

Radon Resolution Program

June 12, 2021

The purpose of this paper is to provide the BOD with an equal footing when it comes to discussions and actions around the radon issues.

Numerous Blasts have been issues and we are moving forward with planning and options. These have included testing results, Public Health References, and a sense of quantifying the significance of the Radon Issue facing us.

The planning and execution will primarily be driven by Governance, Engineering Design & Construction, and Financial Recommendations.

Governance

Initial determinations are that Radon emanates from a common element, (the ground) and penetrates the units through a common element (Slab, Construction Joints, Gaps in Service Pipes, Cavities in inside walls) and is therefore a “communal problem”. See Attachments 2 & 3.

This has been challenged by the Governance Committee, Attachment 1, and an Association Member, Attachment 5. It is recommended that we obtain a second opinion. Attachment 4 provides the detail referenced in Attachment 1.

The final output from Governance would recommend:

- The Associations Radon Policy
- Changes to the Governing Documents
- Enforcement Actions

Engineering and Construction

The Project Planning Committee has assembled a sub- committee to determine the best path forward with regards to mitigation. It is in the process of prescreening and soliciting input from qualified vendors. The process is detailed in Attachment 6.

The final output of this subcommittee would recommend:

- Mitigation Solutions and Standards
- The Budget (Funding Requirements)
- The Recommended Vendor
- The Recommended Schedule

Finance:

The combination of the above two efforts will produce the package that is presented to the Finance Committee to provide a recommendation for the source of funding considering all the activities planned or in progress.

It is expected that these three activities will proceed in parallel recognizing the interdependencies between them and providing support to each other as needed.

Conclusion:

These above three activities will shape the recommendation made to the association as part of the 2022 budget approval process and should be targeted to complete by September 1, 2021.

Attachment 1

Approved Governance Committee Motion from 6/8/2021

Upon reading "The radon issue" document provided during the May 27, 2021 Board of Directors meeting, I submit the following for your consideration:

I very much appreciate the Association's concern for the health and safety of our community.

As I understand the situation, the Association became aware of elevated levels of radon gas as part of a unit sale process. Subsequently, the BOD tested 21-lower level units, and 68% of those units attained "actionable" radon levels. Legal (I'm assuming Harker/ LePore) advised that CC&R Article 4 reflects that the Association is responsible for General Common Areas and Facilities, which does not include Apartment Units. If I understand the BOD's radon remediation plan going forward, the system being considered will be placed in the building foyers. The foyers were not tested so it's unknown what the radon levels are within those locations.

- RCW 64.32.010 states, "...The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed...." Fairway View Condominiums CC&R, 10 May 1989, Article 3, Section 3.2, provides the Apartment Description with no mention of airspace, however, the RCW has legal precedent above the CC&Rs.

- Below reflects two legal reviews that provide condominium apartment owners are responsible for maintaining their unit and therefore radon remediation is an owner responsibility:

1. The Colorado based law firm, Altitude speaks directly an Association's responsibility when a condominium unit tests high for radon: <https://altitude.law/resources/newsletter/clearing-air-questionsrelated-radon-mitigation>

2. Seattle, WA law firm of Barker Martin provides that a Condominium Association should employ best practices by providing a policy and procedure to make radon mitigation easy for their members: <https://www.barkermartin.com/blog/condo-hoa-blog/post/radon-whosresponsible-it-depends>.

- Based on the above legal opinions that disagree with Harper LePore, suggest we obtain a second opinion from the Condominium Law Group in Seattle.

- Does Fairway Village HOA have a mitigation policy?

- Add Radon mitigation policy to ARTICLE VI OBLIGATIONS OF THE OWNERS, Section 6. Maintenance and Repair and procedure to Rules and Regulations.

- Present Finance Committee with situation of expenditure of Association funds on other than Common or Limited Common Areas, which 2021 Audit should flag. Considering the BOD concern for the health and safety of their membership was the driver behind the expenditure and a clear act of good faith should not be a cause for concern, but, rather a teachable moment.

