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NO. 73725-2  
IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

**ROBERT WILBUR and DUSTIN FREDERICK,**

**Plaintiffs,**

vs.

**ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation; and  
JEAN SALLS, MARIA CHAMBERLAIN, KAREN SHAAK, ROBERT PEETZ,  
ELSA PALMER, ED DELAHANTY AND DAN JONES, individuals,**

**Defendants.**

**SUE CORLISS,**

**Intervenor/Appellant,**

vs.

**DUSTIN FREDERICK; ROBERT WILBUR; ADMIRAL'S COVE BEACH CLUB,  
a Washington non-profit corporation; and its BOARD OF DIRECTORS,**

**Respondents.**

**APPEAL FROM ISLAND COUNTY SUPERIOR COURT  
Honorable Alan R. Hancock, Judge**

**BRIEF OF RESPONDENT  
ADMIRAL'S COVE BEACH CLUB BOARD OF DIRECTORS**

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## **I. INTRODUCTION**

This action involves questions about the duties and obligations of the Board of Directors of a non-profit corporation, Admiral's Cove Beach Club ("ACBC") as set forth in its governing documents. In particular, the superior court was presented with and declared the legal effect of ACBC governing documents and membership votes about a swimming pool which is part of the Admiral's Cove plat on Whidbey Island.

The superior court ruled on summary judgment that under the ACBC governing documents, the Board and membership did not have the authority to demolish or decommission the pool located on the property and that unless the ACBC Bylaws are amended, the pool must be maintained, repaired, and operated. The ACBC Board asks this Court to affirm.

## **II. RESTATEMENT OF ISSUES**

1. Did the superior court correctly conclude that the pool is a recreational facility that must be maintained and operated and cannot be decommissioned without an amendment to the Bylaws?

2. Did the superior court correctly conclude that the May 2013 ballot violated the membership's October 2012 Motion?

3. Did the superior court correctly conclude the “Alternative Visions” motion did not supersede, repeal, or replace the October 2012 Motion?

4. Did the superior court correctly conclude that declaratory relief could be granted without joining all the ACBC members?

### **III. STATEMENT OF CASE**

This lawsuit involves a request for declaratory judgment regarding a swimming pool at the Admiral’s Cove Beach Club (“ACBC”) in Coupeville, Washington. (CP 703, 1209-11, 1214-17) ACBC is a non-profit corporation established in 1969 to administer, advance, and protect the Admiral’s Cove residential district. (CP 697-98)

The Admiral’s Cove plat fronts on the shoreline of Admiralty Bay. (CP 525, 1184) The original deed for each parcel in the Admiral’s Cove plat conveyed a membership in the ACBC “which will own and maintain certain beach rights, recreational areas, swimming pool and other tracts, as shown on plat of Admiral’s Cove.” (CP 872) A swimming pool and facility sit near the shoreline. (CP 1183-84) The pool has views of Admiralty Bay and the Olympic mountains. *Id.* Over time, the pool and shower facility fell into a state of disrepair and in 2012, the pool ceased to operate. (CP 1185, 1212)

**A. GOVERNING DOCUMENTS.**

The ACBC Articles of Incorporation list nine purposes, objects and powers. (CP 545-47, 695-701)<sup>1</sup> The first purpose is: “[t]o construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members.” (CP 546, 698) The Bylaws state the object of ACBC is twofold: (a) provide and operate recreational facilities for the members’ benefit, and (b) procure, maintain, operate, and protect the members’ recreational concerns. (CP 703, 1221)<sup>2</sup>

ACBC’s affairs are managed by the Board of Directors. (CP 706, 1224, 1226) The Board is elected at the annual membership meeting. (CP 706, 1224) Article VIII of the ACBC Bylaws sets forth the powers and duties of the Board. (CP 708-09, 1226-27) Section 2 of Article VIII states:

**Section 2 – Maintenance and Operations of the Club Facilities**

To cause the properties and facilities owned by the Club to be maintained and operated in accordance with the appropriate County, State, and Federal laws and regulations, the Articles of Incorporation, and these Bylaws.

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<sup>1</sup> The Articles of Incorporation are attached as Appendix A.

<sup>2</sup> The Bylaws are attached as Appendix B.

(CP 708, 1226) Article XII of the ACBC Bylaws establishes six standing committees. (CP 713-14, 1231-32) Pool – Operations and Safety and Pool Maintenance and Improvement are two of the six committees. (CP 713, 1231) The Bylaws can be amended by a majority vote of the members. (CP 716, 1234)

**B. THE ACBC POOL.**

In the summer of 2012, the ACBC Board and members discussed the need for a special assessment to repair the pool. (CP 1191) In September 2012, the ACBC Board held three town hall meetings open to the entire membership to discuss the needed pool repairs. *Id.*

The issue of the pool was discussed again at the October 2012 ACBC annual membership meeting. (CP 719-20) The members were informed of a long list of repairs and improvements that were needed. *Id.* The members discussed solutions for funding the needed repairs and a motion to study the pool was presented and passed (“the October 2012 Motion”). (CP 723-24) The motion stated:

By November 10, 2012, Pool Planning by members of the Pool Maintenance, Long Range Planning and Budget Committees will work with a nonresident facilitator as an ex officio team member and may consult with legal counsel as warranted. All legal counsel expenses and other costs will require prior approval from the Board of Directors. **Under the overall objective of having the pool open as soon as a funding and construction schedule allow, the**

committees shall have three (3) tasks to complete by February 28, 2013, or sooner:

(1) To identify and evaluate various options related to the pool's future, including but not limited to needed equipment, a permanent pool cover, and repairs to the pool and its building, foundation, plumbing, and electrical system, and to recommend the best cost and timing options. A basic and simple plan to identify projects for contractor bidding shall be developed to guide these efforts; the plan shall also recommend an implementation schedule for ADA compliance from both a financial and legal standpoint.

(2) Investigate and develop payment options related to assessment costs and dues under task one and to select the approach that produces the best balance between recreational benefits and costs to members. The assessment total will be offset by the amount of donations accumulated for that purpose.

(3) Upon completion of tasks 1 and 2, the committees shall submit the findings to the Board and subsequently work with [the] Board as appropriate.

(3/27/2015 RP 92:12-93:16; CP 723-24) (emphasis added). Accordingly, at its essence, the October 2012 Motion authorized the Maintenance, Long Range Planning and Budget Committees (with the overall objective of having the pool open) to: (1) identify and evaluate options related to repair and renovations for the pool; (2) develop payment options related to task one, and (3) submit the findings to the Board and work with the Board as appropriate. *Id.* Over the following months, meetings were held and information was gathered on the scope of work and cost estimates for the pool. (CP 1192-93)

In May 2013, the Board sent a ballot to all Active ACBC members to vote on how to address the pool's future. (CP 1193) The ballot presented two options: (1) "refurbish, remodel, and update the pool at a cost of approximately \$650,000 or (2) remove the pool at a cost of approximately \$200,000." (CP 874) The first option (refurbish and update the pool) received 153 votes. (CP 874, 1193) The second option (removal of the pool) received the majority of votes: 166. *Id.*

In September 2013, before any action was taken in furtherance of the May 2013 vote, Robert Wilbur and Dustin Frederick, owners of parcels at Admiral's Cove filed suit against ACBC and the individual Board members. (CP 1209-10) The lawsuit sought injunctive and declaratory relief regarding the pool (CP 1209-20), including a declaration that (1) the pool is an integral part of the ACBC, (2) the pool could not be decommissioned, and (3) the May 2013 ballot and vote to decommission the pool was invalid. (CP 1218)

**C. TEMPORARY INJUNCTION.**

The superior court granted a temporary injunction on December 30, 2013, nullifying (1) the May 2013 vote to decommission the pool as being contrary to the Bylaws and (2) the October 2012 motion, to the extent it was inconsistent with the intent to formulate a repair/renovation

plan for the pool. (CP 309, 871-97)<sup>6</sup> Based on this ruling, ACBC was temporarily enjoined from imposing any assessment to decommission or demolish the pool, from failing to properly maintain the pool, and from acting inconsistent with the October 2012 motion. (CP 877-78)

The Board attempted to comply with the temporary injunction and the stated plan and purpose of the October 2012 motion to prepare and place a ballot before club members that included vetted options for implementing necessary repairs to the pool and funding those repairs. (CP 692) The pool was open for approximately six weeks in the summer of 2014 after the necessary repairs, improvements, and permits were completed and obtained. (CP 692, 727)

The Board's efforts to comply with the court's rulings were opposed by a vocal faction of "anti-pool" club members. (CP 692-93) The opponents insisted the Board had no authority to proceed with any repairs or maintenance because the Court's ruling was only "temporary". The "anti-pool" members also insisted any ballot placed before the members must include an option of decommissioning or doing nothing

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<sup>6</sup> The December 30, 2013, Findings of Fact, Conclusions of Law & Order: 1. Granting Temporary Injunction & 2. Denying Motion for Contempt is attached as Appendix C.

with the pool. *Id.* The Board was concerned the “anti-pool” positions violated the superior court’s rulings. (CP 693)

Decorum at Board meetings frequently deteriorated due to objections voiced by “anti-pool” members. (CP 693, 728) The Board believed any further action regarding the swimming pool, prior to the court’s final ruling, would invite further litigation. (CP 693)

While the lawsuit was pending, new Board members were elected. (CP 310) One of original plaintiffs, Dustin Frederick, was elected to the Board. (CP 310) Mr. Frederick then dismissed all of his claims in the complaint. (CP 310, 758-60, 780-82) Thereafter a settlement was reached and all Board members were dismissed as parties. (CP 310, 727, 765-67) Admiral’s Cove Beach Club remained as the sole defendant in the lawsuit and Mr. Wilbur was the sole plaintiff. (CP 310)

In September 2014, Wilbur moved for summary judgment seeking the declaratory relief asked for in the complaint and for a permanent injunction prohibiting the pool from being demolished. (CP 743-57) The Board responded to the summary judgment motion with a declaration from the Board President, Ed Delahanty, explaining that, due to the controversy regarding the pool and interpretation and understanding of the superior court’s rulings, the Board chose not to take any official position on plaintiff’s summary judgment motion. (CP 691-725, 726-30) The Board

simply asked the court to issue a final ruling clarifying the ACBC Board's duties and responsibilities regarding the pool to enable the Admiral's Cove Beach Club community to finally resolve the issues regarding the pool. (CP 693, 728-29)

In November 2014, Susan Corliss, an ACBC member and property owner who is "anti-pool" moved to intervene. (CP 614-22) Her motion for intervention was granted. (CP 320-21) In January 2015, Wilbur filed an amended summary judgment motion.<sup>7</sup> (CP 302-17) Corliss filed a cross-motion for summary judgment asking the court to implement the May 2013 vote to decommission the pool and to dissolve the temporary injunction. (266-77, CP 284-86)

