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SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 90636-0

Court of Appeals No. 70329-3-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUDDEN VALLEY COMMUNITY ASSOCIATION,
a Washington Non-Profit Corporation,

Respondent,

vs.

CURT CASEY, DAVE SCOTT & BARBARA VOLKOV,

Petitioners.

RESPONDENT SUDDEN VALLEY COMMUNITY ASSOCIATION'S RESPONSE TO PETITION FOR REVIEW

Richard A. Davis III, WSBA #20940
CHMELIK SITKIN & DAVIS P.S.
1500 Railroad Avenue
Bellingham, WA 98225
(360) 671-1796
Attorney for Respondent

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I. IDENTITY OF RESPONDING PARTY

The Respondent is Sudden Valley Community Association ("SVCA"). SVCA was the defendant in the Trial Court and was the Appellant before the Court of Appeals.

II. DECISION ON APPEAL

The Appellants, Curt Casey, Dave Scott, and Barbara Volkov ("Appellants"), have requested discretionary review of the Court of Appeals (Div. 1) decision filed on July 10, 2014 (the "Decision").[1]

III. ISSUES PRESENTED FOR REVIEW

Whether the Decision involves an issue of substantial public interest and should be determined by the Supreme Court when the Court of Appeals decision is consistent with the plain language of the statute and legislative intent?

IV. STATEMENT OF THE CASE

SVCA is a homeowners' association located in Whatcom County, Washington. It was incorporated in 1973 and is comprised of 3,204 lots[2] plus a variety of common amenities.[3]

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[1] The Decision is attached to Appellant's Petition for Review as Appendix A.

[2] The term "lots" includes units of several condominium buildings located within the entire development.

SVCA is governed by an elected nine (9) member Board of Directors, which is responsible for the affairs of the Association. The Board is elected by the members of SVCA at the annual general meeting (AGM). Each lot in SVCA has one vote, so there are 3,204 possible votes at any meeting of the members. CP 216-17. Over the past 4 years, votes at member meetings have been cast in person or by mail-in ballot, by an average of only forty percent (40%) of the membership. CP 94, 97. Accordingly, even if every person voting at the meeting voted to reject the budget proposed by the Board, it would still pass.[4]

SVCA obtains its revenue from a variety of sources[5] but the majority comes from "annual dues and assessments" levied on its members. CP 94. Since its incorporation in 1973, SVCA's Bylaws have contained the following provision:

> Annual dues and assessments shall be established by the Board and approved by a vote of not less than sixty (60%) percent of the members present in person or by mail-in ballot at any annual or special meeting.

CP 217-18.

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[3] The common facilities include a golf course, playground, marina, swimming pool, meeting facilities and fitness facility. CP 216-17, 254

[4] RCW 64.38.025(3) states that a budget is ratified unless rejected by a majority of all owners in the entire association, not just those voting at the meeting. In an association the size of SVCA, this threshold would be virtually unattainable.

[5] Such sources include greens fees from the golf course, building rent on leases to third parties, and marina fees.

SVCA holds its annual general meeting of the members in the month of November. CP 234-35. At each AGM, SVCA presents a budget to the members for ratification pursuant to RCW 64.38.025(3). The proposed budget contains the Association's *anticipated* expenses and *anticipated* revenues from *all* sources, including annual dues and assessments.[6] If the Board determines that the assessments should be increased, Article III, Section 19 of the Bylaws requires the Board to offer a separate measure for the membership to vote on the proposed increase. CP 95, 218.

Because of the elevated (i.e., 60%) approval threshold for assessments (plus the failure of past Boards of Directors to adequately justify proposed increases to the membership)[7], SVCA membership has often rejected proposed increases in the assessments.

In 2011, the Board became frustrated with the difficulty of convincing the membership to approve an increase in assessments. Rather than pursue a Bylaw amendment to lower the threshold in Article III, Section 19 of the Bylaws, the Board

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[6] Plaintiffs have repeatedly mischaracterized SVCA's budget process by claiming that SVCA excludes revenue from its budget. See, e.g., CP 60-61, 448, 472.
[7] The increase proposed at the 2012 AGM was passed by the membership, in part, due to the efforts of the Board to justify it.

simply passed a motion declaring that the proposed dues increase would automatically be approved if the membership did not reject the budget (which, again, is a virtual impossibility given the Association's size and historic voter turnout).