- Lawsuits I was able to find regard tenant against landlords, inmates against the state for not protecting their health and COA's that prevent unit owners from installing radon gas mitigation systems in their unit.

- I was unable to locate any US tort cases involving radon gas and Condominium Associations.

- The City of Vancouver does not track building permits for radon gas mitigation.

The above was presented during the June 8, 2021, Fairway View Condominium Association Governance Committee Zoom meeting. A motion was made, seconded and passed recommending the BOD consider the above concerns and obtain a second legal opinion regarding which party holds mitigation responsibility.

Attachment 2

Request Sent to Harker LePore

Bruce:

As we discussed earlier, we have identified and validated the fact that we have a radon issue here at Fairway View Condos. After the initial tests we conducted an expanded sampling of one lower unit in each building with short term, minimum 60 hr tests. The severity of the issue is solely based on the established EPA limits and the tests we conducted by an EPA Certified Testing Organization, Cascade Radon.

We believe that the data indicates that we should begin exploring remediation solutions rather than continuing to expand testing.

The following Table show the Radon test results to date. The units are PicoCuries/Liter.

Building					Building					
1	Unit	1	3	4	11	Unit	61	62	65	66
	Test		2.8		12	Test	1.7			
2	Unit	7	8	11	12	Unit	69	70	73	74
	Test	11.5	21.7		13	Test	4.9		4.1	
3	Unit	15	16		14	Unit	77	78	81	82
	Test	9.5			15	Test		4.7		
4	Unit	19	20	23	16	Unit	85	86		
	Test		8.5		17	Test	3.5			
5	Unit	25	27	28	18	Unit	89	90	93	94
	Test		3.6		19	Test	14.7		10.3	
6	Unit	31	32		16	Unit	97	98	101	102
	Test	10.4			17	Test	13.4			
7	Unit	35	37	38	18	Unit	105	106	109	110
	Test	1.9			19	Test		2.6		
8	Unit	41	42	45	46	Unit	113	114	117	118
	Test		4.2		19	Test	8.7			
9	Unit	49	50		19	Unit	121	122	125	126
	Test	2.2				Test	6.3			
10	Unit	53	54	57	58					
	Test				10.7					

Key		
Low	<2	
Medium	2-4	
EPA Actionable	>4	
Clark Co Avg	2.2	

% Above Average	86%
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Test Results Distribution

■ Low
 ■ Med
 ■ Actionable

While the physical aspects of the solution (remediation) will be rather straight forward the legal and financial implications need to be better understood.

1	Is Ground a Common Area	If Yes Proceed to 2 If No Individual Problem & Solution	Radon Comes from below the earths surface
2	Confirmation of Actionable Radon Levels	If Yes Proceed to 3	68% of those tested were above EPA actionable Levelm & 86% were above the Clark Co Avg. Sample size = 34% of lower level units
3	Is HOA responsible for Remediation	If Yes Proceed to 4 If No Individual Problem & Solution	Radon has been here since the last of the Ice Age and the resultant Missoula Floods.
4	Communal Problem & Solution		

Based upon the logic tree above we believe this issue will result in a communal solution and the financial burden will be ultimately borne by the owners in accordance with Schedule C. Is this correct?

We believe that this issue will require a special vote to approve at >60%.

Is that correct?

What are our options to secure the funding?

Does our Insurance provide any coverage regarding this Issue?

If the vote fails to approve the budget, what are our liabilities as this is a health and safety issue?

How would we handle an Individual who refuses to do the remediation knowing the test results?
Would a waiver be required?

Attachment 3

Response from Our HOA Lawyer

See my answers to the questions regarding radon in blue below. I hope I have covered everything. Please do not hesitate to send any follow ups or requests for clarification. Regarding the options for a special assessment, there are a number of ways to structure it, and it might be simplest to have a call to talk through some ideas.