**D. SUMMARY JUDGMENT ORDER AND DECLARATORY JUDGMENT.**

The superior court granted Wilbur's summary judgment motion in part, denied Corliss's summary judgment motion, dissolved its prior temporary injunction, and denied the request for a permanent injunction. (CP 18-19)

The court entered a summary judgment granting declaratory relief. (CP 14-19)

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<sup>7</sup> Plaintiff's amended summary judgment eliminated any arguments based on his standing as a property owner. (3/27/15 RP 86:20-25) The amended motion also clarified that declaratory relief about decommissioning the pool was tied to the current (i.e. unamended) Bylaws. (CP 305-06, 746)

1. The [ACBC] swimming pool and related facilities are among the athletic and recreational facilities contemplated under Article V of the Articles of Incorporation of ACBC which provides that the purpose of ACBC is “[t]o construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefits of the members.”
2. ACBC and its Board of Directors must adhere to the requirements and directives set forth in the motion that was made and approved at the Defendant’s annual membership meeting on October 27, 2012, unless said motion is properly repealed or amended to remove the duties of the Board of Directors and ACBC, which duties are presently embodied in this motion. That particular motion, as approved, does not contain language that could be construed to permit the demolition or decommissioning of the swimming pool or related facilities as an option for the membership’s future consideration.
3. The prior Board’s action to present a ballot to the membership with the option to decommission the pool was contrary to the October 27, 2012, motion. It was therefore invalid and of no force and effect.
4. The prior Board’s action to authorize an assessment to demolish or decommission the ACBC swimming pool and related facilities is invalid and of no force and effect.
5. The October 25, 2014, motion presented to the membership and characterized as the “Alternative Visions” motion does not supersede, repeal or replace the content or directive set forth in the October 27, 2012 motion, which remains in effect.

6. In consideration of the applicable provisions of the Articles of Incorporation and Bylaws, the context in which they were promulgated, the circumstances surrounding their promulgation, and the other rules for their interpretation, the general power to dispose of property as set forth in the Articles of Incorporation and Bylaws govern ACBC, does not provide authority to the Board to dispose of the ACBC swimming pool and related facilities.
7. Any vote on a motion or other action item submitted to the membership at a regular or special meeting of the membership that would result in the demolition or decommissioning of the ACBC swimming pool, would be invalid and of no effect unless the governing documents of ACBC were first properly amended or changed to allow such action.
8. Under the governing documents as presently constituted, the members of the Board of Directors of ACBC have a legal duty and fiduciary obligation:
  - a. to maintain, repair and operate the swimming pool and its related facilities in a reasonable manner and as may be required by local, state and federal law and the governing documents themselves; and
  - b. to take affirmative action, consistent with the governing documents of Admiral's Cove Beach Club, to budget for and raise funds through properly authorized dues and assessments to carry out these duties.

9. The Board's duties in this regard include sufficient budgeting and funding decisions that will allow for the future and continued operation and maintenance of the swimming pool and related facilities.
10. When making decisions about funding and budgeting, including dues and special assessments, the Board of Directors and the Members of Admiral's Cove Beach Club must adhere to the provisions of ACBC's Articles of Incorporation, Bylaws, and all local, state and federal law.

(CP 16-18)

In sum, the court concluded the pool is a recreational facility which the Board has a legal duty and fiduciary obligation to reasonably maintain, repair, and operate and to take action to carry out these duties (including budgeting allowing for continued operation and maintenance); the October 2012 Motion only addressed repair and renovation options and any conduct by the Board which included options other than repair and renovations (i.e. decommissioning the pool) was improper (unless and until the Bylaws were amended to permit such conduct); the "Alternative Visions" motion does not replace the October 2012 Motion; and the general power to dispose of property in the Articles of Incorporation and Bylaws does not authorize the Board to decommission the pool. (CP 16-18)

The superior court rejected the argument that all ACBC members were necessary parties (i.e. required to join the lawsuit), concluding that declaratory relief could be granted without joining all ACBC members because Corliss represented those members who opposed the lawsuit. (3/27/15 RP 85-86:1-8)

Corliss filed this appeal. (CP 1-2)

She spends the vast majority of her brief addressing the condition of the pool, the need for extensive repairs, casting aspersions on various Board members and the voting history relating to the pool, devoting less than four pages of her 23-page brief to her legal argument. In her legal argument, she contends without citation to any legal authority that because not all ACBC members were parties to the litigation, the final declaratory ruling should not stand. She also argues, again with no citation to any legal authority, that the vote to decommission the pool was valid because it was the only reasonable option. Finally, and again with no legal authority, she argues that the trial court erroneously concluded that the governing documents compel the perpetual operation of the pool. None of these arguments have merit and the superior court's decision should be affirmed.

#### IV. ARGUMENT

##### A. STANDARD OF REVIEW.

An appellate court reviews a summary judgment order in a declaratory judgment action *de novo*. *McNabb v. Department of Corrections*, 163 Wn.2d 393, 397, 180 P.3d 1257 (2008). “Facts and reasonable inferences are considered in the light most favorable to the non-moving party.” *McNabb*, 163 Wn.2d at 397, *citing*, *Coopernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.2d 318 (2005). Questions of law are reviewed *de novo*. *Id.*

##### B. THE SUPERIOR COURT CORRECTLY CONCLUDED THE POOL IS A RECREATIONAL FACILITY WHICH CANNOT BE DISPOSED OF OR DECOMMISSIONED WITHOUT AN AMENDMENT TO THE BYLAWS.

The superior court carefully reviewed ACBC’s governing documents and properly concluded the pool was an athletic and recreational facility that must be maintained and operated. Both the Articles of Incorporation and the Bylaws make maintaining and operating athletic and recreational facilities a fundamental function of ACBC. (CP 698, 703) Articles of Incorporation are contracts and govern the rights of the parties. *Davenport v. Elliott Bay Plywood Machines Co.*, 30 Wn. App. 152, 154, 632 P.2d 76 (1981), *rev. denied*, 96 Wn.2d 1025 (1982). Likewise, Washington courts apply contract law to interpret Bylaws. *Save*

*Columbia CU Committee v. Columbia Community Credit Union*, 134 Wn. App. 175, 181, 139 P.3d 386 (2006).

When interpreting a contract, a court looks to the parties' intent. *Berg v. Hudesman*, 115 Wn.2d 657, 669, 801 P.2d 222 (1990). Contracts are viewed as a whole. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 669-70, 15 P.3d 115 (2000). Words are given their ordinary, usual, and popular meaning unless the entire agreement clearly shows a contrary intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). Applying these rules of interpretation to the Articles and Bylaws, the court correctly concluded the pool was an athletic and recreational facility that must be maintained and operated.

Article V of the Articles of Incorporation states the purpose of ACBC is “[t]o construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members.” (CP 698) The Bylaws state the object of ACBC is to: (a) provide and operate recreational facilities for the members' benefit, and (b) procure, maintain, operate, and protect the members' recreational concerns. (CP 703, 1221) In furtherance of these objectives, the Bylaws established two standing committees for the pool: (1) Pool – Operations and Safety and (2) Pool Maintenance and Improvement. (CP 713, 1231)

Construing the plain language of the Articles and Bylaws and considering the entire document, the superior court properly ruled the pool was an athletic and recreational facility that must be maintained and operated under the existing Bylaws.

Corliss contends the pool is not essential to ACBC because neither the Articles nor the Restrictive Covenants mention the word pool. (App. Br. at 5-6) Corliss ignores the fact that the Articles and Bylaws are correlated documents and that must be considered together. *Rodruck v. Sand Point Maintenance Commission*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956). The Articles specify that maintaining and operating athletic and recreational facilities is a purpose of ACBC. And the Bylaws expressly refer to the pool multiple times. (CP 713) The Pool Operations and Safety Committee sets policies for the pool operation and establishes and enforces safety rules. The Pool Maintenance and Improvement Committee is responsible for maintaining the pool, the operating machinery, the building housing the pool equipment, the office and fence enclosing the pool complex, and the pool supplies. *Id.* A separate committee—the Grounds and Building Committee—is to coordinate with the Pool Maintenance and Improvement Committee. *Id.* Corliss argues the Bylaws’ references to the pool are “operational” only. (App. Br. at 5-6) Whether or not the Bylaws’ references to the pool are operational or

something else, the plain language of the Bylaws when construed with the Articles (as they must be) show a clear intent to maintain, operate, and even improve the pool as necessary.

Corliss argues disposing of the pool is permitted because the Articles give ACBC the right to “sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets.” (App. Br. at 6, 11, 21) (CP 698) Corliss’s position disregards the essential rules of contract interpretation. Contracts are construed as a whole to determine the parties’ intent. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d at 669-70; *Berg v. Hudesman*, 115 Wn.2d at 669. Her interpretation is limited to one phrase of the Articles. As the superior court concluded, the power to convey and dispose property is a general power, not a power that can be exercised under any circumstance. (3/27/15 RP 97)

The entire Articles of Incorporation, including the Bylaws, show the intent to maintain, operate, and improve a pool. Moreover, the superior court noted, the general power to dispose of property in the Articles of Incorporation and Bylaws, does not authorize the Board to decommission the pool. The court noted that in accordance with the purposes of ACBC, the developer of the Admiral’s Cove subdivision constructed a pool. (3/27/15 RP 80) The pool was conveyed to the ACBC

in December 1969. *Id.* The Bylaws presuppose the existence of the pool. (3/27/15 RP 97) The Bylaws reference the pool in Article III, Section 6; Article X, Sections 3 and 4; and Article XII, Sections 2, 3, 4, and 5. (CP 704, 711, 713-14)

The Bylaws list the Board's duties. Those duties include to "cause the properties and facilities owned by the Club to be maintained and operated" and "adopt rules and regulations for use, operation, and care of Club facilities." (Article VIII, Sections 2 and 4) (CP 708) The Bylaws expressly create and authorize a (1) Pool Operations and Safety Committee and (2) a Pool Maintenance and Improvement Committee. (Article XII, Sections 2 and 3). (CP 713)

The pool and related facilities are an integral part of ACBC. (3/27/RP 101) The Articles, although they do not mention the pool, contemplate the construction of and ongoing maintenance of the pool. (3/27/15 RP 99) The pool was constructed in 1969 the same year ACBC was established. (3/27/15 RP 100) The pool was also conveyed to ACBC in 1969. *Id.* The ACBC governing documents, the context in which the governing documents were promulgated, the circumstances surrounding the promulgation, and the rules of contract interpretation establish that the Board's general power to dispose of property does not provide authority to

the Board to dispose of the pool. (3/27/15 RP 100) The superior court's judgment should be affirmed.