The membership did not reject the budget at the 2011 AGM, and the Board proclaimed that the proposed dues increase had also passed, despite the members' overwhelming rejection of that proposal by a 2:1 margin[8]:

Approved: 658
Rejected: 1,249

CP 225.

As soon as the newly elected Board members took office, the newly constituted Board rescinded the August 22, 2011 motion because it violated Article III, Section 19 of the Bylaws. CP 225. This newly constituted Board also determined that the increase in the assessments had ***not*** passed because it had not received approval by a 60% majority of those ballots cast at the meeting as required by the Bylaws. CP 226.

Except for the foregoing aberration in 2011, which was promptly rectified by the incoming Board, SVCA has always treated

[8] According to RCW 64.38.025(3), 1605 votes were needed to reject.

Article III, Section 19 of the Bylaws as the exclusive means to increase assessments. However, because different approval thresholds exist for the votes on the budget and assessments, it is possible for the membership to ratify the budget but reject the increase in assessments. This causes the projected revenue in the budget to be overstated, and it occurred several times during the Great Recession (i.e., 2010, 2011 and 2012). In these years, the Board adopted a "spending plan" to account for the reduction in expected budgeted revenues. Id. This provided an orderly method for the Board to cut costs so that total expenditures for the year would not exceed revenues.[9] By engaging in this effort, the Board avoided the necessity of making ad hoc decisions about how to spend money for the balance of the year.

V. ARGUMENT

A. The Petition Does Not Involve an Issue of Significant Public Interest that Should be Determined by the Supreme Court.

In deciding whether a case presents issues of continuing and substantial public interest, the Court has found three factors to be determinative: (1) whether the issue is public or private nature;

[9] No spending plan was required in 2013 because the measure to increase annual dues and assessments was approved by the membership. CP 226-27

(2) whether an authoritative determination is desirable to provide future guidance; and (3) whether the issue is likely to recur. *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 796, 225 P.3d 213, 222-23 (2009); *Westerman v. Cary*, 125 Wn.2d 277 at 286–87, 829 P.2d 1067 (1995). Here, these three factors lead to the conclusion that the Court should deny review.

1. The Dispute Does Not Involve a Matter of Substantial Public Interest for which Guidance is Needed.

The Decision applies to SVCA, a private homeowners' association, which has consistently followed the process outlined in its Bylaws for imposing assessments for over 40 years. The Decision validates its members' longstanding contractual understanding and expectations that assessments would not be increased without a supermajority vote of the membership. Appellants assert that the Decision affects many other Washington HOA residents as well, but their supporting evidence for this proposition is dubious.

Appellants present no evidence that the Decision directly affects any other homeowners' association in the State of Washington. But, Appellants theorize that other so-called "community associations" *could* be affected by the Decision if they

chose to amend their bylaws to require that assessment increases be approved by a vote separate from budget ratification.

Appellants' assertion about the number of residents who could be affected by the Decision is grossly misleading. The cited statistics refer to "community associations"[10], a term which is a "catch all" for: (i) New Act Condominiums[11]; (ii) Old Act Condominiums[12]; and (iii) homeowners' associations (HOAs). The budget and assessment provisions that apply to each of these are quite different.

New Act Condominiums must ratify an annual budget in the same manner as HOAs[13], but the Legislature expressly limited their ability to impose assessments: "assessments must be made against all units, ***based on a budget adopted by the association***. RCW 64.34.360 (Emphasis added). The Court of Appeals recognized that this language—which does not appear in the HOA Act—confirms that the budget and assessment process are inextricably linked for New Act Condominiums.

[10] Appellants cite to a "Community Association Factbook", which was not attached as an appendix to the Petition.
[11] These are condominiums formed after July 1, 1990 and are governed by the Washington Condominium Act, RCW 64.34.
[12] These condominiums are governed by RCW 64.32, the Horizontal Property Regimes Act.
[13] See RCW 64.34.308(3).