- Is Ground a Common Area: Yes, the ground is a common area. It is specifically listed as a common area under Article 4 of the CC&Rs
- Confirmation of Actionable Radon Levels: "EPA guidance suggests mitigating if levels are at or above 148 Bq/m3 (4 pCi/L)" (<https://www.epa.gov/radiation/what-radon-gas-it-dangerous#:~:text=Radon%20is%20a%20naturally%20occurring,is%20not%20a%20health%20issue.>)
- Is HOA responsible for Remediation: Generally, if the problem originates in the common areas, then the HOA is responsible for mitigation. Given the circumstances, I don't think it would be feasible for owners to remediate individually. This needs to be addressed communally. I'm no expert on radon, but from what I have read, the causal link between radon and lung cancer is pretty clear. So, I think the Association needs to take reasonable steps to mitigate this.
- We believe that this issue will require a special vote to approve at >60%. Is that correct? - No, I believe this is incorrect. RCW 64.90.525 applies and supersedes anything to the contrary in previous statutes or the governing docs. Under 64.90.525(3) the Board may propose a special assessment and call a meeting to ratify. The special assessment is ratified unless at least a majority of all units vote against it.
- What are our options to secure the funding? - If the funds are not currently available, you can either levy a special assessment, or else include the costs in next year's budget. You may be able to obtain a loan.
- Does our Insurance provide any coverage regarding this Issue? - I don't believe that your property insurance would cover this. Your property policy covers "accidents" or "events" that cause damage to the property.
- If the vote fails to approve the budget, what are our liabilities as this is a health and safety issue? - If the Association fails to act, and if an owner subsequently develops lung cancer, there is a possibility that the Association could be held liable in tort for negligence. Negligence is a very fact intensive inquiry, so it is difficult to predict with certainty. But, undoubtedly, there is potential for very substantial liability—potentially well beyond your liability coverage limits. Knowledge of the issue coupled with failure to act would certainly not look good in the event that an owner were to develop lung cancer.
- How would we handle an Individual who refuses to do the remediation knowing the test results? Would a waiver be required? - An owner should not do the remediation themselves. The Association should do it, and if an owner prevents access, the Association has remedies, including seeking a court order

Attachment 4

Radon: Who's Responsible? It Depends

Posted on February 20, 2015 by [Amanda K. Anderson](#)

What is radon? Radon is a radioactive gas that comes from the natural decay and breakdown of uranium that is found in nearly all soils. The United States Environmental Protection Agency offers a substantial amount of information relating to radon, its health risks, and radon mitigation here: <http://www.epa.gov/radon/index.html>.

Who is responsible for mitigating radon when it is found to be at unsafe levels^[1] in a community association? Of course, it depends. Although radon testing recently has become fairly commonplace in real estate transactions, case law relating to radon mitigation in community associations has not yet percolated from the courts.

For condominiums and planned communities, owners are often required to maintain the interiors of their homes. This generally includes the interior air space. For example, governing documents for condominium associations often define a unit by describing a unit's boundaries and noting that the unit includes the air space encompassed by those boundaries. Therefore, there is a strong argument to be made that, if an owner wants to mitigate radon located within the boundaries of an owner's unit, an owner is responsible for procuring and installing a radon mitigation system.

Despite the general comments above, it's important to note that an association's governing documents or the specific circumstances surrounding the determination that radon is present at unsafe levels could alter the determination of responsibility for implementing a radon mitigation system. Rather than allowing for potential uncertainties to play out and in light of increased radon testing outside of the sales context, it's likely best for associations to address the issue proactively.

The approach will depend on each association's specific set of circumstances; however, the best practice will likely include adopting an association policy regarding radon mitigation. On that note, the following are some general guidelines to keep in mind when considering a radon mitigation policy for your association.

First, associations should clarify responsibility for radon mitigation within the community. This provides owners with advance notice of their obligations so they can plan accordingly if they would like to test their home for radon or otherwise plan to sell their homes in the future.

