

Court of Appeals No. 47129-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JAMES AND LAURA WALSH, a married couple,
KIM AND LORI HASSELBALCH, a married couple,

Appellants / Defendants

v.

RONALD HALME, an individual,

Respondent / Plaintiff

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. MOTION TO STRIKE	1
III. WHAT DID APPELLANTS DO?.....	2
IV. RESPONSE TO RESPONDENT’S ARGUMENTS.....	4
A. THE SUBJECT PROPERTIES ARE NOT PART OF ANY SUBDIVISION.	4
B. THERE IS NO “NOSKO TRACT – PHASE TWO HOMEOWNERS’ ASSOCIATION.”	5
C. THE APPELLANTS’ ACTIONS ARE NOT AUTHORIZED BY THE RMA.	8
V. CONCLUSION.....	9

TABLE OF AUTHORITIES

Page

Cases

Bercier v. Kiga, 127 Wn. App. 809, 103 P.3d 232 (2004) 2
Ebel v. Fairwood Park II Homeowners' Association,
136 Wn. App. 787, 150 P.3d 1163 (2007) 2, 8
Meresse v. Stelma, 100 Wn. App. 857, 999 P.2d 1267 (2000) 8
State v. Houvener, 145 Wn. App. 408, 186 P.3d 370 (2008) 2, 8

Statutes

RCW 64.38 7, 8
RCW 64.38.020 4

Other Authorities

Webster's Seventh New Collegiate Dictionary (1972) 5

Rules

RAP 2.5(a) 2, 8
RAP 10.3(a) 2

I. INTRODUCTION

The Respondent (“Halme”) has filed a curious brief. It only cites one case, does not discuss or distinguish any of the cases cited by the Appellant, dismisses certain arguments and facts without discussion and without reason, misinterprets the statutory definition of a homeowners’ association, and introduces a new argument that was not made before the trial court. Respondent also makes several statements which contradict other statements he has made.

For example, at p. 11 of the Respondent’s Brief, he asks why the Homeowners’ Association never had any meetings, directors, officers for the first 25 years of its existence. Then at p. 20, he dismisses Halme’s conduct as being irrelevant. However, Halme’s conduct is exactly why the other residents of Nosko Tract – Phase Two organized. Before Halme moved into the neighborhood, it was a peaceful, quiet subdivision where all the neighbors got along. Halme’s and his son’s conduct in blocking the road and intentionally frightening horses traveling on the road gave rise to the necessity to organize. It is likely that if Halme had not moved into the neighborhood, these actions would not have been necessary.

II. MOTION TO STRIKE

Appellants present two motions to strike. The first is to strike all of Respondent’s arguments except “C. The Appellants’ Actions are not Authorized by the RMA,” pgs. 15-20, because that is the only argument supported by legal authority. Under Washington Rules of Appellate

Procedure 10.3(a)(3) and (5), an appellate brief must include assignments of error, argument supporting the issues presented for review and citations to legal authority. *Bercier v. Kiga*, 127 Wn. App. 809, 103 P.3d 232 (2004). Because the rest of Respondent’s brief fails to cite any legal authority in support of the arguments, Respondent’s arguments under his sections A, B and D should be stricken.

Appellants cited twenty-seven (27) cases in its Opening Brief. Respondent has not discussed or distinguished any of them. This Court should accept Appellants’ arguments and positions stated in its Arguments, A - D and G, as Respondent has offered no legal authority to contravene them, and enter judgment for Appellants.¹

Appellants’ second motion is to strike the arguments made under “C. The Appellants’ Actions are not Authorized by the RMA”, pgs. 15-17, because the argument that the only way the RMA could be amended was by unanimous consent and that the clause allowing it to be amended by eighty percent (80%) related only to increasing annual contributions was not made before the trial court. This violates RAP 2.5(a). *See State v. Houvener*, 145 Wn. App. 408, 186 P.3d 370 (2008).

III. WHAT DID APPELLANTS DO?

The Appellants based their actions on the first paragraph of the Road Maintenance and Use Agreement (“RMA”) (App. 1) and on the

¹ Respondent cites *Ebel v. Fairwood Park II Homeowners’ Association*, 136 Wn. App. 787, 150 P.3d 1163 (2007) which is cited and discussed by Appellants in their Arguments, E and F. Therefore, Respondent has arguably met his obligation to cite legal authority against these two Arguments.

Rules of Conduct (p. 4). The first paragraph of the RMA allows additional Rules and Regulations to implement it and states in pertinent part:

The private road herein dedicated is to be used and administered under such regulations consistent with other conditions set forth in this instrument as may, from time to time hereafter, be established by the owners of THE NOSKO TRACT – PHASE TWO for the purpose of safe-guarding the road/roads or improvements thereon from damage or deterioration, and for the further purpose of protecting the residents of THE NOSKO TRACT – PHASE TWO from any uses or conditions in or upon said private road or property which are, or may be, detrimental to the amenities of the neighborhood.

The Rules of Conduct (RMA, p. 4) require that a reasonable speed limit be observed at all times; that there shall be no parking or storing of vehicles or other equipment on the roadway; and that no owner shall engage in any activity which might unreasonably interfere with the traffic flow or maintenance of the roadway. The Halme's conduct violated these Rules of Conduct but there is nothing in the RMA which allows the other owners to enforce these provisions.

Pursuant to the first paragraph of the RMA, which allows the Association to adopt regulations consistent with other conditions in the RMA, the owners organized. They adopted By-laws of Nosko Tract – Phase Two Homeowners' Association (App. 2) and a Fine Schedule and an Appellate Procedure. (App. 3)

The adoption of the Fine Schedule and Appellate Procedure allows the owners in Nosko Tract - Phase Two to regulate conduct consistent

with the RMA and to enforce them, without having to file a lawsuit. These procedures are authorized by RCW 64.38.020(1), (4), (6) and (11). RCW 64.38.020(11) allows the Association to levy reasonable fines in accordance with a previously established schedule adopted by the Board of Directors and furnished to the owners for violations of the Bylaws, Rules and Regulations of the Association. This is exactly what the Board of Directors intended to do through their actions. The Bylaws and the Rules and Regulations can be adopted by the Association through its Board of Directors and does not need a vote of the owners.

The Appellants have always identified themselves as “Nosko Tract – Phase Two” and all of their actions were intended to deal with the eight (8) lots in Nosko Tract – Phase Two. *See* the map attached to the RMA (App. 1).

It is the Appellants’ contention that Nosko Tract – Phase Two meets the statutory definition of a “homeowners’ association” and the Respondent has not set forth any credible argument that it does not.

IV. RESPONSE TO RESPONDENT’S ARGUMENTS

The remainder of this brief will address the arguments made by the Respondent.

A. THE SUBJECT PROPERTIES ARE NOT PART OF ANY SUBDIVISION.

Appellants have never argued that Nosko Tract – Phase Two is a subdivision. This argument made by the Respondent is superfluous.

B. THERE IS NO “NOSKO TRACT – PHASE TWO HOMEOWNERS’ ASSOCIATION.”

Part of the Respondent’s argument has already been met. The need to organize to protect the residents of Nosko Tract – Phase Two did not arise until Halme moved into the Association.

Respondent then argues that the statutory language is clear and unambiguous and that Nosko Tract – Phase Two did not meet the definition. Respondent’s argument is illogical and ignores the commonly understood meaning of the language of the statute.