"Old Act Condominiums" include condominiums created over more than a thirty year period prior to July 1, 1990.[14] Although the Legislature applied many WCA provisions to Old Act Condominiums, the Legislature did not impose the WCA's budget and assessment provisions on Old Act Condominiums. In fact, Old Act Condominiums are governed by ***no*** statutory provision mandating how they must adopt budgets or impose assessments.[15] They have absolute freedom in that regard.

HOAs are the only form of "community association" that could be affected by the Decision. But, as the Appellants concede, the HOA Act does not *explicitly* require HOAs to increase their assessments via the budget ratification *process*. Petition at 12. Appellants' conclusion must be inferred from the statute and legislative intent. That is a difficult pill to swallow, particularly if the Legislature truly intended to invalidate longstanding contractual expectations of HOA members such as those in Sudden Valley

[14] The Horizontal Property Regimes Act was passed in 1963, and it governs condominiums created until July 1, 1990.

[15] The Legislature did not make this budget approval section apply retroactively to Old Act Condominiums. If it was so critical, as Appellants have contended, for assessments to be automatically approved by ratification of a budget, then it makes no sense at all that Old Act Condominiums would be excluded from this requirement while pre-1990 homeowners' associations would not.

who, for over 40 years have relied upon the process contained in their Bylaws.

In short, as the Court of Appeals recognized when it opted to initially issue the Decision as an unpublished opinion[16], this Decision has minimal precedential value and is not a matter of substantial public interest.

2. The Decision Has Minimal Precedential Value.

The Decision merely holds that the Legislature never intended to preempt homeowner associations' freedom to establish a *process* for imposing assessments on their members. This conclusion is rather unremarkable, especially since the Legislature has left numerous other procedural issues up to the discretion of individual homeowner associations.[17]

In cases where the Legislature has decided to preempt conflicting provisions of governing documents, the Legislature has been very explicit as to its intent. Since the "bylaws of a

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[16] SVCA asked for the decision to be published to achieve finality. SVCA wanted to ensure that the Decision would be res judicata as to any other member in SVCA who may subsequently bring a similar action against SVCA.

[17] An HOA has the discretion, for instance, to decide the number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers; filling of vacancies on the board; the method of amending the bylaws; the percentage of votes needed for a quorum; the procedure for levying of fines and appeals; and the manner by which associations adopt rules and regulations.

homeowners' association are, in effect, a contract between the association and its members"[18] one would expect the Legislature to use explicit language when it abrogates a central feature of this contractual relationship. The Legislature knows very well how to do this. Consider, for instance, the language used by the Legislature to abrogate inconsistent provisions in a homeowners association's governing documents regarding displaying the American flag or political yard signs: "[t]he governing documents may not prohibit . . . ." RCW 64.38.033-.034. The Legislature's admonition is unambiguous and explicit. This affirms that the Legislature will properly notify homeowners' associations when statutory provisions are intended to preempt governing documents. Knowing this, it becomes clear that the Legislature did *not* intend RCW 64.38.025(3) to preempt an association's procedures for approving assessments.

3. The Decision Does Not Impact the Financial Sustainability of Homeowners' Associations.

Because of the unexceptional holding of the Decision, Appellants attempt to make more of the Decision than is warranted to enhance the likelihood that the Supreme Court will accept

[18] *Rodruck v. Sand Point Maint. Comm.*, 48 Wn.2d 565 (1956).

review. They assert, for instance, that the Decision affects the financial stability of homeowners' associations. Appellants argue that the Legislature was concerned enough about the financial viability of associations that it recently required "even apathetic homeowners' associations to be fiscally responsible."

While financial stability of HOAs may well constitute sound public policy, it was not a concern the Legislature addressed when it passed the HOA Act in 1995 or when it passed the recent reserve study amendments. The HOA Act was passed in 1995 to enhance notification to HOA owners of Board actions and to require some basic consistency of procedures. There is nothing in the legislative history that indicates legislative concern over HOA solvency.