Second, if owners are determined to be responsible for radon mitigation, associations should develop a process and guidelines for handling exterior or common element modification requests to implement radon mitigation systems. Given the safety issues involved, associations should treat an owner's request to install a radon mitigation system differently than a request to, for example, change paint color. The policy details should note the association's reasonable requirements relating to the installation of radon mitigation systems, and if those requirements are met, the association should approve the exterior modification proposal. Please feel free to contact us if you have any questions or would like to discuss the details of a policy that fits your community.

^[1] The EPA recommends radon mitigation if the radon level is 4 picocuries per liter or higher. For those interested, a picocurie is an international measurement unit of radioactivity and 1 picocurie means that in one liter of air, there will be 2.2 radioactive disintegrations per minute.

Attachment 5

Comment from Association Member

It appears the association is moving to accept, or has accepted this as an association obligation. The 6-9 Project Team minutes includes the statement, 'The bottom line is that the Association has a responsibility to address issue', but doesn't offer an explanation on how the committee reached this conclusion.

I googled this topic, nationally and in WA. I'm not finding evidence of any association accepting this obligation. Nor do I find any vendor, state agency, federal agency, or advocacy group suggesting an owner approach their association to mitigate. Rather, the consumer-level on-line blather indicates associations consider this an owner obligation.

The board minutes from 5-27 include an update on radon. The radon report includes these findings attributed to the attorney:

1. The ground is a common area under Article 4
2. The HOA is responsible for mitigation, the issue needs to be addressed communally and the HOA needs to take reasonable steps to mitigate it.

I certainly agree Article 4 makes the ground a common element. However, the article also excludes anything 'not part of an apartment'. Section 3.2 defines an apartment, but stops at the unfinished interior surfaces. Of course, air isn't defined.

You know the problem isn't radon gas in the soil. The attorney seems to be including in the definition of 'ground' radon gas that is no longer part of the ground. This logic model appears to be the basis for other associations nationally denying any obligation.

I recognize the possibility that case law may have connected those dots, serving as the basis for the attorney's advice, but the dot points included in the May 27 board minutes don't say that. At a possible cost of \$100,000 to \$192,000 owners should be provided better evidence this is an obligation that fully rests on the HOA.

My google search found lawsuits but no case findings – your attorney would have better info. However, the lawsuits I found were not initiated over whether the association should mitigate. Rather, the suits were over associations prohibiting mitigation measures proposed by owners or requiring owners to accept liability if their mitigation efforts caused harm to others.

I ask the Project Team to step away from creating an obligation where none exists, before suggesting all owners should be paying to mitigate as a common cost. Without clear evidence there's a real obligation here I'm not sure how this even got accepted into the HOA. Once suggested as a common cost it will be hard to pull it back.

BTW, it appears the committee didn't approach how to deal with smokers. Risk of lung cancer for a smoker vs. never-smoker exposed to the same level of radon over a lifetime is something like 700% higher. Would you proposed mitigation when someone in the unit smokes?

Attachment 6

Request for Radon Remediation Presentation For Fairway View Condominiums Vancouver, Washington

Summary:

Fairway View Condominiums is in the process of understanding the options available to remediate known high radon levels, short listing certified and qualified Remediation Contractors, establishing an HOA approved budget for implementation, requesting formal Proposals, awarding a the contract and developing an achievable implementation schedule.

1.0 Background

We have identified and validated the fact that we have a radon issue here at Fairway View Condos. After the initial tests we conducted an expanded sampling of one lower unit in each building with short term, minimum 60 hr tests. The severity of the issue is solely based on the established EPA limits and the tests we conducted by an EPA Certified Testing Organization, Cascade Radon. See Attachment A for Summary of test results.