**C. THE SUPERIOR COURT CORRECTLY CONCLUDED THE MAY 2013 BALLOT VIOLATED THE MEMBERSHIP'S OCTOBER 2012 MOTION.**

Corliss argues the May 2013 vote to decommission the pool was democratic and valid and should be implemented. (App. Br. at 15-17, 20-21) She asserts the October 2012 Motion directed the committees to evaluate the repairs, work with the Board on alternatives, and develop a ballot for available options. (App. Br. at 15) She argues the committees presented the only two realistic options: repairing the pool or decommissioning the pool. (App. Br. at 16) Her arguments ignore the plain language of the October 2012 Motion—which only addressed repairs and renovations to the pool, not decommissioning it.

The “overall objective” of the motion was to have the “pool open as soon as a funding and construction schedule allow.” (CP 724) The October 2012 Motion directed the committees to “identify and evaluate various options related to the pool's future” and listed various options, all of which relate to making the pool operational. The committees were to identify repairs, recommend best cost and timing, identify a contractor for bids, and implement a schedule for ADA compliance. (CP 724) None of these options refer to demolishing or decommissioning the pool. The fact

that decommissioning the pool was a less expensive option or that certain ACBC members do not use the pool and have no interest in the pool's future has no bearing here. The committees were required to conduct their work consistent with the October 2012 Motion—repairing, not decommissioning, the pool. And because the results would lead to an assessment which must be voted on by ACBC membership, the Board was required to present a ballot. A ballot choice of decommissioning the pool did not comply with the October 2012 motion. The May 2013 ballot was not consistent with Board's obligation to follow the Bylaws and membership motion and to act in good faith in the best interests of ACBC. RCW 24.03.127 (board director has duty of good faith). The superior court properly declared the May 2013 vote invalid.

**D. THE SUPERIOR COURT CORRECTLY CONCLUDED THE OCTOBER 2014 "ALTERNATIVE VISIONS" MOTION DID NOT SUPERSEDE THE MEMBERSHIP'S OCTOBER 2012 MOTION.**

Corliss portrays the October 2014 annual meeting "Alternate Visions" motion as furthering the future use of the "underutilized property" where the pool is located. (App. Br. at 18) She implies the "Alternate Visions" motion is consistent with the October 2012 Motion. Corliss is wrong. Corliss ignores the fact that as of October 2014, the December 2013 temporary injunction was still in full force and effect and that ACBC was temporarily enjoined from imposing any assessment to

decommission or demolish the pool, from failing to properly maintain the pool, and from acting in any way that was inconsistent with the October 2012 Motion. (CP 877-78) The “Alternate Visions” motion violated the temporary injunction because it was a motion at a membership meeting which proposed action “the purpose of which [was] to obtain funding for or approval of [] action resulting in the removal or decommissioning” of the pool. (CP 878-79, Paragraph E,4.4 of December 2013 temporary injunction)

The “Alternative Visions” motion was also inconsistent with the October 2012 Motion. The purpose of the October 2012 Motion was to get the pool operational as soon as possible. (CP 724) The October 2012 Motion stated “the overall objective of having the pool open as soon as a funding and construction schedule allow.” (CP 724) The entire objective of the “Alternative Visions” motion was directly the opposite: to use the pool property for another purpose. The “Alternative Visions” motion could not, and did not, override the October 2012 Motion. The superior court’s judgment should be affirmed.

**E. THE SUPERIOR COURT CORRECTLY CONCLUDED DECLARATORY RELIEF COULD BE GRANTED WITHOUT JOINING ALL ACBC MEMBERS.**

Corliss erroneously contends the superior court’s judgment is improper because it imposes obligations on all ACBC members and not all

members were parties to the lawsuit. (App. Br. at 19-20) She cites RCW

7.24.110 which provides in part:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

...

RCW 7.24.110 has not been interpreted as broadly as Corliss urges. The statute does not require that every single person affected by declaratory relief be added as a party to the lawsuit. A necessary party is a person whose interests would be impeded by the declaratory relief. If the person's interest is already represented in the lawsuit, the person is not a necessary party. *Williams v. Poulsbo Rural Tel. Ass'n*, 87 Wn. 2d 636, 644, 555 P.2d 1173 (1976) (quoting *State ex rel. Continental Cas. Co. v. Superior Court*, 33 Wn.2d 839, 842, 207 P.2d 707 (1949)), *overruled on other grounds*, *Chemical Bank v. Washington Pub. Power Supply Sys.*, 102 Wn. App. 874, 888 n.4, 691 P.2d 524 (1984)); *Town of Ruston v. City of Tacoma*, 90 Wn. App. 75, 82, 951 P.2d 805, *rev. denied*, 136 Wn.2d 1003 (1998).

The case of *Town of Ruston v. City of Tacoma*, 90 Wn. App. 75, 951 P.2d 805, *rev. denied*, 136 Wn.2d 1003 (1998), provides guidance. *Town of Ruston* involved a declaratory judgment action between a town (Ruston) and a city (Tacoma) to resolve a boundary dispute. Tacoma

argued that the current lessees and all residents of Tacoma and Ruston were necessary parties because each had a vested interest in the outcome of the proceedings. Tacoma contended that because Ruston failed to join all necessary parties, the court had no jurisdiction.

The Court of Appeals rejected Tacoma's argument. The Court held the lessees and the town and city residents were not necessary parties. The interests of each municipality were already represented. A complete determination of the dispute could be made without the residents. The Court stated: "If a complete determination can be had without the presence of other parties, then the right to bring them in is addressed to the sound discretion of the court." 90 Wn. App. at 82, *quoting Williams v. Poulsbo Rural Tel. Ass'n*, 87 Wn. 2d 636, 644, 555 P.2d 1173 (1976) (*quoting State ex rel. Continental Cas. Co. v. Superior Court*, 33 Wn.2d 839, 842, 207 P.2d 707 (1949)), *overruled on other grounds, Chemical Bank v. Washington Pub. Power Supply Sys.*, 102 Wn. App. 874, 888 n.4, 691 P.2d 524 (1984)).

Similarly each and every member of ACBC was not required to be a party to the lawsuit. The interests of each member--whether "pro-pool" or "anti-pool"—were adequately represented by Wilbur and Corliss. Whereas here, the presence of other parties was not necessary for a complete determination, the superior court has discretion. *Town of Ruston*

*v. City of Tacoma*, 90 Wn. App. at 82. The court properly exercised its discretion in concluding that each and every ACBC member was not a necessary party. (3/27/15 RP 85:4-86:8)

**F. THE SUPERIOR COURT PROPERLY CONCLUDED WILBUR HAD STANDING TO OBTAIN DECLARATORY RELIEF.**

Corliss has not specifically challenged whether Mr. Wilbur had standing to obtain declaratory relief. Nor has she provided legal argument or legal authority about his standing. Therefore, this Court should reject any standing argument. *Darkenwald v. State Emp't Sec. Dep't*, 183 Wn.2d 237, 248-49, 350 P.3d 647 (2015).

Corliss is critical of Wilbur's assertion he had a property right. (App. Br. at 11, 22) Wilbur's amended summary judgment did not assert a property interest. (CP 302-17) The superior court correctly ruled the governing documents (i.e. Articles of Incorporation and Bylaws) are contracts which can be enforced by members. (3/27/2015 RP 87:18-89:17) This Court should reject any challenge to Mr. Wilbur's standing to assert declaratory relief.

**V. CONCLUSION**

The Board asks this Court to affirm Judge Hancock's decision. The summary judgment order and declaratory relief determined the action. Judge Hancock's ruling correctly interpreted the ACBC's governing

documents. Judge Hancock's ruling is consistent with Washington law and the facts and circumstances of this case.

Dated this 10<sup>th</sup> day of March, 2016.

**REED McCLURE**

By



**Christopher Nye      WSBA #29690**  
**Marilee C. Erickson      WSBA #16144**  
**Attorneys for Respondent ACBC**  
**Board**

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Art Hyland, ISLAND COUNTY AUDITOR  
DEPUTY: CS REQUESTED BY:  
ADMIRALS COVE BEACH CLUB INC



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**STATE of WASHINGTON SECRETARY of STATE**

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I, **Ralph Munro**, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

**CERTIFICATE OF AMENDMENT**

to

ADMIRAL'S COVE BEACH CLUB

a Washington Non Profit corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Amending Article V, Section 8

Corporation Number: 2-198255-8

Date: March 30, 1987



Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

Ralph Munro, Secretary of State

SSF 58

APPENDIX A

GNRL BK 698 PG 2069

PO Box 366 WISA

695

ARTICLES OF AMENDMENT

OF

ADMIRAL'S COVE BEACH CLUB

FILED

MAR 30 1987

SECRETARY OF STATE  
STATE OF WASHINGTON

Admiral's Cove Beach Club, a non-profit corporation organized under the laws of Washington comes for the purpose of amending its Articles of Incorporation, and in pursuance thereof, does hereby deliver in duplicate to the Secretary of State of the State of Washington, the following Articles of Amendment, and does state as follows:

ARTICLE I

The name of the corporation is Admiral's Cove Beach Club.

ARTICLE II

ARTICLE V, Section 8 of the existing Articles of Incorporation shall be amended to read as follows:

To levy assessments and to enforce collection of the same, against owners of property in the Admiral's Cove development and/or members of this club on a pro rata basis for the maintenance and upkeep of this corporation's property; provided, however, that owners of no-perc lots which are duly registered with the Island County Assessor and thereby granted a fifty (50%) percent tax exemption shall be subject to a fifty (50%) percent reduction on current dues and assessments.

ARTICLE III

The amendment of the Articles of Incorporation of Admiral's Cove Beach Club set forth above was adopted at the annual membership meeting, at which a quorum was present, on October 25, 1986, by an affirmative vote of more than two-thirds (2/3) of the votes which members present at that meeting or represented by proxy were entitled to cast.

ADMIRAL'S COVE BEACH CLUB

DATED:

3-21-87

BY:

Joel N. Brown  
Joel N. Brown  
President

ORIGINAL

696

24

Articles of Incorporation

APPROVED  
AS TO FORM AND FILED

JUN 2 - 1969

ARTICLES OF INCORPORATION  
of  
ADMIRAL'S COVE BEACH CLUB

A. LUDLOW KRAMER  
SECRETARY OF STATE  
BY *Paul H. [Signature]*  
CORPORATION SECRETARY

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, each of whom is a citizen of the United States of America and a resident of the State of Washington, have associated themselves together for the purpose of forming a non-profit, non-stock corporation under the provisions of Chapter 24.04 of the Revised Code of Washington; and in pursuance thereof do hereby sign and acknowledge the following Articles of Incorporation in triplicate originals and stated as follows:

ARTICLE I.