House Bill Report HB 1471 provided:

> The bill is needed to deal with common complaints received from members of homeowners' associations. The bill provides a set of basic rules and procedures by which homeowners' associations must operate in order to protect individual association members. **The board of directors of some homeowners' associations currently do not provide members notice of their actions and imposition of assessments**. The board needs to be accountable to the members of the association and needs to make decisions based on the association's interest.

CP 81-84 (emphasis added).

This shows that the Legislative intent behind the Act was to "protect individual association members" by giving them more information and, thus, more control. It did this by ensuring that members received adequate notice.

In 2011, the Legislature amended the HOA Act to require associations to conduct periodic reserve studies and to authorize homeowner associations to establish reserve accounts. Once again, as the Final Bill Report[19] for the amendment confirms, this had nothing to do with mandating fiscal responsibility[20] and everything to do with ensuring that members received crucial information regarding the condition of association facilities and future repairs:

> Appellants' associations are encouraged to establish reserve accounts, supplemental to the annual operating budget, to fund major maintenance, repair, and replacement of common elements. Similar to the new requirement for condominium associations, *HOAs must disclose information to owners regarding*

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[19] Final Bill Report, ESHB 1309, attached hereto as Appendix A.

[20] The clever use of quotation marks allows Appellants to misrepresent the purpose of the 2011 amendments. Appellants contend that "the purpose of this legislation is to 'offset the financial burden of necessary renovations that, in the absence of a reserve account, would require the condominium association to impose a special assessment upon the owners.'" Petition at p. 9. The House Bill Analysis actually states that "the purpose of a *reserve account*" (not the legislative amendment) is to offset the financial burdens associated with such deferred maintenance.

reserve accounts and reserve studies with the summary of the annual budget.

B. Supreme Court Review is Not Needed to Correct Any Departure from Established Practice.

Without citation to authority, Appellants assert that the Decision represents a "dangerous" departure from some "established practice." To the extent it exists, any established practice is irrelevant to this Court's inquiry.

But, a brief discussion of "practice" is important if for no other reason than to demonstrate how Appellants' argument is detached from reality. Appellants' misguided assumption is that an owner can review the association's budget and determine whether the proposed assessment for his lot is acceptable.[21] That's not how it works. The budget is a "macro" document, dealing with the association's *total* revenue and total expenses for the year; it does not deal with the obligation of individual owners. Take SVCA's budget, for example. It shows the total projected revenue from assessments, but not the individual assessment per lot. See CP 405. So, by looking at the budget, how would a lot owner know exactly what assessment level he is ratifying or whether it

[21] See Petition at p. 17 ("the Act provides a uniform method by which owners receive notice of assessments-contained within budgets . . . .")

represents an increase over last year's assessment? Simply put, he can't. He would have to dig for that information elsewhere because the line item for "assessments" does not translate into the ideal mathematical formula that Appellants seem to envision:

Revenue = assessment/lot x number of lots

Such a rigid formula fails to account for different assessment tiers[22] or the Board's judgment in adjusting for potential foreclosures, bankruptcies, and defaults. The Board's failure to adjust for these events were, in large part, why the revenue portion of SVCA's budget for 2010 was overestimated. The 2010 Spending Plan notes:

> To say that 2009, with its wave of personal bankruptcies, home foreclosures, business failures, lost jobs and reduced consumer spending, has been bad for the Association, would be an understatement. Add to this dismal national picture, our own failed dues proposal, increased dues delinquencies and a flat construction season and you have the makings of a challenging new year. This is the context in which the 2010 budget exists and to which it must be reconciled.

CP 366.

[22] See CP 401. SVCA has different assessment levels depending upon whether a lot is developed or undeveloped.

If the Legislature really intended ratification of the budget to provide essential assessment information to the members, wouldn't the Legislature have insisted that the assessment be listed in the budget itself or, at a minimum, in the "summary of budget"? Yet, not even the summary of budget requires this crucial information to be disclosed to members.[23] So, instead of enhancing information to members, Appellants' position serves to keep them in the dark.