Respondent argues that Nosko Tract – Phase Two is not an unincorporated association and is not registered with the State as any other legal entity. This argument is nonsense. Unincorporated associations are not registered with the State. Associations governed by a contract are not registered with the State. The definition of “incorporate” includes “to form into a legal corporation.” Webster’s Seventh New Collegiate Dictionary (1972). An unincorporated association then, would be one that is not incorporated.

The legislative history (App. 4) shows that the legislature intended to include in the definition of “homeowners’ association” entities created by contract or which otherwise meet the definition of a “homeowners’ association”. An association formed by contract, binding on the members to the contract, is a legal entity.

This is another area where the Respondent argues against himself. Here, he argues that a group of people bound together by a contract does not form a legal entity but then relies on the language of the RMA and

adds a new argument not presented in the trial court, that eighty percent (80%) of the owners can adjust the annual contribution but may not amend the rest of the RMA. Respondent's brief states at p. 17:

It is black-letter law that “[o]nce a contract has been entered into, mutual assent of the contracting parties is essential for any modification of the contract.

Respondent offers no explanation of why a legal entity cannot be created by a contract to meet the definition of “homeowners’ association” but it is otherwise binding on the parties to the contract in other contexts.

Further, Respondent's argument is nonsensical. Common interest communities include homeowners’ associations, condominiums, cooperative agreements, camping clubs, and refer to community associations and in Colorado, “common interest communities”. Whether or not any intent is shown in the RMA to create a “homeowners’ association”, as they are known in Washington, or some other type of community association is irrelevant. As noted in the Colorado cases, once an association meets the definition of a common interest community (or in Washington, a homeowners’ association), it is a homeowners’ association subject to the statutes which govern them. Respondent has not attempted to distinguish the Colorado cases.

Next, the Respondent attempts to confuse other legal entities with a homeowners’ association. He cites a commercial lease, an easement and an option. But, these legal arrangements do not meet the definition of a “homeowners’ association” because they are not owners of residential real property located within the Association’s jurisdiction. A commercial lease

is not a residential real property. The dominant easement owner may pay for the maintenance of an easement but the servient owner may not. In an option to purchase real estate, the option owner does not yet own the real estate.

Petitioners agree that there are many contractual arrangements for residential real property that do not create a homeowners' association but these are different than the one which is the subject of this lawsuit. For example, an association can be bound together to protect views through view easements. This would be a legal entity, enforceable by the owners, but not one where the members are required to pay assessments for the maintenance of common elements. Other entities may have architectural standards to govern the aesthetic quality of property within a given area but again, if there is no requirement to pay assessments for the maintenance of common elements, they do not meet the definition. The Respondent has not provided any argument why Nosko Tract – Phase Two does not meet the definition of a “homeowners’ association”, subjecting it to the powers and restrictions of Chapter 64.38 RCW.

Finally, the Respondent argues that it would create chaos across the State if Chapter 64.38 RCW applies to all road maintenance agreements. How this would lead to chaos is not explained but it is easy to see how chaos results when members to a road maintenance agreement are not subject to the statute. Here, Walsh and Halme have already been through one very costly litigation dealing with a gate which cost each side roughly \$40,000 to litigate. If the governing structure allowed by Chapter

64.38 RCW would have been applied in that situation, that result would not have happened. That is the chaos the legislature intended to avoid.

C. THE APPELLANTS' ACTIONS ARE NOT AUTHORIZED BY THE RMA.

This is the only place where the Respondent cites a single case in his entire brief and it is not even explained or argued. *Ebel v. Fairwood Park II Homeowners' Association*, 136 Wn. App. 787, 150 P.3d 1163, 1167 (2007) (quoting *Meresse v. Stelma*, 100 Wn. App. 857, 865, 999 P.2d 1267 (2000)), is discussed at pgs. 18, 20 and 21 of Appellants' Opening Brief which discussion will not be repeated. Suffice it to say that the case does not support the Respondent's argument and given the other cases cited by the Appellants in their Opening Brief, nothing more needs to be said.

In the same argument, however, Respondent advances a new argument that was not presented to the trial court. Here, Respondent says that the eighty percent (80%) vote mentioned in the RMA is limited to the adjustment of the amount of annual contributions. This argument was not made to the trial court and should be rejected. *See* RAP 2.5(a); *State v. Houvener, supra*. However, even if the Court considers this argument, it is irrelevant. All the owners of Nosko Tract – Phase Two have done is to adopt Bylaws, which are authorized by the RMA and are allowed by statute, and to adopt a Fine Schedule and an Appellate Procedure, which again are consistent with the statute. Both of these are in addition to and are separate from the RMA. They do not amend the RMA but simply

implement a method to enforce the RMA as allowed by the language of the first paragraph of the RMA.

The rest of the Respondent's argument in this section deals with the amendment to the CC&Rs which Appellants have long ago admitted were invalid. However, the invalidity of the amendments to the CC&Rs should not affect the adoption of the Bylaws for Nosko Tract – Phase Two, the Fine Schedule and the Appellate Procedure which were adopted on the same day and which specifically refer to Nosko Tract – Phase Two only. *See* Footnote 1 on p. 6 of Appellants' Opening Brief.

Respondent spends a lot of time jousting at windmills instead of dealing with the substantive issues raised in the Appellants' Opening Brief. Respondent does not address the issues pertaining to assignments of error outlined on p. 2 of Appellants' Opening Brief, nos. 2, 3 and 4.

V. CONCLUSION

Appellants cited twenty-seven (27) cases in their Opening Brief. The Respondent distinguished none of them. The Respondent cited one case in its brief which had already been distinguished by the Appellants. The Court should grant Appellants' motions to strike and enter judgment for the Appellants.

Appellants have shown how the Nosko Tract – Phase Two Road Maintenance and Use Agreement meets the definition of a "homeowners' association"; how they properly adopted Bylaws, a Fine Schedule and an Appellate Procedure to implement certain portions of the RMA as allowed

by its first paragraph. Whether they did so relying on the statute or relying on common law, the result is the same.

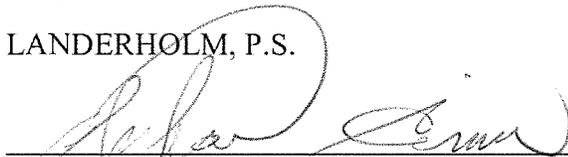
Appellants request that this Court reverse the decision of the trial court, determine that Nosko Tract - Phase Two is a homeowners' association meeting the definition of such in Chapter 64.38 RCW or that under common law, the Association has the authority to implement a governing system and a Fine Schedule to implement the Rules of Conduct which are already present in the RMA.

In addition, the Appellants ask the Appellate Court to reverse the trial court's granting of attorney's fees to the Respondent and grant attorney's fees to the Appellants.

DATED this 18th day of JUNE, 2015.

Respectfully Submitted,

LANDERHOLM, P.S.


MICHAEL SIMON, WSBA No. 10931
Attorneys for Appellants/Defendants

APPENDICES

1. Road Maintenance and Use Agreement
2. By-Laws of Nosko Tract – Phase Two Homeowners’ Association
3. Adoption of Fine Schedule and Appellate Procedure
4. Final Bill Report ESHB 1471

APPENDIX 1

ROAD MAINTENANCE AND USE AGREEMENT

THIS DEDICATION is made and accepted on the condition that the private road herein dedicated is to be used and administered forever for ingress, egress and utility purposes, for the benefit of the persons residing within the boundaries of certain real property within the County of CLARK, State of Washington, commonly known and referred to as: NOSKO TRACT - PHASE TWO. The private road herein dedicated is to be used and administered under such regulations consistent with other conditions set forth in this instrument as may, from time to time hereafter, be established by the owners of THE NOSKO TRACT - PHASE TWO for the purpose of safeguarding the road/roads or improvements thereon from damage or deterioration, and for the further purpose of protecting the residents of THE NOSKO TRACT - PHASE TWO from any uses or conditions in or upon said private road or property which are, or may be, detrimental to the amenities of the neighborhood.