The name of this corporation shall be:

ADMIRAL'S COVE BEACH CLUB.

ARTICLE II.

The principal place of business of this corporation shall be:

2230 - Eighth Avenue, Seattle, Washington/98121.

The name of the registered agent of this corporation is and shall be: ROBERT C. DITTRICH, whose address is: 2230 - Eighth Avenue, Seattle, Washington/98121.

ARTICLE III.

The duration of the corporate existence shall be perpetual.

ARTICLE IV.

The number of Directors of this corporation who shall manage its affairs shall be not less than five (5).

ARTICLE V.

The purposes, objects and powers proposed to be transacted, promoted, executed and carried on by the corporation are as follows:

1. To construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members.

2. To maintain entryways, parks and all land set aside for community development purposes and promote friendly relations and social intercourse among the owners and purchasers of properties in the Admiral's Cove development on Whidbey Island in the State of Washington.

3. To do any and all such acts and things as may be provided in the By-laws and in the manner herein provided for the administration, advancement and protection of said ADMIRAL'S COVE residential district.

4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property or any interest therein wherever situated.

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets.

6. To lend money to its employees other than its officers and directors.

7. To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships

of individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality, or of any instrumentality thereof.

8. To levy assessments against owners of property in the Admiral's Cove development and/or members of this Club on a pro rata basis for the maintenance and upkeep of this corporation's properties and enforce collection of the same.

9. Such other powers as are authorized by the laws of the State of Washington.

#### ARTICLE VI.

The corporation shall have no capital stock. Membership in the corporation shall not be transferable and shall be only for the life of each member or until his membership shall be otherwise terminated according to the corporation's By-laws which shall prescribe both the conditions of membership and the causes and conditions of terminating membership in this Club.

#### ARTICLE VII.

The purpose for which this corporation is created and/or these Articles of Incorporation may be altered, modified, enlarged or diminished by the vote of two-thirds (2/3rds) of all of the members at a meeting duly called for such purpose, notice of which meeting shall be given in the manner provided by law for the giving of notice for the meetings of members.

#### ARTICLE VIII.

The By-laws of the corporation may be amended in the manner provided in such By-laws for such amendment.

#### ARTICLE IX.

The names and post office addresses of the Directors who shall

first manage the affairs of the corporation until the first Saturday in August , 1969, are as follows:

ROBERT C. DETRICH	2230 - 8th Avenue, Seattle, Wash./98121
ELLA JANE DETRICH	5516 N.E. 180th, Seattle, Wash.
CRAIG A. HARMON	2230 - 8th Avenue, Seattle, Wash./98121
LILA W. HARMON	8925 Inverness Dr., N.E., Seattle, Wash.
HULBERT S. MURRAY	1500 Northern Life Tower, Seattle, Wn./98101.

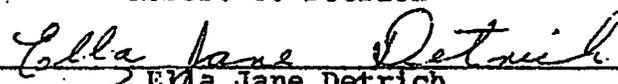
ARTICLE X.

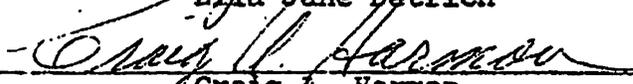
The name and post office address of each of the incorporators of the corporation are as follows:

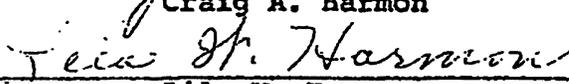
ROBERT C. DETRICH	2230 - 8th Avenue, Seattle, Wash./98121
ELLA JANE DETRICH	5516 N.E. 180th, Seattle, Wash.
CRAIG A. HARMON	2230 - 8th Avenue, Seattle, Wash./98121
LILA W. HARMON	8925 Inverness Dr., N.E., Seattle, Wash.
HULBERT S. MURRAY	1500 Northern Life Tower, Seattle, Wn./98101

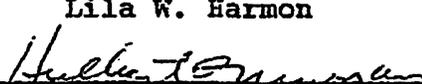
IN WITNESS WHEREOF, the incorporators have hereunto set their hands this 28<sup>th</sup> day of April, 1969.

  
 \_\_\_\_\_  
 Robert C. Detrich

  
 \_\_\_\_\_  
 Ella Jane Detrich

  
 \_\_\_\_\_  
 Craig A. Harmon

  
 \_\_\_\_\_  
 Lila W. Harmon

  
 \_\_\_\_\_  
 Hulbert S. Murray

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 28<sup>th</sup> day of April, 1969, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ROBERT C. DETRICH, ELLA JANE DETRICH,

CRAIG A. HARMON, LILA W. HARMON and HULBERT S. MURRAY, to me known to be the individuals described in and who executed the foregoing instrument, and acknowledged the said instrument to be their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed on the date in this certificate above written.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle

# ADMIRAL'S COVE BEACH CLUB, INC

## BYLAWS

PO Box 366,  
Coupeville, WA 98239-0366

### ARTICLE I - NAME

Sec. 1- NAME of this club shall be the Admiral's Cove Beach Club, hereinafter referred to as the club.

### ARTICLE II - OBJECT

SEC. 1- OBJECT-The object of the Club shall be to:

- a. Provide and operate recreational facilities for the benefit of the members.
- b. Procure, maintain, operate, and protect the recreational (and associated safety) concerns of the members of the community of Admiral's Cove, subject to the approval of the members of the Club.

### ARTICLE III - MEMBERSHIP

#### Section 1 - CLASSES OF MEMBERS

Membership in the Club shall be of two Classes.

- a. Active
- b. Associate

#### Section 2 - ACTIVE MEMBERS

Active Members shall be owners of property in Admiral's Cove Development, Division 1 through 7.

#### Section 3 - ASSOCIATE MEMBERS

Associate members shall be persons who are, on an annual basis, accepted upon such terms, both as to dues and assessments, as the Board of Directors shall determine. Associate members cannot exceed 250 in number. Associate members do not own property in Admiral's Cove Development.

#### Section 4 - GOOD STANDING

A member shall be in good standing if all current and back dues and/or assessments are paid, including a payment plan approved by the Board where payments have been made, or are being as agreed. A member in good standing during the previous year shall be considered in good standing in the current year until such time as the current dues and/or assessments are assigned and due. Dues and/or assessments shall normally be due thirty (30) days after mailing.

#### Section 5 - ADDRESSES FOR NOTIFICATION

Approved by Members October 26, 2012  
Admiral's Cove Beach Club  
Page 1 of 14

EXHIBIT A TO COMPLAINT

APPENDIX B

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## ACBC BYLAWS

Every Active Member shall furnish the Club with an address to which notices of meetings, and all other matters, may be served or mailed to the member.

### Section 6, ENTITLEMENT TO CLUB PRIVILEGES

Privileges of the Club, and the property thereof, shall be available to all Active and Associate Members in good standing and their families, including parents, grandparents, children and grandchildren, and their spouses/partners, subject to the rules and regulations adopted by the Board of Directors.

Other relatives than those identified in this section, and house guests, shall be considered 'guests', and may also receive the Club privileges when accompanied by an Active or Associate Member in good standing; provided that all guests shall be required to pay a daily fee, as determined by the Board of Directors, for the use of the swimming pool. No member who is delinquent in his dues or land owner or resident of Admiral's Cove who is eligible for, but has declined to pay for membership in or the privileges of the Club, may use the Club facilities as the 'guest' of a member in good standing.

### Section 7 - TERMINATION BY SALE OR TRANSFER OF PROPERTY

Active Membership shall be appurtenant to the lot or lots owned or being purchased by the members. Upon the transfer of membership or making of a contract for the sale of any lot, the membership appurtenant thereon shall be deemed to be transferred to the contract purchaser or grantee. No membership may be conveyed or transferred in any other way. In the event of the death of a member, his membership shall pass in the same manner and to the same persons as does the real property itself. No compensation shall be paid by the Club upon any transfer of membership and no member whose membership is transferred shall be entitled to share or participate in any of the property or assets of the Club.

## ARTICLE IV - MEMBERSHIP MEETINGS

### Section 1 - REGULAR MEETINGS

Meetings of the members shall be held at least once a year at such a place or places as shall be designated by the Board of Directors. Unless otherwise ordered by the Board of Directors, the regular Annual Meeting of the members shall be held on the fourth Saturday in October of each year, unless such date falls on a legal holiday, in which case the said meeting shall be held on the next succeeding Saturday which is not a legal holiday.

### Section 2 - SPECIAL MEETINGS

Special meetings of the membership may be called by the President, Board of Directors, or by a request in writing of not less than one-twentieth (1/20th) of all members entitled to vote. The purpose of the meeting shall be stated in the call.

### Section 3 - ADJOURNMENTS

## ACBC BYLAWS

If there is not a quorum (Article V, Sec 2) present at any duly called membership meeting, an adjournment, or adjournments, may be taken without notice being given, but any meeting at which directors are to be elected shall be continued from month to month until such directors have been elected (Article IV, Sec 3).

### Section 4 - NOTIFICATION TO MEMBERS

The Board of Directors shall cause written notice as to the time, place and purpose of all meetings to be given all members entitled to vote at such meetings by depositing same in the United States Mail at least fifteen (15) days prior to the day named for the meeting, except when a mail, first class postage prepaid, ballot is involved, in which case the notice shall be sent not more than fifty (50) days prior to the date of the meeting. (Revised Code of Washington (RCW) 24.03.009 and 24.03.0850) The notice, per RCW 24.03.009 and 24.03.085, may be sent by electronic mail (email) and may be used in lieu of mail for those that request the email distribution of notices, excluding mail-in ballots per Article V, Section 4. Notification of the annual meeting shall include a copy of the proposed budget for the following year, a treasurer's report showing actual and anticipated expenditures and cash on hand for the current year, an alphabetical list of candidates for election to the Board of Directors together with the candidates' statement of their qualifications, as certified by the Chair of the Nominating Committee, and a mail-in ballot(s).

## ARTICLE V - VOTING - QUORUM FOR MEMBERSHIP MEETINGS

### Section 1 - ELIGIBILITY

Every Active Member of Record in good standing shall have the right at every member's meeting and at every mail balloting to one (1) vote, regardless of the number of lots owned, and no more than one (1) vote shall be cast per lot, regardless of the number of owners thereof.

### Section 2 - QUORUM

A member's meeting, duly called, can be organized for the transaction of business whenever a quorum is present. The presence, in person or by an absentee ballot, of ten percent (10%) of the members having voting powers, shall constitute a quorum for the purpose of:

- a. Election of Directors,
- b. Action on proposed changes to, or revisions of these Bylaws.
- c. Action on proposed special assessments.
- d. Any other business which has been submitted to the membership by mail-in ballot. New business, requiring a membership vote, may not be transacted unless at least ten percent (10%) of the members having voting powers are physically present.