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[23] RCW 64.38.025(4) provides:

As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

On the other hand, SVCA's process of conducting an independent vote places the issue front and center for the members' collective decision.

1. The Decision Correctly Interpreted the Plain Language of the Statute.

The primary statute at issue, RCW 64.38.025(3) provides:

> Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. **Unless at that meeting the owners of a majority of the votes in the association are allocated [sic] or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present**. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(Emphasis added). The term "assessments" is not even found in this section. That term is defined in RCW 64.38.010(1) as "all sums chargeable to an owner by an association *in accordance with RCW 64.38.020*." (Emphasis added). Notably, the definition of assessments does not even refer to the budget ratification statute

(RCW 64.38.025), which it would obviously do if assessments were approved via the budget ratification process.

The Court of Appeals properly understood that the terms "budget" and "assessments", while related, are nonetheless distinct concepts. A budget is "a statement of an organization's *estimated* revenues and expenses[24] for a specified period." CP 79. It is a *planning* tool, not a binding document. Approving a budget does not mean that the Association *must* collect all of its projected revenue, nor does it mandate the Association to spend precisely the amount budgeted for any given line item. If it can replace a building roof for cheaper than the estimate, it is free to do so. If the cost is higher than expected, the Board has the inherent discretion to spend more. And so on. The Board is not required to have a new vote to "amend" the budget whenever there is a variance from the budget.

In contrast to this flexible planning tool, however, an "assessment" is a fixed and binding financial obligation upon the members, enforceable by a lien foreclosure action. In light of the

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[24] See, e.g., SVCA's 2012 Budget at CP 405.

budget's purpose as a general planning tool, it is not surprising that the Legislature entrusted boards with greater deference in this area by making it almost impossible to reject a budget. But, that same logic does not extend to assessments.

2. The Decision is Supported by Legislative Intent.

House Bill 1471 Report summarizes the legislative intent for the HOA Act:

> The bill is needed to deal with common complaints received from members of homeowners' associations. The bill provides a set of basic rules and procedures by which homeowners' associations must operate in order to protect individual association members. **The board of directors of some homeowners' associations currently do not provide members notice of their actions and imposition of assessments**. The board needs to be accountable to the members of the association and needs to make decisions based on the association's interest.

CP 81-84.

It important to remember that this legislative intent applies to the entire HOA Act, not any specific provision. The Legislature was concerned about consistency in certain areas, e.g., establishing a process for ratifying a budget or establishing a threshold for

removal of directors.[25] But, it left countless other procedural and substantive matters up to the discretion of individual associations.[26]

Perhaps the most misunderstood effect of Appellants' interpretation is that it fails miserably to achieve the Legislature's primary goal of ensuring that members receive notice of their assessments. As explained above, a budget does not inform a member what he, personally, would be obligated to pay as assessments. This result is absurd, particularly when the member could face a lien foreclosure action for nonpayment. SVCA's process, by contrast, requires the Board to place this information squarely before each member by conducting a separate vote on the assessments. This method holds the Board completely accountable to the membership by requiring the Board to justify the proposed level of assessments, something that the SVCA Board admitted that it did not do very well in certain years. And, partially as a result of this failure, the membership "held the board accountable" and failed to pass the assessment increase. When that occurred, the Board did what it would do in any other situation where a revenue shortfall occurred. It adjusted expenditures so

[25] See RCW 64.38.025(5).
[26] See note 17.

that the association could "live within its means." Appellants' effort to redefine this exercise as an amended budget just highlights their misunderstanding of the nature of a budget as a planning document. Under their interpretation, anytime a line item had to be changed, the entire membership would have to approve an amended budget. It would be a patently absurd result and certainly one the Legislature never contemplated.

VI. CONCLUSION

As the Court of Appeals recognized by its issuance of an unpublished opinion, the Decision is not a matter of substantial public importance. SVCA requests the Court to deny review in this matter.

Dated this 21st day of November, 2014.

CHMELIK SITKIN & DAVIS P.S.