OWNERSHIP. The present ownership of the property to be governed by this agreement is as follows:

Eldon D. Stroup and Mary L. Stroup, husband and wife; Mary L. Leith, as her separate estate; Mark A. Beirdneau and Angela F. Beirdneau, husband and wife;

The legal descriptions of the properties owned by the respective parties named herein are shown on the attached EXHIBIT "A".

DEDICATION OF ROADS. It is the intent of this agreement to dedicate the private road/roads contained in NOSKO TRACT - PHASE TWO for the exclusive use of the owners thereof, their families, guests and official visitors and none other. The legal description of the lands contained in THE NOSKO TRACT - PHASE TWO is as follows:

The Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M. EXCEPT the South 30 acres thereof;
AND

The Fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M.

IDENTIFICATION OF ROADS. The private road (or roads) to be dedicated in this agreement is described as follows:

A portion of N.E. 167th Ave. (private road), the centerline of which portion is described as the East line of the Northwest quarter of the Southeast quarter of section 36, Township 4 North, Range 2 East, W.M.

ALSO a portion of the future N.E. 229th Street (private road), described as the North 60 feet of the Northeast quarter of the Southeast quarter of Section 36, township 4 North, Range 2 East, W.M.

ALSO the following portions of the fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M:

The West 30 feet of the South half thereof; and the South 60 feet of the North half thereof EXCEPT the East one-third thereof. 438

ALSO the North 30 feet of the West 30 feet of the Fractional Northwest quarter of the Southwest quarter of section 31, Township 4 North, Range 3 East, W.M. which is intended to aid in understanding the location of the above-described road, is shown on the attached EXHIBIT "B".

SHARING OF COMMON EXPENSES. The individual owners of the parcels of land contained within The Nosko Tract - Phase Two shall share proportionately in regards to the costs and expenses of maintenance and repairs after the initial construction of the road by the developer.

MAINTENANCE FUND. Upon the initial sale of three (3) parcels, there shall be established a road maintenance fund:

A. Said fund shall be set up in an interest bearing checking or savings account at a chartered, local banking institution. All monies in said fund shall be used exclusively for the purposes provided in this agreement and none other;

B. Each owner of a parcel shall make an annual contribution to said fund, on or before February 1st of each calendar year. The amount of the contribution to be paid by each owner shall be computed on the following formula:

Five cents (.05¢) per running foot, as measured along the center of the road, from the point of beginning of the private road to a point opposite the entrance of the owner's driveway. If an owner has more than one driveway, the computation shall be based on the driveway which is furthest from the point of beginning; or, if an owner does not yet have a driveway, the computation shall be made to a point midway along the owner's road frontage. For clarification, the point of beginning shall be on N.E. 167th Ave. at the Southeast corner of the Northwest quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East.

C. Withdrawal of funds shall require two signatures as designated by the owners, which shall elect a Manager annually.

D. Any owner, upon selling, cannot receive a refund from said fund and must settle with the new owner in escrow, or privately, for the proration of the year of sale;

E. Any contribution not received by February 15th is delinquent. The owners may take legal action to collect and are entitled to be awarded reasonable costs, including attorney's fees, if action is necessary. The Manager shall be responsible for initiating said legal action and may draw money from the fund to pay for such action. Any money received or awarded from said action must be returned to the fund in its entirety;

F. The owners, by an 80% vote, shall have the right to adjust the amount of annual contribution as is deemed necessary. This action shall require a written addendum to this agreement, which shall be recorded.

G. Should any owner, or group of owners engage in any activity which causes excess damage or deterioration to the road beyond normal wear and tear, said owner or owners shall be required, at their sole expense, to make immediate and appropriate repairs on said road to the extent that it is restored to its regularly maintained condition. The Manager shall be responsible for overseeing said repair work and may, if necessary, initiate legal action, as defined herein-above, in order to ensure that such repairs are completed in a timely and proper manner. Examples of activity which might cause excess damage or deterioration may include, but are not limited to: Logging, heavy truck traffic, moving of heavy equipment and building construction.

MANAGER . One owner shall be designated as Manager . The term for the Manager shall be for one year and the duty shall rotate among the owners. The Manager shall receive no remuneration other than reimbursement for actual costs or expenses incurred for maintenance, administration and repair of the road.

439

DUTIES OF THE MANAGER

A. The Manager shall call at least two meetings of the owners per year, or more, as needed. The owners, as a group, will inspect the road and determine its state of repair and the extent and nature of any maintenance to be carried out, and the state of compliance with the rules and regulations of this agreement. All decisions shall require a majority vote, except for the increasing of annual contributions, which shall require an 80% vote. There shall be one vote for each parcel, which shall be made by the owner. Only those owners who are present at the meetings called by the Manager may vote, except they may, by written proxy, designate another owner to vote on their behalf.

B. The Manager shall give each owner notice of any and all meetings by properly postaged mail deposited in the United States Post Office at least ten (10) days prior to any meeting.

C. The Manager shall contract for and oversee the repairs and maintenance authorized. Payment for said repairs and maintenance shall be disbursed from the road maintenance fund as provided. In the event costs of authorized repair or maintenance exceed the amount in said fund, said Manager shall not incur any such costs or expenses until the owners have approved the same.

REPAIR. Any repairs or maintenance undertaken, including but not limited to the filling of chuckholes, without the consent of the other owners, shall be at the sole expense of the party or parties undertaking same; and in any event, no road repairs, other than the filling of chuckholes with approved materials, shall be undertaken unless by the procedure outlined herein.

A. Any and all road maintenance and repair shall be done in a professional manner and with materials of an appropriate nature of equal or greater quality to those existing.

B. No major changes in the road system, nor alteration thereof shall be undertaken except by official action taken in an official meeting called by the Manager, and any decision shall require the approval of a majority of the owners and shall be reduced to writing and signed by the same. Major changes or alteration may include, but not be limited to: total re-surfacing; alteration of drainage systems; changes of street names; changes, alterations or additions to utility services; alteration to design or traffic control; changes in any of the provisions contained herein.

ADDENDA:

1. The owners of Nosko Tract- Phase Two agree to participate equally with the owners of Nosko Tract - Phase One in the maintenance of that portion of N.E. 167th Ave. extending Northerly from the point of beginning of the private road to the intersection at N.E. 226th Circle.

2. All participants in this agreement acknowledge the Water Well of Byron and Greta Nudd, which said well is encroaching into the easement of 167th Avenue just West of where the private road is actually constructed. This acknowledgement in no way implies that the participants in this agreement accept any liability for said well.

3. In order to lessen the impact of the slope, the road to be constructed will follow a curve in a Northeasterly direction across the Northwest corner of Parcel 9. After completion of the road, the route of the centerline of the curve will be surveyed and its description added to this agreement.

4. For purposes of clarification, regarding the phrase "ingress, egress and utilities" as contained in the descriptions of the road easements herein, it is agreed that CLARK PUBLIC UTILITIES will be included for underground electric lines and U.S. WEST COMMUNICATIONS will be included for underground phone lines to serve the parcels embraced by this agreement.