Except as otherwise provided in the Articles of Incorporation or in these Bylaws specifically with regard to the election of Directors as set forth in Article VI, all matters being acted upon by absentee ballot shall require a majority vote of those members voting.

## ACBC BYLAWS

### Section 3 - TALLYING OF ABSENTEE MAIL-IN BALLOTS

Absentee ballots shall be tallied after receipt of the mail delivery on the day preceding the membership meeting for which the ballots relate. No ballots shall be accepted after the tallying has begun.

### Section 4 - BUSINESS BY MAIL BALLOT

The following must be conducted by mail-in ballot:

- a. Election of Directors.
- b. Action on proposed changes to, or revision of these Bylaws.
- c. Action on proposed special assessments.

Ballots shall not be submitted by email. All other business of the club requiring membership approval may be conducted by mail-in ballot without a membership meeting unless otherwise prohibited by the Bylaws.

## ARTICLE VI - BOARD OF DIRECTORS - ELECTION - TERM OF OFFICE

### Section 1 - NUMBER

The affairs of the Club shall be managed by a Board not to exceed seven (7) Directors, subject to alteration in number from time to time by amendments to these Bylaws, provided however, that the number of Directors shall never be reduced to less than five (5) as required by the Articles of Incorporation.

### Section 2 - TERM OF OFFICE

Directors shall be elected for a term of two (2) years continuing until their successors are elected and duly qualified with four (4) being elected in the odd numbered years and three (3) in the even numbered years.

### Section 3 - ELECTION

Election of Directors shall be conducted at the regular Annual Meeting by absentee ballot of all eligible voters. Members shall be elected to the Board of Directors by plurality vote, the candidate or candidates receiving the largest number of votes being elected. Cumulative voting is not permitted. In the event of a tie requiring additional voting to determine which candidate will be elected, it will be broken by secret ballot of the members present and voting in person at the meeting at which such Directors are being elected whether or not a quorum is physically present at the meeting.

### Section 4 - RE-ELECTION

No incumbent Director shall serve more than seventy two (72) consecutive months. No Director re-elected under this provision, or who has been removed from office in accordance with the provisions of Section 6 of this Article, shall again be eligible to run for election to or be appointed to the Board until he has been off the Board for at least twenty four (24) months.

## ACBC BYLAWS

### Section 5 – VACANCIES

Vacancies occurring on the Board of Directors for any reason including resignation, death, by removal from office, or sale or transfer of property to which voting membership in the Club is appurtenant, shall be filled by appointment by a majority vote of the remaining directors. Directors so appointed shall hold office until the expiration of the original term of the position.

### Section 6 – REMOVAL

**REMOVAL OR RESIGNATION** – Any Director may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect upon receipt of such notice or at a later time specified therein. Any Director may be removed without cause from the Board of Directors by a two-thirds majority vote of the remaining Directors; provided however, that the written notice of such proposed removal shall be given by mail, courier, or any electronic transmissions to all Directors including the director sought to be removed not less than ten (10) days prior to the meeting at which such proposal is to be voted upon.

## ARTICLE VII - BOARD OF DIRECTORS – MEETINGS

### Section 1 – LOCATION – MEMBERS MAY ATTEND

The meetings of the Board of Directors shall be held at such such places the majority of the Directors may appoint. Any Active Member in good standing shall have the right to attend any and all meetings of the Board of Directors. To the extent possible, members at large shall be notified by newsletter of the normal dates, times, and places of Board Meetings.

### Section 2 – REGULAR MEETINGS

Unless otherwise ordered by the Board of Directors, a regular meeting of said Board shall be held annually immediately after adjournment of each Annual Meeting of the members at the place where such Annual Meeting is held. No prior notice of the regular meeting of the Board of Directors shall be required.

### Section 3 – SPECIAL MEETINGS

Special meetings of the Board of Directors may be called at any time by the President or by a majority of the Directors.

### Section 4 – NOTIFICATIONS

The President or Secretary shall give each Director notice personally, verbally, by mail, by electronic transmissions if requested, or by telephone, of all regular and special meetings at least five (5) days prior thereto, unless shorter notice is agreeable to 2/3 majority of the Board.

### Section 5 – QUORUM

## **ACBC BYLAWS**

A majority of the Board of Directors shall be necessary to constitute a quorum for transaction of business. When a quorum is not present, those directors present must adjourn the meeting to some other time.

### **ARTICLE VIII - POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

#### **Section 1 - BASIC POWERS**

Subject to limitations in the Articles of Incorporation and these Bylaws, and any applicable County, State, Federal laws or regulations, all powers of the Club shall be exercised by or under the authority of, and the business and affairs of the Club shall be controlled by, the Board of Directors.

Directors shall serve without compensation. The Board of Directors shall establish a procedure formalizing the requirements for preparation, submittal, and approval of an expense report when reimbursement is requested.

Without prejudice to such general powers and subject to the same limitations, it is hereby expressly declared that the Board of Directors shall have the following powers and duties:

#### **Section 2 - MAINTENANCE AND OPERATIONS OF THE CLUB FACILITIES**

To cause the properties and facilities owned by the Club to be maintained and operated in accordance with the appropriate County, State, and Federal laws and regulations, the Articles of Incorporation, and these Bylaws.

#### **Section 3 -- MANAGEMENT AND CONTROL OR BUSINESS**

To conduct, manage, and control the affairs and business of the Club, and adopt, modify, and/or rescind standing rules thereof not inconsistent with law, or with the Articles of Incorporation or these Bylaws.

#### **Section 4 -- OTHER RULES AND REGULATIONS -- ADOPTION AND ENFORCEMENT -- SUSPENSION OF PRIVILEGES**

To adopt rules and regulations for use, operation, and care of Club facilities, not inconsistent with law, the Articles of Incorporation, or these Bylaws; as they may deem best. They may authorize employees to enforce such rules and regulations, and may suspend Club privileges of any member for violation of any rules and regulations so prescribed.

#### **Section 5 - SELECTION AND REMOVAL OF OTHER OFFICERS -- COMPENSATION - SUPERVISION**

To select and remove all other officers, agents, and employees of the Club, prescribe such powers and duties for them as may be consistent with the County, State, and Federal laws and regulations, the Articles of Incorporation, and these Bylaws, supervise them to assure their duties are properly performed, and fix their compensation, if any.

## **ACBC BYLAWS**

### **Section 6 – RECORDS AND REPORTS TO THE MEMBERSHIP**

Shall cause to be kept a complete record of all minutes and acts and to present a full statement at the regular Annual Meeting of the members, showing in detail the condition of the affairs of the Club, and shall cause a newsletter to be sent to all members at least three (3) times each year, reporting appropriate information concerning management and operation of the Club facilities, and other Newsworthy items.

### **Section 7 - DUES AND ASSESSMENTS**

Shall from time to time prescribe the dues and/or assessments that each Active and Associate Member shall pay to the Club, and the time or times when said dues shall be payable. The Board shall have the power to levy assessments against owners of property in the Admiral's Cove Development on a pro-rata basis for the maintenance and upkeep of the Club's properties provided, however, that any increase of ten percent (10%) or more over the prior year's dues proposed by the Board of Directors shall be presented to the membership at large thirty (30) days prior to the Annual Meeting and shall require approval by a majority vote of those members present and/or voting by absentee ballot.

### **Section 8 – INSURANCE – BONDING**

To procure and maintain adequate liability and hazard insurance on property owned by the Club, and shall cause all officers and employees having fiscal responsibilities to be bonded for a sum sufficient to protect the Club from financial loss, the cost thereof to be paid by the Club.

### **Section 9 – UNUSUAL EXPENSES**

Shall not incur any unusual expense in an amount over four thousand (\$4000.00) dollars without authorization by a majority vote of the members present and voting at the Annual Meeting, or any other Regular Business Meeting, or at a Special Meeting called for that purpose.

### **Section 10 – AUTHORIZATION TO SIGN CHECKS**

To cause all checks to be signed by any two of the following officers: (a) President, (b) Vice-President, (c) Secretary, and (d) Treasurer.

### **Section 11 - AUDIT**

Shall cause an independent Annual Financial Audit of the books and records of the Secretary and Treasurer after the close of the fiscal year and report thereon to the membership at the Annual Meeting. Independent Annual Financial Reviews are permitted in lieu of an audit.

## **ARTICLE IX - OFFICERS**

### **Section 1 – ENUMERATION AND ELECTION**

The Board Of Directors, at its meeting immediately following the Annual Meeting of members each year, or as soon thereafter as possible, shall elect a President, one or more Vice-Presidents, Secretary and

## **ACBC BYLAWS**

Treasurer. The President and Vice-President(s) shall at all times be members of the Board of Directors. The President shall have served one (1) year or more as a member of the Board prior to his election as President. The Secretary and Treasurer shall be members in good standing of the Club but need not be Directors. The Board may also at any time appoint a Corresponding Secretary and/or Financial Secretary, who need not have membership in the Club, and whose terms of office shall coincide with those of the officers who they assist.

### **Section 2 – TERM OF OFFICE**

The officers of the Club shall be elected and/or appointed annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, be removed, or otherwise be disqualified to serve.

### **Section 3 – SPECIAL APPOINTMENTS**

The Board may elect or appoint such other officers as the affairs of the Club may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

### **Section 4 – RESIGNATION – REMOVAL - REPLACEMENT**

Any officer may be suspended or removed by a majority vote of all of the Directors, when in their judgment the best interests of the Club will be served thereby. Any officer so removed who is a Director will remain a Director unless removed in accordance with Art.VI, Sec. 6.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein. Any vacancy occurring in an elective office shall, and any vacancy occurring in an appointive office may, be filled by the Board of Directors. The officer elected or appointed to fill such vacancy shall serve for the remainder of the term of the office he replaces.

### **Section 5 – EXPENSES – COMPENSATION**

Officers may be reimbursed by the Club for such reasonable expenses as they may necessarily incur in the pursuance of the business of the Club, as may be fixed or determined by resolution of the Board. The Board of Directors may authorize compensation for the Secretary, Corresponding Secretary, and/or Financial Secretary or Treasurer.

## **ARTICLE X – DUTIES OF OFFICERS**

### **Section 1 – PRESIDENT**

The President shall be the general executive officer of the Club. He shall sign as President all contracts or other instruments in writing authorized by the Board of Directors or the members whenever he deems it necessary; he shall have and exercise under the direction of the Board of Directors the general supervision of the affairs of the Club. He shall appoint all members of standing and special committees and designate the chairman of each in accordance with Article XI, Section 1. He shall be ex-officio member of all

## ACBC BYLAWS

committees except the nominating committee. He shall prepare and present at each Annual Meeting of the members a report of the operation of the Club since the last annual Meeting; shall work in conjunction with the Secretary in handling all correspondence, and shall sign all outgoing correspondence, except that which he shall authorize the Secretary to sign over his name. He shall obtain approval of the form and content of all outgoing correspondence from the Board of Directors, except in case of routine correspondence originated in the normal course of business. He shall perform such other duties as are properly incidental to this office and as shall be prescribed, from time to time, by the Board of Directors.