We believe that the data indicates that we should be proactive in establishing remediation solutions rather than continuing to expand testing only to reach the same endpoint.. The solution will likely be a communal one and it is our desire to have the solution be:

- Cost Effective, Efficient, with Low Maintenance, and
- A Standard Design with non-intrusive Installation requirements, and be
- Aesthetically Acceptable, and Warrantied

2.0 Property Description

1. Fairway View Condominium Community is located west of SE Village Loop, and just south of McGillivray Blvd. Multiple addresses, can use 2624 SE Baypoint Drive Vancouver, WA 98683
2. There are 128 individual units constructed in the 1980'S and are on slab foundations. There are 19 Buildings, 64 upper-level units and 64 lower-level units, and 34 Foyers.
3. They are all over under units in two story buildings. Upper and lower Units are the same models. The lower-level models have 8' ceilings and rage in volume from 5,736 CF to 10,128 CF.

4. Areas are available for staging during the project and must be agreed to by the FVC Board or the Management Company.
5. The Property Management affairs of FVC are professionally managed ~~Deleted~~ by Key Property Services, Inc. Phone: 360-695-1538. Fax: 360-695-4238; Email: hoa@kpsinc.net; 7700 NE Greenwood Dr., Suite 110, Vancouver, WA 98662

See Attachment B for Summary Level Plat. And Attachment C is a typical cross section.

3.0 Presentation Requirements:

Presentations will include as a minimum:

- Company History
- Similar projects completed in the last five years in Washington or Oregon:
 - Name and address of project
 - Total value of project
 - Contact person with phone number.
- Summary of the proposed methodology for this project and any alternate approaches
- Order of Magnitude Estimates (Schedule and Cost)
- Staging Area requirements
- Product literature and specifications.
- Warranty information from the manufacturer

4.0 Scheduling and Coordination of Meetings

“Work in Progress”

There are only 2 enacted requirements regarding Radon in Washington State.

- Homeowners are required to disclose known Radon levels when selling their homes
- Only new construction requires minimization of Radon levels.

From "Washington Radon Fact Sheet" – below.

Additional Background Information:

Radon was not considered in the Washington State Cancer Control Plan because there were limited resources available to address the objectives outlined in the 2009-2013 Plan. However, the exposure to radon is still a concern and will be placed in the "emerging issues" section as an environmental exposure of concern when considering future interventions and activities. From "Washington Radon Fact Sheet" – below.

Even though there are very few state and governmental guidelines, the lack of governmental requirements does not preclude Fairview Condos from taking proactive measures to reduce Radon for our owners.

Companies being Considered for Pre-Qualification

Cascade Radon – Portland, OR –

Completed initial/expanded measurements
BBB Listed – A+

- Steve Tucker, NRSB exp. 6/30/22
- Anne Tucker Certified NRPP, Radon mitigation
- Was Gervais, NRPP Radon mitigation

Environmental Works – Fairview, OR

BBB Listed – A+

- Dylan Jacobs, NRPP Radon mitigation

SWAT Environmental – National company,

Local affiliate, Columbia River Valley
BBB Listed and Accredited since 2010

- Brent Garcia, NRPP Radon mitigation
- Christopher Kuntzmann, NRPP Radon mitigation

Just Radon – Lake Oswego, OR

No listing on BBB

- Lawrence Belland, NRSB exp. 7/30/22, NRPP Radon mitigation

Alpha Environmental – Beaverton, OR

BBB Listed – A

- Richard Cason, NRPP Radon mitigation

In summary:

We suggest inviting companies to present mitigation options in a pre-bid meeting.

It is important to receive clarification that any proposed mitigation plan cannot use standards for new construction and must take into account:

- How their proposal addresses frequently changing levels of naturally occurring Radon in units with several different internal floor plans and air exchange scenarios;
- Incorporates the current known state of Fairview Condo foundations (heavily cracked cement with no crawl space and no polypropylene barrier) so as to eliminate the need for any additional drilling to draw up Radon; and
- Clarify the potential utility of using low sones fans (quiet fans <1.5 sones) installed in existing lower unit vents (such as bathrooms, oven exhaust, dryer exhaust) near the roof line. These fans will operate 24 hours/day, although fans may only run a few minutes each hour.