Richard A. Davis III (WSBA #20940)
Attorney for Respondent
Sudden Valley Community Association

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APPENDIX A

FINAL BILL REPORT
ESHB 1309

C 189 L 11
Synopsis as Enacted

Brief Description: Concerning reserve accounts and studies for condominium and homeowners' associations.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Roberts, Appleton, Rodne, Springer, Hasegawa, Ryu, Eddy, Green, Kagi and Kelley).

House Committee on Judiciary
Senate Committee on Financial Institutions, Housing & Insurance

Background:

In 2008 the Condominium Act and the Horizontal Property Regimes Act were amended to require condominium associations to conduct an initial reserve study by a reserve study professional, updated annually with a visual site inspection every three years, unless doing so would impose an unreasonable hardship. Homeowners' associations (HOAs)are not required to conduct reserve studies.

Condominium Associations and Reserve Studies.
A "reserve study" identifies the major maintenance, repair, and replacement expenses that a condominium association will incur over time that are not practical to include in an annual budget. The purpose of a reserve study is to evaluate the expected cost of future repair and maintenance of common elements. A reserve study must include a variety of information such as a reserve component list and the balance of the association's reserve account. A condominium association is not required to conduct a reserve study if the cost of a study exceeds 10 percent of the annual budget.

Condominium associations are authorized and encouraged to establish "reserve accounts" independent of the annual operating budget, administered by the board of directors, to fund the maintenance, repair, and replacement of common elements. A reserve account consists of funds contributed by condominium owners, supplemental to the association's annual operating budget, to fund major maintenance, repair, and replacement of common elements that will be required within 30 years. Examples of common elements include a condominium's lobby, roof, parking lot, recreational areas, roads, and sidewalks. The purpose of the reserve account is to offset the financial burden of necessary future

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This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

renovations that, in the absence of a reserve account, would require the condominium association to impose a special assessment upon the owners.

Homeowners' Associations.
A HOA is a legal entity with membership comprised of the owners of residential real property located within a development or other specified area. A HOA typically arises from restrictive covenants recorded by a developer against property in a subdivision. The purpose of a HOA is to manage and maintain a subdivision's common areas and structures, to review design, and to maintain architectural control.

Under the Homeowners' Association Act, the HOA may exercise powers necessary and proper for the governance and operating of the association. It must prepare annual financial statements and provide homeowners with notice of and a ratification process for the annual budget. It is not required to conduct reserve studies or to maintain reserve accounts.

Summary:

The requirements of condominium associations concerning reserve components and summaries of annual budgets are amended. Reserve study and reserve account requirements are adopted with respect to HOAs.

Condominium Associations.
A condominium association is required to comply with the reserve study requirement if the association has significant assets. For the purposes of condominium associations, "significant assets" means that the current total cost of major maintenance, repair, and replacement of the reserve components is 50 percent or more of the gross budget of the association, excluding reserve account funds.

A reserve study's reserve component list must include roofing, painting, paving, decks, siding, plumbing, windows, and any other building component that would cost more than 1 percent of the annual budget for major maintenance, repair, or replacement. If one of the components is not included, the study must explain the basis for the exclusion.

The board of directors must disclose information to owners regarding reserve studies with the summary of the annual budget. The list of required information includes:

- the current amount of regular assessment budgeted for contribution from the reserve account;
- any regular or special assessments and the date of such assessments;
- the sufficiency of reserve funds for the next 30 years and, if the funds are insufficient, notice of a possible assessment; and
- the projected balances of the reserve account at the end of the next five budget cycles.

Homeowners' Associations.
Homeowners' associations with significant assets are required to prepare an initial reserve study based upon a visual site inspection conducted by a reserve study professional. The study must be updated annually and must include a visual site inspection every three years by a reserve study professional.

When more than three years have passed since the date of the most recent reserve study prepared by a professional, the owners to which at least 35 percent of the votes in the association are allocated may demand that a reserve study be conducted in the next budget year. The board of directors must provide the owners with reasonable assurance that a study will be conducted if the next budget is not rejected by a majority of the owners in the association.