### Section 2 – VICE PRESIDENT

The Vice President shall assist the President and in the absence of the President shall preside at all meetings of the members and the Board of Directors, and during the absence of the President or his inability to act, he shall possess the same powers and perform the same duties as the President. He shall perform such other duties as are properly incidental to this office and also, shall, from time to time, be prescribed by the Board of Directors.

### Section 3 – SECRETARY

The Secretary shall have custody of the corporate seal, and it shall be his duty to affix the same to all instruments requiring the fixing of the seal. He shall keep the membership books, accounts, original warrants, and papers connected with finances of the Club. He shall keep a current list of all members of the Club with their current post office addresses, issue notices of all meetings of the members and the Board of Directors, and shall keep a fair and correct record of the proceedings of all meetings. He shall read or summarize and report on all correspondence received by the Club at the Board of Directors meetings. He shall issue billings of all dues and special assessments as provided in ARTICLE XIV of these Bylaws. He shall receive all assessment payments on his individual membership ledger records, shall promptly turn all monies received to the Treasurer, taking a receipt for same. He shall pick up swim fees collected at the pool, record them in his records and promptly turn them over to the Treasurer. He shall prepare warrants for payments of all disbursements, retaining the duplicate, and upon approval by the Board of Directors, shall turn the original over to the Treasurer for payment. He shall handle all correspondence as the President shall authorize him to sign over the President's name. He shall perform generally all the duties as are incident to his office and such other duties as the Board of Directors may, from time to time prescribe. He shall make available for inspection to any member of the Club in good standing, at any reasonable time and for any proper purpose, any and all books and records of the Club.

### Section 4 – TREASURER

The Treasurer shall have general charge of the finances of the Club under the supervision and control of the Board of Directors. He shall maintain an up to date card file of paid up members for use at the Club swimming pool. He shall prepare any reports to the Internal Revenue Service as required by law, and may be authorized by the Board of Directors to expend a reasonable sum for tax consultation, if necessary in preparing same. He shall have charge of all monies, securities and similar assets of the Club, subject to the regulation and control of the Board of Directors. He shall give to the Secretary a receipt for all monies received from him, shall promptly deposit all monies of the Club coming into his hands with a bank designated by the Board of Directors, and shall disburse such funds as directed by resolution of the Board of Directors and covered by the appropriate warrants; PROVIDED, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business,

## ACBC BYLAWS

such as routine bills between meetings of the Board and conducted within the limits of a budget adopted by the membership. Such disbursements shall, however, be approved by the Board of Directors at their next meeting. He shall keep a full and correct account of all monies received or delivered to the Club. He shall prepare and co-sign all checks except in the event of his incapacity or unavailability, in which case any two other officers may perform this function. He shall not maintain any detailed record of Club membership. He shall render a statement of his account to the Board of Directors monthly and at any other time the Board may require such a statement. When requested to do so, he shall produce the checkbook, and all other books and records in his possession for inspection and examination of same by the Board of Directors. He shall prepare and present an Annual Financial Report of income and expenditures, assets and liabilities, showing in detail the financial condition of the affairs of the Club, to the membership at the Annual Meeting. Copies of this report shall be furnished each member of the Club with notice of the Annual Meeting. He shall make available for inspection to any member of the Club in good standing, at a reasonable time and for any proper purpose, any and all books and records of the Club under the his control.

### Section 5 - RELEASE OF BOOKS AND RECORDS

Each retiring director, officer, and committee chair shall deliver to the Board of Directors all books, records, and other material pertaining to the office no later than one working day after relinquishing the office.

## ARTICLE XI - COMMITTEES -- SELECTION

### Section 1 - COMMITTEES

The President shall appoint members of all Standing and Special Committees for a term not to exceed the balance of the fiscal year and designate the chairman chairperson of each committee. The number and personnel of each committee shall be determined by the Board of Directors, except as otherwise set out herein, except that each committee shall include at least one (1) member, other than the President, of the Board of Directors and that the Nominating Committee shall include at least two (2) members, other than the President, of the Board of Directors. The President shall be an ex-officio member of each Standing Committee except the Nominating Committee. No paid employee who is a committee member shall have a vote on any matter pertaining to their employment. Each year, to the extent practical, at least one member of each committee shall be appointed on the next year's committee to maintain continuity of performance. Ad Hoc committees shall be formed for a specified purpose and for a specified time.

### Section 2 - DUTIES OF COMMITTEES

All committees shall serve without power, except as specifically delegated by the Board of Directors, and as such shall refer all proposed actions to the Board of Directors with such frequency as the duties of the committee or the Board shall dictate, and in any event, shall make at least one report annually at the Annual Meeting of members. All Standing Committees shall provide estimates of costs expected to be incurred in the following year and submit these estimates to the Board who shall pass it on to the Budget and Finance Committee for consideration in future budgets. All Committee meetings shall be open to all.

### Section 3 - SEPARATION OF COMMITTEES

## **ACBC BYLAWS**

No committees designated in Article XII or Article XIII shall be combined into a single committee. No one person may chair more than one committee.

### **ARTICLE XII – STANDING COMMITTEES**

#### **Section 1 - BUDGET AND FINANCE COMMITTEE**

The Budget and Finance Committee shall, with the assistance of the Treasurer who shall normally be named a member thereon, prepare a budget for the ensuing year and present it to the Board of Directors thirty (30) days prior to the Annual Meeting. The Board of Directors shall review and approve the proposed budget and furnish a copy to each member of the Club with the notice of the Annual Meeting. The committee shall also prepare and recommend financial procedures to the Board of Directors.

#### **Section 2 - POOL – OPERATIONS AND SAFETY COMMITTEE**

The Pool Operation and Safety Committee shall, with approval of the Board of Directors, set policies for operation of the club swimming pool, and establish and enforce safety rules and procedures in accordance with the requirements of the Washington State Department of Health, the Revised Code of Washington and the Washington Administrative Code, and solicit applications from lifeguards or other employees to carry out the responsibilities of the Committee and deliver all such applications to the Secretary for approval by the Board of Directors. The lifeguard or lifeguards shall be non-voting members of this committee. They shall consult freely with all committees on all matters of mutual consideration, in the best interest of the Club.

#### **Section 3 - POOL MAINTENANCE AND IMPROVEMENT COMMITTEE**

The Pool Maintenance and Improvement Committee shall be responsible to the board of Directors for maintenance of the Club Swimming Pool and the operating machinery, the buildings housing the pool equipment, rest rooms, office and fence enclosing the pool complex, pool supplies, heating, lighting, etc. They shall obtain estimates as necessary for accomplishing such maintenance and make recommendations to the Board of Directors to enable the Board to approve work and solicit bids. They shall consider and propose to the Board of Directors, as they see fit, improvements in the pool complex, such as heating methods, pool solar covers, etc. They shall consult freely with all committees on all matters of mutual consideration, in the best interest of the Club.

#### **Section 4 – GROUNDS AND BUILDING COMMITTEE**

The Grounds and Building Committee shall be responsible to the Board of Directors for maintenance of all grounds and buildings belonging to the Club, (Tract A), including but not limited to playfields, playground equipment, the shelter and stoves, picnic tables, flower beds, etc., except for the immediate swimming pool complex. They shall, within the limits of the budgeted funds, maintain to the greatest extent possible in the facilities a pleasing and safe environment for the benefit of the Club members. They shall consider and propose to the Board of Directors, as they see fit, improvements in the grounds and buildings. They shall coordinate with the Pool Maintenance and Improvement Committee in all matters of mutual concern, in the best interests of the Club.

## **ACBC BYLAWS**

### **Section 5 - LONG RANGE PLANNING AND BUILDING COMMITTEE**

The Long Range Planning and Building Committee shall make long range plans for overall improvements and development of major Club facilities, including study of possible expansion to include a clubhouse, additional shelters, expanded playground facilities, improved lawn and flowering plants, permanent pool cover to facilitate year round use, etc. They shall prepare and present to the Board of Directors and the membership a long range plan for such development, with several options, particularly as to building expansion, and including options which would permit development in stages, with current finances or special assessments voted by the membership would permit and on a step by step basis. They shall consult freely with the committees on all matters of mutual consideration, in the best interest of the Club.

### **Section 6 - NOMINATING COMMITTEE**

The Nominating Committee shall comprise five (5) members appointed by the President. The Nominating Committee shall prepare a slate of candidates for vacancies on the Board of Directors each year. Members desiring to be on the Board of Directors should notify the Nominating Committee through the Club Secretary prior to August 15<sup>th</sup> when nominations will close. The Nominating Committee shall determine that all candidates selected are qualified as members in good standing in the Club. Members of the Nominating Committee are not barred from becoming nominees themselves. A copy of the Nominating Committee's final report along with candidates' resumes shall be included with the ballot. Nominees shall be listed on the ballot alphabetically.

## **ARTICLE XIII - SPECIAL COMMITTEES**

### **Section 1 - TELLERS COMMITTEE**

The Tellers Committee shall be responsible to the Board of Directors for counting of the ballots in any matter voted upon by the Club Membership by mail, in accordance with the provisions outlined in Article V, Section 3 and elsewhere in these Bylaws. Any member running for the position of Director may not serve on the Tellers Committee.

### **Section 2 - SOCIAL COMMITTEE**

The Social Committee shall plan, supervise and execute all Club sponsored social functions, potlucks, picnics, etc. arranging dates and plans with the concurrence of the Board of Directors. They shall provide refreshments at all membership meetings, as they and the Board see fit. They may solicit assistance from the membership at large in discharging their functions. They shall recommend to the Board of Directors any rules for the use of the Shelter and picnic areas that they deem appropriate and, on concurrence of the Board, post such rules within and adjacent to the Shelter.

### **Section 3 - WELCOMING COMMITTEE**

The Welcoming Committee shall keep aware of all new families moving into Admirals Cove, or building new homes in Admiral's Cove, and shall welcome such newcomers to the area. The Board of Directors is encouraged to disseminate information regarding newcomers in the Newsletter.

## **ACBC BYLAWS**

### **Section 4 – GOVERNMENTAL RELATIONS COMMITTEE**

The Governmental Relations Committee shall be aware of, and receive reports from other Club members, concerning any matters regarding Admiral's Cove Community which should be taken up with Island County or other officials, relating to maintenance of roads, ditches, etc. and enforcements of public laws in the community. Any such matters noted, or brought to their attention shall be investigated, evaluated and referred with recommendation to the Board of Directors for consideration. Upon Board approval, the Committee shall bring such matters to the attention of the proper officials, request appropriate action be taken, and follow up to assure resolution thereof.