In further clarification, Clark Public Utilities, legally known as Public Utility District NO.1 of Clark County, shall have the right of ingress and egress for the purpose of installing, repairing, operating and maintaining thereon and therein an underground electric system including surface-mounted transformers. The District shall have the right to tap to or from the underground electrical facilities to serve the present and/or future development of contiguous lands and for the present and future development and/or partitioning of the herein mentioned tract of land. The same rights shall extend to U.S. West Communications with respect to underground phone lines.

440

RULES OF CONDUCT.

- A. A reasonable speed limit will be observed at all times. As deemed appropriate by the owners, the Manager may be authorized to post speed limit and/or other traffic control signs along the roadway.
- B. In the event that fire hydrants are installed in the future, there will be no parking allowed in the vicinity of same.
- C. There shall be no parking or storing of vehicles or other equipment on the roadway or on the shoulders of the road. Nor shall access of emergency vehicles be impeded in any way.
- D. All property owners will park or store their personal vehicles, boats, trailers, campers or other equipment on their own property.
- E. Each owner shall be responsible for keeping the road frontage along their respective property free and clear of litter, debris, rubbish or other unsightly or hazardous material.
- F. No owner shall engage in any activity which might reasonably interfere with the traffic flow, sight distance and clearance, drainage, maintenance, repair or safety of the road.
- G. Each owner, their families, guests and visitors, are responsible for obeying all traffic control regulations and other regulations as contained herein.

ATTORNEY FEES. The prevailing party in any suit or action to enforce this agreement shall be awarded reasonable attorney's fees and the reasonable costs of prosecuting or defending said suit or action.

APPLICABLE LAW AND SEVERABILITY. This document shall in all respects be governed by the laws of the State of Washington applicable to agreements executed and wholly performed therein. Nothing contained herein shall be construed so as to require the commission of any act contrary to the law and wherever there is any conflict between any provision contained herein and present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision of this document which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. Any action commenced to enforce this agreement shall be brought in Clark County, Washington.

AGREEMENT TO RUN WITH THE LAND. This agreement shall run with the land and shall be binding upon and inure to the benefit of all owners, their heirs, successors or assigns; and further shall be binding upon and apply to all future divisions of land within NOSKO TRACT - as herein described. PHASE TWO

IN WITNESS WHEREOF, THE PARTIES have executed this Agreement on the 29th day of June, 1990, in Clark County, Washington.

Eldon D. Stroup
Eldon D. Stroup

Mary L. Stroup
Mary L. Stroup

Mary L. Leith
Mary L. Leith

X Charles F. Buchanan
Buchanan

X Mark A. Peirheart
Peirheart

Mark W. Belcher
M. Belcher

ADDITIONAL PARTIES TO THIS AGREEMENT SHALL SIGN BELOW:

441

SEE EXHIBITS "A" and "B" attached.

STATE OF WASHINGTON
County of CLARK

I certify that I know or have satisfactory evidence that _____
ELDON D. STROUP signed this
instrument and acknowledged it to be HIS free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated JUNE 29, 1990

Signature of Notary Public _____

Title NOTARY PUBLIC

My appointment expires 12-15-91

STATE OF WASHINGTON
County of CLARK

I certify that I know or have satisfactory evidence that _____
MARY L. STROUP signed this
instrument and acknowledged it to be her free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated JUNE 29, 1990

Signature of Notary Public _____

Title NOTARY PUBLIC

My appointment expires 12-15-91

STATE OF WASHINGTON
County of CLARK

I certify that I know or have satisfactory evidence that _____
MARY L. LEITH signed this
instrument and acknowledged it to be HER free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated JUNE 29, 1990

Signature of Notary Public _____

Title NOTARY PUBLIC

My appointment expires 12-15-91

STATE OF WASHINGTON
County of Clark

I certify that I know or have satisfactory evidence that _____
Angel & Beirdness & Mark A. Bairdness signed this
instrument and acknowledged it to be their free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated 7-31-90

Signature of Notary Public _____

Title NOTARY PUBLIC

My appointment expires _____



ADDENDUM "A"

ROAD MAINTENANCE AND USE AGREEMENT - NOSKO TRACT - PHASE TWO

LEGAL DESCRIPTIONS OF THE PROPERTY OWNERS:

Eldon D. Stroup and Mary L. Stroup

All of the North half and the East one-third of the South half of the Fractional Southwest quarter of the Northwest quarter of Section 31, township 4 North, Range 3 East, W.M.

AND the Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East W.M. EXCEPT the South 30 acres thereof.

SUBJECT TO AND TOGETHER WITH ROAD EASEMENTS

Mary L. Leith

The South half of the Fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M. EXCEPT the East one-third thereof.

SUBJECT TO AND TOGETHER WITH ROAD EASEMENTS

*NOTE: SEE CORRECTION DEEDS recorded under Auditor's File No.s 9008310161 and 9008310162 for corrected description of Leith.

Developer is exempt from annual contribution unless land is retained for their personal residence.

Mark A. Beirdneau and Angela F. Beirdneau

The Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M. EXCEPT THE SOUTH 30 ACRES thereof AND EXCEPT THE WEST HALF thereof.