A HOA is not required to comply with the reserve study requirements if: there are 10 or fewer homes in the HOA; the cost of the reserve study exceeds 5 percent of the HOA's annual budget; or the HOA does not possess significant assets. For the purposes of HOAs, "significant assets" means that the current replacement value of the major reserve components is 75 percent or more of the HOA's gross budget, excluding reserve account funds.

Homeowners' associations are encouraged to establish reserve accounts, supplemental to the annual operating budget, to fund major maintenance, repair, and replacement of common elements. Similar to the new requirement for condominium associations, HOAs must disclose information to owners regarding reserve accounts and reserve studies with the summary of the annual budget.

Monetary damages or any other liability may not be awarded against the association, the officers, or board of directors, or those who may have provided assistance to the association for failure to: (1) establish a reserve account; (2) have a reserve study prepared or updated; or (3) make reserve disclosures.

Votes on Final Passage:

House	93	5	
Senate	48	1	(Senate amended)
House	95	1	(House concurred)

Effective: January 1, 2012

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Supreme Court No. 90636-0

Court of Appeals No. 70329-3-I

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

SUDDEN VALLEY COMMUNITY ASSOCIATION,
a Washington Non-Profit Corporation,

Respondent,

vs.

CURT CASEY, DAVE SCOTT & BARBARA VOLKOV,

Petitioners.

CERTIFICATE OF SERVICE

I, RHONDA S. VOGELZANG, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am employed by the law firm of Chmelik Sitkin & Davis P.S., at all times hereinafter mentioned I was a resident of the State of

Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

2. On the date set forth below I sent for service, in the manner noted, the documents entitled:

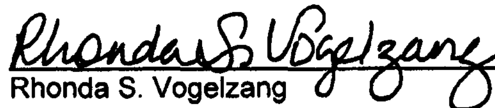
1. Respondent Sudden Valley Community Association's Response to Petition for Review; and
2. Certificate of Service,

on the party listed below:

Attorney for Petitioners
MARLYN K. HAWKINS, WSBA #26639
BARKER MARTIN PS
719 2ND AVE STE 1200
SEATTLE WA 98104-1749

[X] Legal Messenger

DATED this 21st day of November, 2014, at Bellingham, Washington.


Rhonda S. Vogelzang

\\APP\SHARED_DOCS\CLIENTS R-Z\SUDDEN VALLEY COMMUNITY ASSOCIATION\LITIGATION FILES\CASEY-SCOTT-VOLKOV LAWSUIT\PLEADINGS\SUPREME COURT\CERTIFICATE OF SERVICE_RESPONSE BRIEF_11-21-14.DOCX

OFFICE RECEPTIONIST, CLERK

To: CSD - Rhonda Vogelzang
Cc: CSD - Richard Davis
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Supreme Court Clerk's Office

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From: CSD - Rhonda Vogelzang [mailto:rvogelzang@chmelik.com]
Sent: Friday, November 21, 2014 2:32 PM
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Cc: CSD - Richard Davis
Subject: Documents for Filing / Supreme Court No. 90636-0
Importance: High

RE: Sudden Valley Community Association vs. Curt Casey, Dave Scott & Barbara Volkov
Supreme Court No. 90636-0
Court of Appeals No. 70329-3-1

Filing by Richard A. Davis III on behalf of the Respondent Sudden Valley Community Association

Richard A. Davis III, WSBA #20940
Chmelik Sitkin & Davis P.S.
1500 Railroad Avenue
Bellingham, WA 98225
(360) 671-1796, Ext. 202
Attorney for Respondent Sudden Valley Community Association

ATTN: Supreme Court Clerk

Attached for filing are the following documents:

1. Respondent Sudden Valley Community Association's Response to Petition for Review; and
2. Certificate of Service

A reply email confirming receipt of this filing would be greatly appreciated.

Thank you very much.

Rhonda

Rhonda S. Vogelzang
Legal Assistant & Paralegal to

Richard A. Davis III and Jonathan K. Sitkin
CHMELIK SITKIN & DAVIS P.S.
1500 Railroad Avenue
Bellingham, WA 98225
(360) 671-1796, Ext. 211
FAX: (360) 671-3781
rvogelzang@chmelik.com