### **Section 5 – BYLAWS COMMITTEE**

A Bylaws Committee shall be appointed as needed. When appointed, the committee shall review the By Laws and recommend any appropriate Amendments.

## **ARTICLE XIV - DUES AND ASSESSMENTS**

### **Section 1 – PURPOSE**

The expenses incurred by the Club in carrying out its responsibilities shall be defrayed by Club dues/or assessments. The Board of Directors shall have authority to levy all dues, assessments, and other charges against members, subject to the provisions of this ARTICLE.

### **Section 2 – DEFINITIONS**

Annual assessments for regular Club operation shall be known as "dues". Special assessments for unusual or unexpected costs, maintenance, or improvements, shall be known as "special assessments".

### **Section 3 – SPECIAL ASSESSMENTS**

Special Assessments may be proposed by the Board of Directors, or members, at any time and must be presented to the membership at least thirty (30) days prior to a meeting called in accordance with ARTICLE IV, of these bylaws. They shall require approval by a majority vote as required by ARTICLE V, Sections 2 or 4 of these Bylaws.

### **Section 4 – BILLINGS AND PAYMENTS**

Paid up membership shall be from January 1 to December 31 each year. Special Assessment billings shall be prepared by the Secretary promptly upon approval of any special assessments, unless a different effective date is set by the motion or other action proposing such special assessment. From time to time, as when any such dues and/or assessment, described in this ARTICLE are levied, each member with respect to the land or interests therein to which his membership is appurtenant, shall pay the amount of such dues and/ or special assessments against the same, to the Club offices, within thirty (30) days after the mailing of the notice of such dues and/or special assessments to the member.

## **ARTICLE XV - PARLIAMENTARY AUTHORITY**

## **ACBC BYLAWS**

### **Section 1 – PARLIAMENTARY AUTHORITY**

The rules contained in the current edition of Roberts Rules of Order, Newly Revised, shall govern the Club in all cases to which they are applicable, and in which they are not inconsistent with the Articles of Incorporation, these Bylaws, applicable State Law, and/or any special rules of order the Club may adopt.

## **ARTICLE XVI - AMENDMENTS**

### **Section 1 – AMENDMENTS**

These Bylaws may be amended by a majority vote of the members present and/or voting by absentee ballot at any duly called meeting, in accordance with ARTICLE IV, Section 2 and ARTICLE V, Sections 2 & 4 of these Bylaws, provided that those sections of these Bylaws which are governed by the Articles of Incorporation of this Club and may not be amended except as provided in the Articles of Incorporation or applicable law. Any changes approved by the membership shall become effective immediately after approval, unless otherwise specified in the proposed change, or by the action proposing such change.

### **Section 2 - COMPLIANCE**

Any Articles, Sections, or elements of these bylaws found to be non-compliant with current laws and/or regulations shall be amended to become compliant so that the laws and regulations will prevail.

### **Section 3 - SUPERSEDING**

These Bylaws, once approved and filed, shall supersede any and all previous versions.

the following described real estate, situated in the County of Island, State of Washington

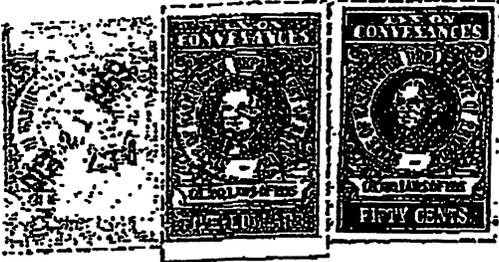
(See legal description hereto attached.)

TOGETHER WITH one family membership in Admiral's Cove Beach Club, Inc., a Washington non-profit corporation, which will own and maintain certain beach rights, recreational areas, swimming pool and other tracts, as shown on plat of Admiral's Cove, and the grantors warrant that all dues, assessments and charges for maintenance of and upkeep of said Beach Club properties and facilities to October 15, 1969, have been paid or will be paid by the grantors.

ISLAND COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX  
PAID

OCT 21 1969

AMOUNT PAID \$ 152.00  
T. F. CARSKADEN  
ISLAND COUNTY TREASURER



Dated this 15<sup>th</sup> day of October, 1969.

Dale E. Howe (SEAL)  
Dale E. Howe  
Kathleen M. Howe (SEAL)  
Kathleen M. Howe

STATE OF WASHINGTON,  
County of KING } st.

On this day personally appeared before me DALE E. HOWE and KATHLEEN M. HOWE, his wife,  
to me known to be the individuals described in and who executed the within and foregoing instrument, and  
acknowledged that they signed the same as their free and voluntary act and deed, for the  
uses and purposes therein mentioned.

GIVEN under my hand and official seal this 15<sup>th</sup> day of October, 1969.

[Signature]  
Notary Public in and for the State of Washington,  
residing at Bethesda

VOL 204 PAGE 441

EXHIBIT A

FILED

DEC 30 2013

DEBRA VAN PELT  
ISLAND COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

ROBERT WILBUR and DUSTIN  
FREDERICK,

Plaintiffs,

vs.

ADMIRAL'S COVE BEACH CLUB, a  
Washington non-profit corporation;  
and JEAN SALLS, MARIA  
CHAMBERLAIN, KAREN SHAAK,  
ROBERT PEETZ, ELSA PALMER,  
ED DELAHANTY AND DAN JONES,  
individuals,

Defendants.

NO. 13-2-00741-4

FINDINGS OF FACT,  
CONCLUSIONS OF LAW &  
ORDER:

1. GRANTING TEMPORARY  
INJUNCTION &
2. DENYING MOTION FOR  
CONTEMPT

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MA

THIS MATTER came before the Court upon the motion of the plaintiffs; the plaintiffs appearing through counsel, Christon C. Skinner; and the defendants, Elsa Palmer and Ed Delahanty appearing through their attorney, Marilee C. Erickson; and the defendants Admiral's Cove Beach Club, Jean Salls, Maria Chamberlain, Karen Shaak, Robert Peetz and Dan Jones appearing through their attorney, Vasu Addanki; and the court having considered the plaintiffs' original motion for entry of temporary restraining order and order to show cause and supporting documents, including declarations from Robert Wilbur, Dustin Frederick and Gwyn Staton; the response submitted by the defendants, including the declaration of Karen Shaak; and the reply declarations submitted by Dustin Frederick and Robert Wilbur, and Dustin Frederick on behalf of plaintiff; and Court having determined that the plaintiffs <sup>have established</sup> are entitled to

ORDER GRANTING TEMPORARY INJUNCTION  
& OTHER RELIEF

Page 1

**ORIGINAL**

*\*a likelihood of prevailing  
on the merits for some or*

APPENDIX C

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LAW OFFICES OF  
Christon C. Skinner P.S.  
791 SE Barrington Drive  
Oak Harbor WA 98277

Tel. (360) 679 1240 · Fax (360) 679 9131

1 ~~some~~ of all of the relief requested in their complaint; and further that ongoing,  
2 irreparable injury and financial loss may occur to the plaintiffs if this order is not  
3 entered; and that no other plain, adequate or speedy remedy at law is available to the  
4 plaintiffs; and, based on the evidence presented at the hearing, the Court makes the  
5 following Findings of Fact, *and conclusions of law which are based*  
6 *on the current record for purposes of the court's decision on Plaintiff's \**

I. FINDINGS OF FACT

8 1. Admiral's Cove Beach Club ("ACBC") was formed on June 2, 1969. ACBC is  
9 an association that was formed for the principal purpose of providing and operating  
10 recreational facilities for the benefit of its members and to procure, maintain, operate  
11 and protect the recreational and associated safety concerns of the members of the  
12 community of Admiral's Cove, subject to the approval of the members of the Club. This  
13 purpose is found in Article II of the ACBC Bylaws.

15 2. The Plat of Admiral's Cove, Divisions 1 through 7, is located in Island County,  
16 Washington.

17 3. The owners of parcels of property within this plat are entitled, by virtue of  
18 that ownership, to an "Active" membership in the non-profit corporation known as  
19 Admiral's Cove Beach Club.

21 4. The original grant of deed for each parcel of property within the Admiral's  
22 Cove Plat conveyed both the real estate and,  
23 "one family membership in Admiral's Cove Beach Club, Inc. (sic), a Washington  
24 nonprofit corporation, which will own and maintain certain beach rights,  
25 recreational areas, swimming pool and other tracts, as shown on plat of  
26 Admirals Cove... .

27 ~~5. ACBC is not a Homeowner's Association because it permits non-owners to~~  
28 ~~be members of the corporation pursuant to an "Associate Membership."~~

29 6. The primary recreational asset owned by ACBC is an Olympic sized  
30 swimming pool and locker room/lavatory located on property owned by ACBC.

31 *\* motions for a preliminary injunction and motion for*  
32 *contempt.*

1           7. ACBC is governed by a board of directors who are elected by and serve at  
2 the pleasure of the membership.

3           8. Defendants Salls, Chamberlain, Shaak, Peetz, Palmer, Delahanty and  
4 Jones are the current members of the board (the "Board").

5           9. The swimming pool and associated lavatory/locker facility is in need of  
6 maintenance, repair or renovation, the extent, timing and funding options of which  
7 have not yet been fully developed

8           10. At an annual meeting of the members of ACBC, a motion was made and  
9 unanimously approved by the membership that required the board of directors to meet  
10 and confer with the "Pool Operations and Maintenance" and "Long Range Planning"  
11 committees to investigate various funding alternatives for paying the costs of  
12 renovating and/or repairing the swimming pool. In addition, the members directed the  
13 board to work with these committee members to develop a ballot to be submitted to  
14 the members for the purpose of voting on a special membership assessment.  
15

16           11. On October 27, 2012, the membership of the beach club held its annual  
17 meeting. At that time, the membership passed a motion which is part of the record in  
18 this case. The motion provided that the committees of the beach club were to identify  
19 and evaluate various options relating to the pool's future, including but not limited to  
20 needed equipment, a permanent pool cover, and repairs to the pool and its building,  
21 foundation, plumbing, and electrical system and to recommend the best cost and  
22 timing options. The motion further stated that a basic and simple plan to identify  
23 projects for contractor bidding shall be developed to guide these efforts.  
24

25           12. The plan approved by the members also recommends an implementation  
26 schedule for ADA compliance from both a financial and legal standpoint.  
27

28           13. The motion that was approved also provided that the committees would  
29 investigate and develop payment options related to assessment costs and dues under  
30 task 1 and to select the approach that produces the best balance between recreational  
31  
32

1 benefits and costs to members. The assessment total was to be offset by the amount  
2 of donations accumulated for that purpose.