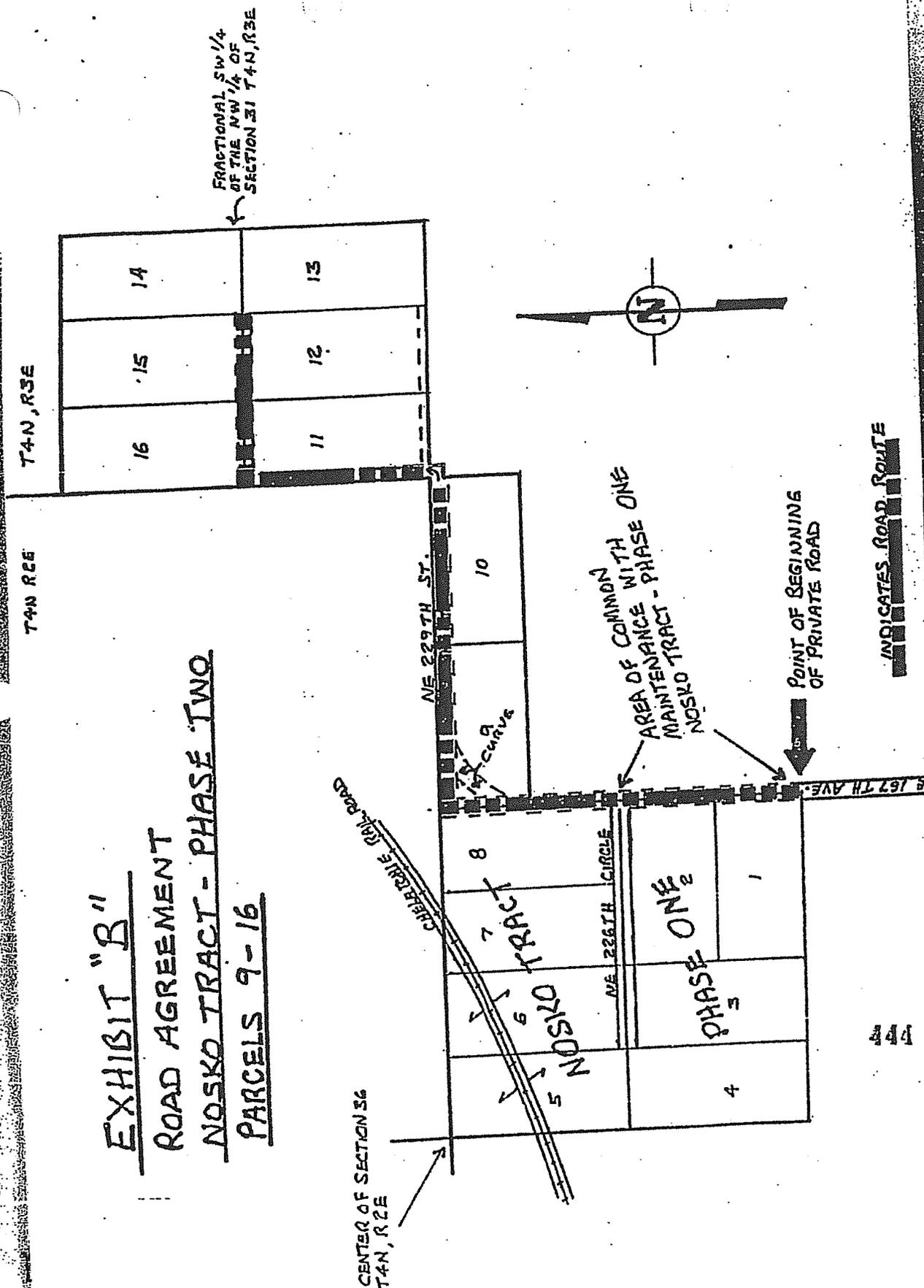
Larry Riley and Rebecca Riley

The East one-third of the South half of the fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M. Said parcel is more particularly described in Real Estate Contract recorded under Auditor's File NO. 9010110124.

Mark Bellika and Catherine Bellika

The Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M. EXCEPT THE EAST HALF THEREOF, AND EXCEPT THE SOUTH 30 ACRES THEREOF.

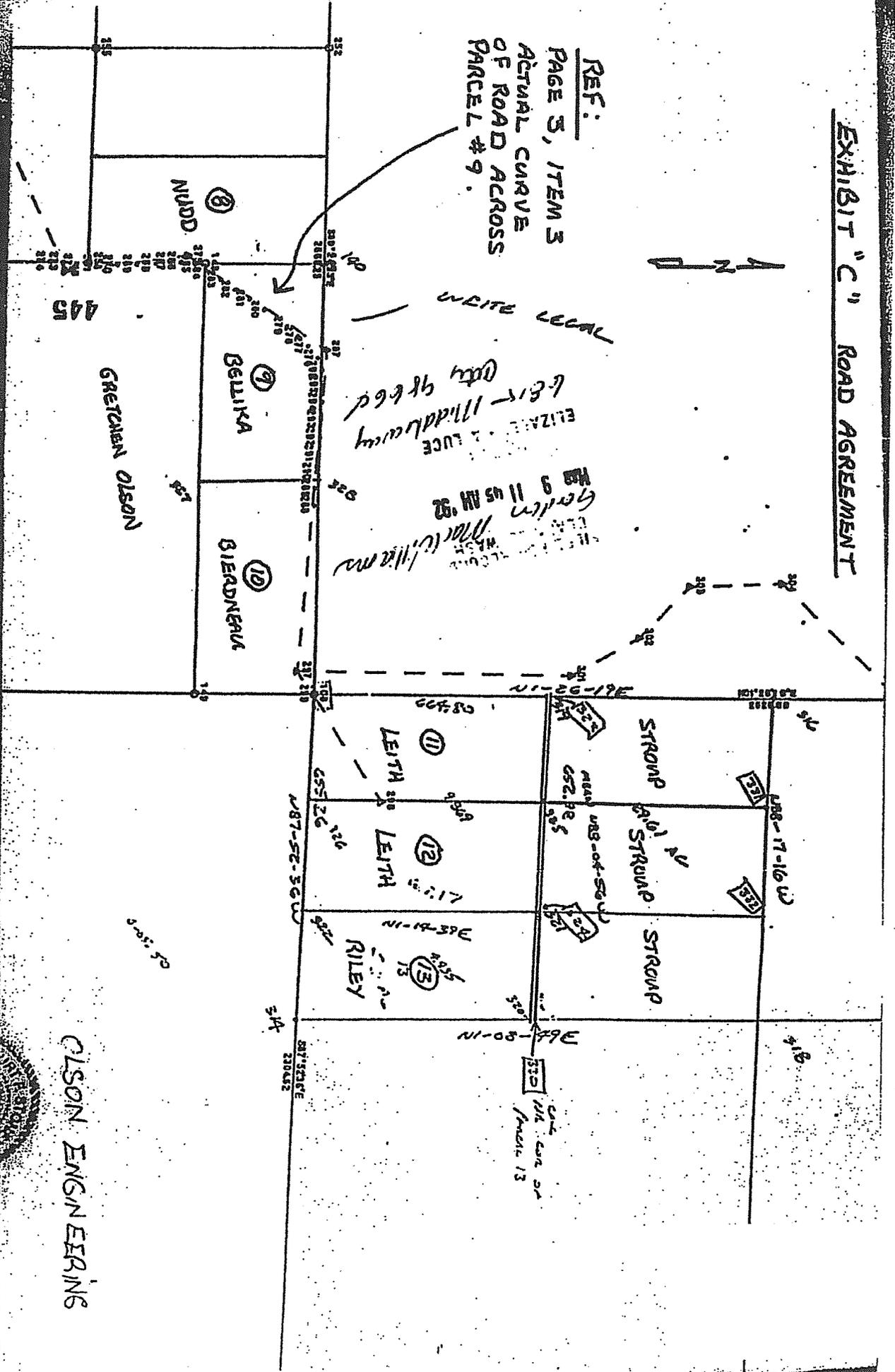
EXHIBIT "B"
ROAD AGREEMENT
NOSKO TRACT - PHASE TWO
PARCELS 9-16



444

EXHIBIT "C" ROAD AGREEMENT

REF: PAGE 3, ITEM 3
ACTUAL CURVE
OF ROAD ACROSS
PARCEL #9.



OLSON ENGINEERING

I, GREG A. KIMSEY, Auditor of Clark County, State of Washington, do hereby certify that the foregoing is a true and correct copy of a:

General Affidavit
Microfilm No. 78 File No. 2203990151

of record in this office. WITNESS my hand and official seal
This 9th day of October, 2014 A.D.

GREG A. KIMSEY, Auditor, Clark County
By Gene H. England
Deputy



APPENDIX 2

BY-LAWS
OF
NOSKO TRACK – PHASE TWO HOMEOWNERS ASSOCIATION

1. Definitions.

As used, the following terms are defined to have the following meanings:

1.1 The term “Nosko Track – Phase Two Homeowners’ Association” (“Association”) shall mean and refer to real property recorded under Clark County Auditor’s Recording No. 8310110099.

1.2 The term “Board” shall mean and refer to the Board of Directors of the Homeowners Association.

2. Membership.

Unless changed by adoption or amendment of Articles of Incorporation of this Civic Association and these By-Laws, Membership in this Association shall be:

2.1 Members. Each owner of a Lot in the HOA shall be a Member subject to the By-Laws; provided, that the purchaser(s) in a contract for the purchase and sale of a residential unit shall be deemed the “owner” and “Member” of such residential unit for these purposes. Each Member shall be at least eighteen (18) years of age. Each Member shall be entitled to one vote per residential lot owned by such member; provided that if two (2) or more Members or an investment entity shall own any residential lot by any form of co-tenancy or community property type of interest, such ownership is entitled to one vote, and the community or co-owners shall designate in writing filed with the secretary of the Homeowners Association the one of their number who shall exercise the voting rights for such residential lot.

