

USE OF PROFESSIONALS

Engineer on Board

By **STEPHEN VARONE** and **PETER VARSALONA**

One of the new board members in our cooperative is an engineer and partner with a firm that provides consulting services for repairing and upgrading buildings. Our building is planning several capital improvement projects over the next few years, including replacing the roof, making Local Law 11/98 repairs, and upgrading our heating system. Because of his technical background, this board member has volunteered to be the point person on these projects and has also offered the services of his firm. While the board would like to make use of his engineering knowledge, we're wary of potential conflicts of interest if we hire his firm for these projects. What recommendations or guidelines do you suggest we follow to take advantage of this person's technical expertise but avoid sticky situations that could arise if we engage his firm?

"Having an engineer or an architect on your board can be a tremendous help because they bring technical knowledge and insight to projects," observes Beth Markowitz, president of Merlot Management. "It can also be a hindrance if they think they know what's best and act in a counterproductive way. Then it can get contentious, ugly, and nasty."

Having an engineer or architect on the board certainly can give a cooperative or condominium a leg up on repair and upgrade projects. The person can provide valuable input throughout the different stages of the project, while serving as the board's technical contact to the project engineer or architect and to contractors. A harmonious relationship between a board member who is an engineer or architect and the engineering or architectural firm hired by the board will no doubt help the project run more smoothly. It is important, however, for the board to understand the limits of the board engineer/architect's role and to establish strict areas of responsibility for running the project.

The first thing to consider before accepting help (paid or unpaid) from your engineer board member is whether his area of expertise matches the project at hand. A mechanical engineer may not have much experience with exterior repairs, for example, while a civil engineer is not necessarily qualified to provide advice on a heating plant upgrade. Similarly, an interior architect may not be up to speed on the details of roofing systems.

If the engineer/architect on the board does have the relevant techni-

cal knowledge, then he or she can certainly take on an advisory role and act as the owner's representative for the project. But it should be a clearly defined – and limited – role that does not blur the lines of responsibility with the engineer/architect hired for the job.

The board engineer can apply his expertise on the project by reviewing the scope of work, budget, timetable, drawings, and specifications and letting the board know if anything looks out of line. Once construction begins, the board member can periodically check on the quality of the workmanship and alert the other members about any potential problems.

Keep in mind, however, that the engineering or architectural firm engaged by the board – not the home-grown expert – is the engineer/architect of record for the project, and his or her firm stamps the drawings and files them with the Department of Buildings, thereby assuming liability for the project if the design proves flawed. The firm cannot simply abdicate that responsibility to the engineer on the board, no matter how active a role he or she has played on the project.

While a knowledgeable, involved board member who is an engineer or architect can be a great benefit to a project, a meddlesome know-it-all is a detriment. A board member usually cannot devote his full time or attention to the project, so he won't know all of the necessary details to make fully informed day-to-day decisions. Though it can be helpful for the engineer/architect on the board to question how things are being done, the hired engineering

or architectural firm cannot work efficiently if its decisions are constantly second-guessed or it doesn't have the confidence of the board. Above all, the engineer on the board needs to keep in mind that he or she is providing advice, not running the project.

"An engineer sitting on the board has to remember that he can't work the same way he does professionally," Markowitz says. "The person may be used to being in charge at his firm, but serving on a board is a collaborative effort, and they make group decisions."

It is the board's responsibility to address any friction that develops between the engineer on the board and the hired engineer. Either the board will have to pull back the reins on the intrusive board member, or, if the board finds itself siding more frequently with the engineer on the board than the firm it hired, then it is probably time to re-evaluate its relationship with the firm. In either case, a contentious relationship between the two engineers will jeopardize the project, so it is essential that each one's role is clearly understood.

Boards may be tempted to save money on a project by bypassing an engineering or architectural firm and instead allowing an engineer/architect on the board to voluntarily oversee the project on an as-needed basis. So long as the project is small and doesn't require a Department of Buildings permit, this type of arrangement can work sufficiently well. It can become a problem, however, if the board tries to run larger projects in the same way. While it's one thing to make the engineer/architect the board's point person on a project being administered by an engineering or architectural firm, it's quite another to ask him to take on the entire project himself, especially in an informal capacity. Unless the board member is able to dedicate the necessary time and effort on the project, it could easily end up haphazardly managed. It also places undue liability on the board if there is no engineer or architect of record on the project.

Hiring the board member as the engineer of record for the project raises another set of concerns, however. Many cooperative and condominium bylaws forbid boards from hiring a member who is an engineer/architect

USE OF PROFESSIONALS

Engineer on Board

(or contractor or attorney, etc.) because of conflicts of interest, the appearance of impropriety, and different types of liability insurance required (directors and officers for the board, errors and omissions for the engineer). The most obvious pitfall of this type of arrangement, according to Andrew Brucker, a partner at Schechter & Brucker, a law firm that specializes in condominium and cooperative law, is that it puts the person in conflicting roles. "As a board member, the person is a fiduciary, and the law sets forth certain requirements," Brucker says. "As an engineer, he has different concerns. They simply might not be in sync with one another."

For example, as a board member and shareholder, the person pays for a portion of each of the projects that the board undertakes, while some of those projects could interfere with his use of the premises. That puts him at odds with his role as an independent engineer, for whom cost and inconvenience are less important than the technical necessity of the project and the operational efficiency of the building.

Because of the potential problems inherent in this type of relationship, Brucker recommends boards and engineers/architects steer clear of it. "The better policy would be to hire an independent engineer, with the board member who's an engineer acting as the liaison for the board," he says. For those cooperatives and condominiums willing to enter into a contract with a board member as its engineer or architect, Brucker emphasizes that there must be full disclosure and a vote by the board to permit it.

Given that your board member has offered his engineering know-how, it makes sense to put his experience to use. Just be sure to proceed with caution and establish a well-defined, fully transparent relationship that enhances your building's operations and financial health and avoids putting the cooperative at risk. **H**

Send your questions, queries, and comments to: tsoter@habitatmag.com.