3 14. The approved motion also provided that, upon completion of tasks 1 and 2,  
4 the committees "shall submit the findings to the Board and subsequently work with the  
5 Board to develop an appropriate ballot." The approved motion also set forth the nature  
6 of these committees that would be formed for these purposes.  
7

8 15. The motion approved by the members at the 2012 annual meeting had no  
9 provision or contingency related to the "decommissioning" of the swimming pool.

10 16. The Board of Directors of the beach club honored neither the letter nor the  
11 spirit of that motion of October 27, 2012. Instead, the Board prepared a ballot to be  
12 sent to the membership that gave the membership two choices and two choices only:  
13 (1) either refurbish, remodel, and update the pool at a cost of approximately \$650,000  
14 or (2) remove the pool at a cost of approximately \$200,000. No further information was  
15 provided.  
16

17 17. In view of the manner that the board presented the members with ballot  
18 choices, no member of ACBC could possibly make an informed decision on this ballot  
19 without knowing how the Board arrived at these figures, nor was there any information  
20 provided about various financing arrangements or any other information that would be  
21 necessary to give the membership an idea of the underpinnings of what they were  
22 voting upon.  
23

24 18. The ballot was plainly inconsistent with the October 27, 2012, motion that  
25 was approved by the membership at its annual meeting.

26 19. The vote on the defective ballot was 166 to 153 in favor of the provision to  
27 remove the pool for the cost specified. The Board then approved a special assessment  
28 to raise the funds to remove the pool.  
29

30 20. On September 11, 2013, this court entered an order restraining the board of  
31 directors from, among several things, taking any action to decommission or damage  
32 the swimming pool and from attempting to impose a levy or special assessment

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1 related to the removal or decommissioning of the pool. The restraining order was  
2 continued by agreement on several occasions.

3 20. Based on the timing of the Board's actions, the assessments for funds to  
4 remove the pool were due to be paid on September 13, 2013, two days after the  
5 temporary restraining order was issued in this case.

6 21. The parties have stipulated on the record that the court may extend the  
7 provisions of the temporary restraining order that enjoin the defendants from taking  
8 any action to decommission or otherwise damage or remove the pool as provided in  
9 paragraph 1 of the temporary restraining order entered in this case on September 11,  
10 2013.

11 22. The purpose and objective of the Admiral's Cove Beach Club in Article II of  
12 its bylaws is to provide and operate recreational facilities for the benefit of the  
13 members and to procure, maintain, operate and protect the recreational and  
14 associated safety concerns of the members of the community of Admiral's Cove,  
15 subject to the approval of the members of the Club.

16 23. The Bylaws of the association clearly presupposed the existence of the  
17 pool, and any action taken that would decommission the pool would be contrary to the  
18 Bylaws.

19 24. Any assessments or special assessments levied for the purpose of  
20 decommissioning the pool would be contrary to the Bylaws of ACBC and should be  
21 enjoined.

22 25. In addition to the express findings of fact set forth in paragraphs 1 – 24,  
23 above, the court incorporates by this reference, the transcript of the court's oral  
24 pronouncement which was placed on the record at the conclusion of the November 27,  
25 2013 hearing on Plaintiffs' motion. The transcript is identified as Exhibit A.  
26  
27  
28  
29  
30  
31  
32

1 Based on the above findings, the Court makes the following Conclusions of  
2 Law:

3 **II. CONCLUSIONS OF LAW**

4 1. The plaintiffs, as members of the association, have a clear  
5 legal right to the continued operation and maintenance of the pool, a well-grounded  
6 fear of the immediate invasion of that right based on the Board's decision to  
7 follow the unauthorized vote to decommission the pool and impose a special  
8 assessment to do so, and they would be actually and substantially injured if the Board  
9 was allowed to proceed with these actions.  
10

11 2. The Plaintiffs have no adequate remedy at law in this connection  
12 either.

13 3. Unless the Defendants are enjoined from taking the action precluded by the  
14 terms of the temporary restraining order, the Plaintiffs' right to relief will be  
15 substantially invaded or prejudiced.

16 4. The special assessment imposed by the defendant board of directors on or  
17 about August 13, 2013, was invalid for two reasons: First, it was contrary to the  
18 October 27, 2012 motion. Secondly, the Board has no authority under the Bylaws to  
19 decommission the pool, and, therefore, it did not have any authority to impose the  
20 special assessment for that purpose.  
21

22 5. Since the special assessment was invalid, it necessarily follows that the  
23 members are not required to pay it.

24 6. Members of ACBC who have not paid the special assessment levied on  
25 August 13, 2013, remain members in good standing and are, therefore, entitled to vote  
26 at membership meetings and are eligible to serve as directors if they are otherwise in  
27 good standing as defined by the Bylaws of ACBC.  
28

29 7. The Defendants, their agents and all persons acting on their behalf or  
30 together with them must be enjoined from the actions described in the temporary  
31  
32

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1 restraining order if the Plaintiffs' rights are to be preserved until final hearing in this  
2 action.

3 8. The Defendants' rights in this action will not be adversely affected and  
4 the Defendants will not be substantially inconvenienced by issuance of a preliminary  
5 injunction enjoining the above described acts.  
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### 10 III. ORDER

11 The court having entered findings of fact and conclusions of law, and further  
12 finding that just cause exists for the entry of this order, now, therefore, it is

13 ORDERED that, pursuant to the parties' CR 2A stipulation placed in the record  
14 at the hearing held November 27, 2013, paragraph 1 of the Temporary Restraining  
15 Order entered on September 11, 2013, shall remain in full force and effect until further  
16 order of this court and the same shall NOT expire after fourteen days. The Defendants  
17 and their successors, are restrained from taking any action, including the employment  
18 of third parties, contractors or subcontractors, which action furthers or allows, in any  
19 manner, the demolition, decommissioning, filling, damaging, destroying, covering,  
20 inactivating, altering or otherwise rendering unusable, temporarily or otherwise, the  
21 swimming pool complex and all related facilities owned and operated by the Admiral  
22 Cove Beach Club and located within the Plat of Admiral's Cove, Island County,  
23 Washington. It is further  
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25

26 ORDERED, that the Plaintiffs' request for a Temporary Injunction relating to the  
27 other matters presented in Plaintiffs' motion is hereby GRANTED. The Defendants,  
28 and each of them, and their successors, are temporarily enjoined from engaging in any  
29 of the following activity pending final disposition of this case:  
30

31 A. From imposing or levying or attempting to enforce or collect an assessment  
32 of any type against each or any lot within the plat of Admiral's Cove, the purpose of

1 which is to pay for any part of the costs of decommissioning, filling, damaging,  
2 inactivating, covering, demolishing or in any manner grading, removing, destroying or  
3 otherwise rendering unusable, the swimming pool and related facilities owned by the  
4 Admiral's Cove Beach Club.

5 <sup>From</sup>  
6 B. Failing to properly maintain the Admiral's Cove Beach Club swimming pool  
7 so that its condition deteriorates or worsens beyond conditions that existed on  
8 September 11, 2013. The term "properly maintain" shall include the usual and  
9 customary maintenance tasks previously undertaken by the Board of Directors in  
10 accordance with bylaws of ACBC and pursuant to usual practices, and any  
11 maintenance required by federal, state, or local law.

12 C. From attempting to take any action that is contrary to or inconsistent with the  
13 express terms of a motion unanimously approved by the members of Admiral's Cove  
14 Beach Club at the October 27, 2012 annual meeting of the membership, unless that  
15 motion is repealed or modified by action properly taken in accordance with the Bylaws  
16 and not inconsistent with the Court's findings and conclusions set forth in this order or  
17 the express terms of this temporary injunction.

19 D. From failing to properly schedule annual membership meetings as required  
20 by the ACBC Bylaws. The Defendant Board of Directors shall immediately schedule an  
21 annual meeting of the members of the Admiral's Cove Beach Club which meeting  
22 shall be treated as the annual meeting for calendar year 2013. The meeting shall be  
23 scheduled in accordance with the Bylaws of ACBC, and shall be set at a time no earlier  
24 ~~than January 18, 2014.~~ At that meeting the new board will be seated. The election of  
25 new board members will have to be completed prior to the meeting in a process  
26 consistent with the Bylaws.

28 E. From taking any action at or before this or any other regularly scheduled  
29 annual meeting of the members of Admiral's Cove Beach Club, which directly or  
30 indirectly attempts to or actually does:  
31  
32

1 4.1 deny or refuse to accept a nomination for Director of the ACBC  
2 Board of Directors, of any member of the corporation who is in good standing as <sup>or otherwise entitled</sup>  
3 defined by the Bylaws of the Admiral's Cove Beach Club; ~~as set forth in the~~

4 4.2 prevent a member of the corporation in good standing from  
5 running for election to the ACBC Board of Directors <sup>before the</sup> at any meeting of the membership  
6 held for <sup>the</sup> such purpose <sup>of seating the new board</sup> unless the person is expressly precluded from doing so by the  
7 terms of the corporation's bylaws.

9 4.3 treat a member who has not paid the special assessment levied  
10 by the Board of Directors on August 13, 2013, as a member "not in good standing" or  
11 otherwise ineligible to hold office or vote at the annual meetings.

12 4.4 attempt to present a motion or propose any action at the  
13 membership meeting, the purpose of which is to obtain funding for or approval of any  
14 action resulting in the removal or decommissioning or failure to maintain the ACBC  
15 swimming pool. It is further

17 ORDERED, that, pursuant to CR 65(c), this order is conditioned on Plaintiff first  
18 providing security in the amount of \$100.00, for the payment of damages which may  
19 be incurred by a party found to be wrongfully restrained by this order. It is further

20 ORDERED that the Plaintiffs' motion to have the Defendant Board of Directors  
21 of ACBC held in contempt for failing to conduct the ACBC annual meeting within the  
22 time prescribed by the Bylaws is DENIED. The Court is unable to find that the  
23 Defendants or any of them "intentionally" violated the terms of the Temporary  
24 Restraining Order. The Plaintiffs' request for an award of attorney's fees for having to  
25 bring this motion is also, therefore, DENIED.

27 Signed in open court this 30th day of December, 2013.

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31 JUDGE ALAN R. HANCOCK  
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Presented By:

Law Office of Christon C. Skinner, P.S.



CHRISTON C. SKINNER/ #9515  
Attorney for Plaintiffs

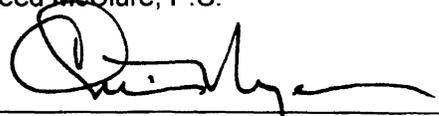
Approved as to form; copy received;  
Presentation waived:

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