The rights and privileges of a Membership shall terminate when the holder of any such Membership shall cease to qualify as an owner, and his recognition of membership shall thereupon be void.

3. Meetings of Members

3.1 Annual Meetings. The annual meeting of the members shall be held in the first quarter of the calendar year. All meetings of members shall be held as provided for in the notice of such regular meeting, at such place within the County of Clark, State of Washington, as shall be stated in the notice.

3.2 Special Meetings. Special meetings of the members may be called by the president of the Board, a majority of the Board members, or by three (3) of the Members.

3.3 **Notices.** Written or printed notices stating the place, day, and hour of the annual and any special meetings, and in the case of special meetings, the purpose or purposes for which the meeting is called, shall be delivered not less than fourteen (14) nor more than sixty (60) days before the date of the meeting of the members, either personally or by mail, or at the direction of the president, the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at the most recent address as it appears on the records of the Association. All procedures and notices for the annual meeting shall comply with the requirements of RCW 64.38.

3.4 **Quorum for Meetings and in Voting.** The vote of a majority of the members present or represented by proxy at a meeting at which a quorum is present, except for the adoption of the yearly budget or special assessments, shall be necessary for the adoption of any matter voted upon by the members. Four of the members of the association present at the commencement of any annual or special meeting of members constitute a quorum at the meeting.

3.5 **Adjourned Meetings.** Whether for failure to obtain a quorum or otherwise, an adjournment of any meetings of Members may be taken to the date, time, and place as the majority of those present (in person or by proxy) may determine without any other notice than announcement at the meeting being adjourned.

3.6 **Waiver of Notice.** Any Member may, in writing, waive notice of any meeting before, at or after the meeting, and this waiver will be deemed equivalent to the giving of notice. Attendance by a Member at any membership meeting, whether in person or by proxy, will be a waiver of notice of the time and place of the meeting, except where a Member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any objection must be made at the beginning of the meeting and the objection will be waived if the Member votes on any action at the meeting.

3.7 **Consent to Actions Without Meeting.** Whenever the vote of the Members is required, the meeting and vote of the Members may be dispensed with if all Members who would have been entitled to vote upon the action consent in writing to the action being taken, and, unless otherwise provided in the consent, the action will be effective when the last Member signs the consent.

3.8 **Mail-In Ballot.** Whenever the vote of the Members is required, the vote may be taken by mail-in-ballot if full instructions for and the mail-in ballot are described in the notice for a meeting established for the actions upon which the ballots will be cast and the instructions are not in contradiction to any provisions contained in the applicable statute or Governing Documents. In order to be counted, all mail-in ballots must be sent to the Secretary of the Association and must be received before the date and time identified in the balloting instructions.

3.9 **Open and Closed Meetings.** All meetings of the Board of Directors must be open for observation by all members of record and their authorized agents, except that, upon a motion duly made and seconded and the affirmative vote of the directors present in open meeting



to assemble in closed session, the Board of Directors may convene in closed executive session to consider the following matters:

3.9.1 To discuss personnel matters;

3.9.2 To consult with legal counsel or consider communications with legal counsel;

3.9.3 To discuss likely or pending litigation;

3.9.4 To discuss matters involving possible violations of the Governing Documents of the Association; and

3.9.5 To discuss matters involving the possible liability of a Lot Owner to the HOA.

The motion must state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session must be included in the minutes. The Board of Directors must restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion or other action adopted, passed, or agreed to in closed session may become effective unless the Board of Directors, following the closed session, reconvenes in open meeting and votes in the open meeting on the motion or other action which is reasonably identified. The requirements of this subsection may not require the disclosure of information in violation of law or which is otherwise exempt from disclosure.

3.10 Minutes. The Board of Directors must keep minutes of all actions taken by the Board, which must be available to all members.

3.11 Waiver of Notice. Attendance of a director or committee member at a meeting in person constitutes a waiver of notice of the meeting, except where a director or a committee member attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. A waiver of notice signed by the director or directors, whether before or after the time stated for the meeting, will be equivalent to the giving of notice.

3.12 Action by Directors Without a Meeting. Any action required by law or by these By-laws to be taken at a meeting of the directors, or at a meeting of a committee, or any action which may be taken at a meeting, may be taken without a meeting by a consent in writing, describing the action taken, and signed by all of the directors or committee members entitled to vote with respect to the subject matter. The consent will have the same force and effect as a unanimous vote.

3.13 Actions of Directors by Other Communications Means. Directors may participate in a meeting of directors by means of a telephone conference or similar communications equipment by means of which all persons participating in the meeting can

communicate with each other at the same time and participation by these means will constitute presence in person at a meeting.

4. **Directors.**

4.1 **Number, Election, and Tenure.** The property and affairs of the corporation shall be managed and controlled by a Board of Directors, the membership of which shall consist of three (3) persons who shall have been duly elected from among the members of the HOA. The members of the Board to be elected by the membership shall be elected at the annual meeting of the members, each for a one (1) year term. Nominations for Directors shall be received by the HOA for a period of thirty (30) days ending twenty-one (21) days prior to the annual meeting. All persons nominated and who consent to such nomination shall have their names placed on the ballot. Directors shall serve during their respective terms and until their successors have been elected and qualified. Any vacancy in the Board of Directors as a result of a vacancy among the members elected by the membership shall be filled by appointment of the remaining Directors. During the existence of any vacancy, the remaining Directors shall possess and may exercise all powers vested in the Board.

The owners of one lot may have only one representative on the Board. If more than one person or a legal entity own more than one lot, then they or it may have two (but not more than two) members on the Board.

4.2 **Regular Meetings of Directors.** A regular meeting of the Board shall be held immediately following the annual meeting of the membership and at the same place. Other regular meetings of the Board may be held without notice at such times and places as the Board by resolution may determine.

4.3 **Special Meetings of Directors.** Special meetings of the Board may be called from time to time by the president or by any two (2) Directors.

4.4 **Notices.** The secretary shall give written notice of each special meeting of the Board by mailing such notice by hand delivery or by United States mail to the respective Directors at their last known post office address, at least three (3) days prior to the date of such meeting. No notice of any regular meeting need be given. Directors may waive notice of meetings of the Board, and a waiver thereof signed by the Director entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, unless the Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If a Director agrees, notice may also be provided by e-mail.

4.5 **Quorum in Voting.** A majority of the members of the Board shall constitute a quorum for the transaction of all business, but if at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. When a quorum exists, action may be taken by the majority vote of the Directors present.



5. Officers and Agents.

5.1 **Elective Officers.** The officers of the association shall consist of a president, a vice president, a secretary, and a treasurer. Any two (2) or more offices may be held by one person except the offices of president and secretary.

5.2 **Election of Officers.** The officers of the Association shall be elected by the Board at its first meeting and thereafter at each regular annual meeting. All officers except the secretary shall be members of the Board, and the secretary may be a Director. In the event of the failure to hold any annual meeting as provided, officers may be elected at any time thereafter at a special meeting of the Board called for that purpose. Each officer shall hold office for the term of one (1) year and until his successor shall be elected and qualified. Each officer and agent shall be subject to removal at any time by a vote of the majority of the entire Board whenever in the judgment of the Board the best interest of the Association will be served by such removal.

5.3 **Vacancies.** A vacancy in any office shall be filled by the Board at any regular meeting or a special meeting called for that purpose.

5.4 **Employees and Agents.** The Board shall be empowered to employ such employees and agents and to execute such contracts as it may deem necessary to properly carry out its objectives and proposes as stated in the Articles of Incorporation and in these By-Laws.

5.5 **President.** The president shall be the chief executive officer and have general and active charge of the management of the Association, subject to control by the Board. When present, he shall preside at all meetings of the Board. The president shall have the power to appoint and discharge agents and employees, subject to the approval of the Board.

5.6 **Vice President.** The vice president shall in the absence or disability of the president exercise the powers and perform the duties of the president. The vice president shall also exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.7 **Secretary.** The secretary shall give such notice of meetings to the Board as required by these By-Laws and shall keep a record of the proceedings of all such meetings. The secretary shall have custody of all books and records and papers of the Association except those which are in the care of the treasurer or some other person to have custody and possession thereof by resolution of the Board. The secretary is authorized to sign with the president or vice president in the name of the Association all official documents, papers, deeds, and contracts including those in any way affecting the property or interests of the Association and shall affix the seal of the Association thereto. The secretary shall submit such reports to the Board as may be requested by it from time to time. An assistant secretary may, if authorized by the Board, perform the duties of the secretary in the event of the absence or inability of the secretary.

5.8 **Treasurer.** The treasurer shall account for all the monies of the Association received and disbursed, and shall deposit all the monies in the name of and to the credit of the Association in such banks and depositories as the Board shall designate, subject to withdrawal in the manner determined by the Board, and subject to the Board, shall safely keep all valuables of



the Association. The treasurer shall from time to time make such reports to the officers and Board as may be required, and shall perform such other duties as the Board from time to time shall delegate. An assistant treasurer may, if authorized by the Board, perform the duties of the treasurer in the event of the absence or inability of the treasurer.

6. Amendments.

These By-Laws may be amended at any regular meeting of the Board or at any special meeting of the Board called for that purpose. A vote of two (2) of the Board shall be required for any amendment of the By-Laws.

7. Offices.

7.1 Principal Office. The principal office of the HOA will be that of the current President serving the HOA.

7.2 Registered Office/Agent. The registered office and the registered agent located at that office may be identified in the Articles of Incorporation of the HOA, or any amendment filed with the Washington Secretary of State.

8. Budget.

8.1 Authority. The Board of Directors has the power to recommend and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for common expenses from Lot Owners.

8.2 Board Action. Within thirty (30) days after adoption by the Board of Directors any proposed regular or special budget of the Association, or any amendment, the Board must set a date for a meeting ("budget meeting") of the Members to consider ratification of the budget or budget amendment.

8.3 Date of Budget Meeting. The budget meeting may not be held sooner than fourteen (14) days nor more than sixty (60) days after the date the notice of the meeting and a summary of the budget to the Members is sent.

8.4 Vote. At the budget meeting, the proposed budget or amendment shall be deemed ratified by the members unless a majority of Members in the HOA reject the proposed budget.

8.5 Rejection of Budget. In the event the proposed budget is rejected or the required notice and summary is not given, the periodic budget last ratified by the Members will continue until the Members ratify a subsequent budget proposed by the Board of Directors.

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9. Miscellaneous.

9.1 Conflicts.

9.1.1 Statute Controls. In case of any conflict between the statute, Chapter 64.38 RCW, (the "Act") and the Articles of Incorporation and/or By-laws of this HOA, the Act will control.

9.1.2 Articles Control. If there is any conflict between the Articles of Incorporation and these By-laws, the Articles of Incorporation will control.

9.1.3 Declaration Control. If there is any conflict between the Declaration and these Bylaws, the Declaration will control.

IN WITNESS WHEREOF, Declarant has executed this instrument this 20th day of

MAY, 2014.

James M Walsh
Print Name: JAMES M WALSH
Title: PRESIDENT

Ken Hasselbaert
Print Name: KEN HASSELBAERT
Title: V. P.

Laura Walsh
Print Name: Laura Walsh
Title: Secretary / Treasurer



APPENDIX 3

ADOPTION OF FINE SCHEDULE

The Board of Directors held a Special Meeting on June 28, 2014 to consider the adoption of a Fine Schedule and Appellate Procedure for Rules Violations. The Board, pursuant to its authority by statute and by Section 11 of the Association's CC&Rs, hereby adopts the following Fine Schedule and Appellate Procedure:

RULES VIOLATIONS – FINE SCHEDULE

There are two type of offenses for which the Association will levy fines. The first type is "an event" where a violation may occur once and then subsequently separately by time. For example, if someone had a barking dog or blocked the road and if these were violations of the CC&Rs or Rules and Regulations, each time would be an event. So, if an owner or someone who is responsible blocked the road on May 1, again on May 3 and again on May 5, each would be a single event and the fines for each subsequent event would increase according to the Fine Schedule. Given the below adopted Fine Schedule, the first offense would result in a warning, the second offense would be a \$100 fine and the third offense would be a \$500 fine, with subsequent events increasing the fine amount.

The second type of offense is a "condition" such as parking junk cars, having a structure blocking the road, etc. For these offenses, a warning will be given to the owner requiring that the condition be removed within five (5) days. If the condition is not removed within that time period, then each day after that will be considered a separate offense giving rise to the increased fine amount. For example, if someone had a junk car on their property beyond the time allowed, the Association would write that owner a letter, requiring the removal of the junk car within five (5) days. On the sixth day, a fine of \$100 would be made, on the seventh day, a fine of \$500 would be made and for each subsequent day, a \$1,000 fine would be levied.

A condition can also become an event. For example, if someone had a parked junk car on their property but removed it within the five days and then brought it back on their property, the Association would not have to wait another five days to levy a fine. A fine could be levied immediately and every subsequent time that or any other junk car appeared on the property would be a separate event subjecting the owner to an increased fine.

Violation of these rules will lead to the following fines subject to the above explanations and to the discretion of the Board:

First Offense:	Written warning to owner.
Second Offense:	\$100 fine to owner.
Third Offense:	\$500 fine to owner.
Additional Offenses:	\$1,000 fine to owner for each additional event or condition.



APPENDIX 4

FINAL BILL REPORT

ESHB 1471

C 283 L 95
Synopsis as Enacted

Brief Description: Regulating homeowners' associations.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Padden and Appelwick).

House Committee on Law & Justice
Senate Committee on Law & Justice

Background: A homeowners' association is an organization formed in a planned unit community or given homeowners' area to provide management and maintenance for common areas in the community, such as parks, lakes, roads, and community centers. Often these associations are formed by the land developer or the builder of planned unit developments pursuant to a restrictive covenant or a contract. Homeowners' associations typically impose and collect assessments on each owner of property in the community for the maintenance and repair of the common areas. In addition, homeowners' associations may adopt rules concerning property use in the community and may impose fines for violations of those rules.

Currently, there is no statutory law that specifically addresses the organization, management, and powers of homeowners' associations. Homeowners' associations may organize as nonprofit associations governed by their own rules and procedures. In addition, homeowners associations may organize as nonprofit corporations.

Nonprofit corporations are managed by a board of directors and officers. The powers of a nonprofit corporation include the power to sue and be sued, engage in property transactions, lend money, make contracts, and incur liabilities. A nonprofit corporation may not issue stock, make income disbursements to members, officers, or directors, or make loans or advance credit to directors or officers. If provided in the articles of incorporation, a nonprofit corporation may make and collect assessments based on the value of the property owned by members of the corporation.

Summary: A new chapter is created governing the formation and administration of homeowners' associations. A "homeowners' association" is a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction and who is obligated to pay real property taxes, insurance premiums, maintenance costs, or improvement costs for real property other than that which is owned by the member.

The membership of an association consists exclusively of the owners of all real property over which the association has jurisdiction.

The association's "governing documents" include the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument which authorizes the association to exercise powers over property under its jurisdiction.

The powers of an association include the power to: (1) adopt and amend bylaws, rules, and regulations; (2) adopt and amend budgets and impose and collect assessments for common expenses from owners; (3) make contracts and incur liabilities; (4) regulate the use, maintenance, repair, replacement, and modification of common areas; (5) acquire, hold, encumber, and convey interests in real property; and (6) impose and collect charges for late payments of assessments and levy reasonable fines for violations of the bylaws, rules, and regulations of the association. An association may only impose fines for violations of the bylaws, rules, or regulations of the association after notice and an opportunity to be heard.

Officers and directors of an association shall act in all instances on behalf of the association and shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation. The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors.

Any budget adopted by the board of directors may be rejected by a majority vote of the owners of the association, either in person or by proxy. The owners may remove any member of the board of directors with or without cause by a majority vote, in person or by proxy, at a meeting at which a quorum of the owners is present.

The bylaws shall provide for: (1) the number, qualifications, powers and duties, terms of office, and manner of election of the board of directors; (2) the manner of election of the officers by the board of directors; (3) which powers the officers or directors may delegate to a managing agent; and (4) the method of amending the bylaws.

The association must hold at least one meeting per year, and special meetings may be called by the president, a majority of the board of directors, or by owners having 10 percent of the votes in the association. Notice of the special meetings must be mailed at least 14 days, and no more than 60 days, in advance of the meeting and must contain the time, place, and purpose of the meeting. All meetings of the board of directors must be open for observation by all owners of record and their authorized agents. The board may meet in closed executive session to consider certain matters

upon an affirmative vote in open session. All actions passed or agreed to in closed session become effective only after the board reconvenes and votes on the action in open meeting.

The association is required to keep financial records and prepare an annual financial statement. Associations with annual assessments of \$50,000 or more shall be audited annually by an independent certified public accountant unless the owners vote to waive the audit. All records of the association are available for examination by all owners, holders of mortgages on the lots, and their respective agents on reasonable advance notice.

A violation of the act entitles an aggrieved party to any available legal or equitable remedy and, if appropriate, an award of reasonable attorney's fees.

Votes on Final Passage:

House	82	13	
Senate	44	4	(Senate amended)
House			(House refused to concur)
Senate	45	1	(Senate amended)
House	88	8	(House concurred)

Effective: July 23, 1995

SENATE BILL REPORT

ESHB 1471

As Reported By Senate Committee On:
Law & Justice, March 30, 1995

Title: An act relating to homeowners' associations.

Brief Description: Regulating homeowners' associations.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Padden and Appelwick).

Brief History: Passed House 3/9/95, 82-13.

Committee Activity: Law & Justice: 3/28/95, 3/30/95 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Smith, Chair; Hargrove, Haugen, Johnson, Long, McCaslin, Quigley, Roach and Schow.

Staff: Dick Armstrong (786-7460)

Background: A homeowners' association is an organization formed in a planned unit community or given homeowners' area to provide management and maintenance for common areas in the community, such as parks, lakes, roads, and community centers. Often these associations are formed by the land developer or the builder of planned unit developments pursuant to a restrictive covenant or a contract. Homeowners' associations typically impose and collect assessments on each owner of property in the community for the maintenance and repair of the common areas. In addition, homeowners' associations may adopt rules and regulations concerning property use in the community and impose fines for violations of those rules.

Currently, there is no statutory law that specifically addresses the organization, management, and powers of homeowners' associations. Homeowners' associations may organize as nonprofit associations governed by their own rules and procedures. In addition, homeowners associations may organize as nonprofit corporations.

Summary of Amended Bill: A new chapter is created governing the formation and administration of homeowners' associations. A "homeowners' association" is a corporation, each member of which is an owner of residential real property located within the association boundaries and who is obligated to pay real property taxes, insurance premiums, maintenance costs, or improvement costs for real property other than that which is owned by the member. The membership of an association consists exclusively of the owners of all real property over which the association has jurisdiction.

The powers of an association include the power to: (1) adopt bylaws; (2) adopt budgets and impose assessments for common expenses; (3) make contracts and incur liabilities; (4) regulate the use and maintenance of common areas; (5) acquire, and convey interests in real property; and (6) impose charges for late payments of assessments and levy reasonable fines for violation of the bylaws of the association.

Officers and directors of an association must act in all instances on behalf of the association and must exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation. The board of directors cannot act on behalf of the association to amend the articles of incorporation; take any action that requires the vote or approval of the owners; terminate the association; elect members of the board of directors; or determine the qualifications, powers, and duties, or terms of office of members of the board of directors.

Any budget adopted by the board of directors must be ratified by the owners of the association. The budget is ratified unless a majority of the owners reject the budget.

The bylaws provide for: (1) the number, qualifications, powers and duties, terms of office, and manner of election of the board of directors; (2) the manner of election of the officers by the board of directors; (3) which powers the officers or directors may delegate to a managing agent; and (4) the method of amending the bylaws.

The association must hold at least one meeting per year, and special meetings may be called by the president, a majority of the board of directors, or by owners having 10 percent of the votes in the association. Notice of the special meetings must be mailed at least 14 days, and no more than 60 days, in advance of the meeting and must contain the time, place and purpose of the meeting.

All meetings of the board of directors must be open for observation by all owners of record and their authorized agents. The board may meet in closed executive session to consider certain matters upon an affirmative vote in open session. All actions passed or agreed to in closed session become effective only after the board reconvenes and votes on the action in open meeting.

The association is required to keep financial records and prepare an annual financial statement. All records of the association are available for examination by all owners.

A violation of the act entitles an aggrieved party to any equitable or legal remedies and, if appropriate, an award of attorney fees. Claims for relief must be brought within six months from the occurrence of the violation.

Amended Bill Compared to Substitute Bill: Owners can vote in person or by proxy. The board is not statutorily required to refund or credit surplus monies to each owner. For associations with assessments of over \$50,000, the audit must be done by an "independent" CPA. Claims must be brought within six months from the time of the occurrence of the violation. Financial statements of an association do not have to be done in "accordance with generally accepted accounting principles."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is essentially the same as the Senate bill which was heard previously in this committee. The bill will address problems that residential homeowners associations are having; right now the associations are practically unregulated. The associations sometimes take advantage of uninformed owners and such owners suffer major consequences. Adjustments need to be made in the bill to protect small associations from some of the bookkeeping details.

Testimony Against: None.

Testified: Ralph Munro, Secretary of State (pro); Glen Hudson, Realtors (with concerns).

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Cost Bill

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Court of Appeals No. 47129-9-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

JAMES AND LAURA WALSH, a married couple,
KIM AND LORI HASSELBALCH, a married couple,

Appellants / Defendants

v.

RONALD HALME, an individual,

Respondent / Plaintiff

AFFIDAVIT OF MAILING

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Of Attorneys for Appellants/Defendants

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Petition for Review (PRV)

Other: _____

Comments:

Affidavit of Mailing Reply Brief of Appellants

Sender Name: Michael Simon - Email: michael.simon@landerholm.com

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