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STATE OF WASHINGTON
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COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

SANDRA LAKE, INDIVIDUALLY
Plaintiff/Appellant

v.

WOODCREEK HOMEOWNERS ASSOCIATION,
a Washington Homeowners Association;
GLEN R. CLAUSING, a single man
Defendants/Respondents

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COURT OF APPEALS DIV. I
STATE OF WASHINGTON
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PETITION FOR DISCRETIONARY REVIEW
BY THE SUPREME COURT OF THE STATE OF WASHINGTON

Glen R. Clausing, Petitioner

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I. TABLE OF CONTENTS

	<u>Page No.</u>
A. IDENTITY OF PETITIONER.....	1
B. COURT OF APPEALS' DECISION	1
C. ISSUES PRESENTED FOR REVIEW	1
D. STATEMENT OF THE CASE.....	2
E. ARGUMENT.....	7
Issue 1 Is review of this case required to eliminate the direct conflict between Division I and Division III as to whether the combining of a condominium common area and a condominium apartment under RCW 64.32.090(10) does, or does not, require unanimous homeowner approval?	7
Issue 2 Under RCW 64.32, the Horizontal Property Regimes Act (HPRA) does combining or "converting" common area to an apartment area change the declared "values" or declared percentages of ownership?	10
Issue 3 Do the questions presented above involve substantial public interest given that all condominiums built and sold in Washington during the first 27 years that condominiums were developed in Washington are governed by the HPRA?.....	17
F. CONCLUSION – RELIEF SOUGHT	20

II. TABLE OF AUTHORITIES

	<u>Page No.</u>
Statutes	
RCW 64.32	2
RCW 64.32.010(14).....	13
RCW 64.32.050(1).....	11, 13, 14
RCW 64.32.080	11, 14
RCW 64.32.090(6).....	1, 11, 14
RCW 64.32.090(10).....	1, 2, 7, 8, 9, 10, 17, 19
RCW 64.32.090(12).....	14
RCW 64.32.090(13).....	11
RCW 64.34	17
RCW 64.34.010	17
RCW 64.34.228(3).....	19
RCW 64.34.455	20
Cases	
<i>Beckman v. Wilcox</i> , 96 Wn. App 355, 979 P.2d 890 (1990).....	19
<i>Bogomolov v. Lake Villas Condominium Association of Apartment Owners</i> , 131 Wn. App 353, 127 P.3d 762 (2006).....	15, 16, 17
<i>In re Detention of Martin</i> , 182 P.3d 951, (Wash.) May 1, 2008.....	8, 20
<i>Lake v. Woodcreek</i> , 142 Wn. App 356, 74 P.3d 1224 (2007).....	1, 2, 10, 16

II. TABLE OF AUTHORITIES (continued)

	<u>Page No.</u>
<i>McLendon v. Snowblaze Recreational</i> , 84 Wn. App 626, 929 P.2d 1140 (1997).....	1, 7, 8, 9, 10, 15
<i>Pierce Co. v. State</i> , ___P3d.___, Wn. App Div 2. May 28, 2008 (No. 34423-8-II)	20
<i>Preserve Our Island v. Shoreline Hearing Board</i> , 133 Wn. App 503, 137 P.3d 31 (2006).....	20
<i>Rozner v. City of Bellevue</i> , 116 Wn.2d 343, 804 P.2d 24 (1991)	8
<i>Waste Management v. WUTC</i> , 123 Wn.2d 621, 869 P.2d 1034 (1994)	20

Other Authority

<i>Seattle Daily Journal of Commerce Commercial Marketplace</i> , “Seattle Area Condominium Market Subdued,” Fahey, Tim, 1996.....	17
---	----

APPENDICES

Court of Appeals’ (Div. I) Decision in <i>Lake v. Woodcreek</i> , 142 Wn. App 356, 174P.3d 1224 (2007).....	A-1
Court of Appeals Order dated May 22, 2008 Denying Motion For Reconsideration of Decision in <i>Lake v. Woodcreek</i>	A-15
Court of Appeals’ (Div. III) Decision in <i>McLendon v.</i> <i>Snowblaze</i> , 84 Wn. App 629, 929 P.2d 1140 (1997).....	A-16
Declaration of Wayne Huseby dated July 13, 2006 [CP 152-174].....	A-20
Table Comparing Declared “Values” of Units with and without Bonus Rooms	A-43

II. TABLE OF AUTHORITIES (concluded)

Page No.

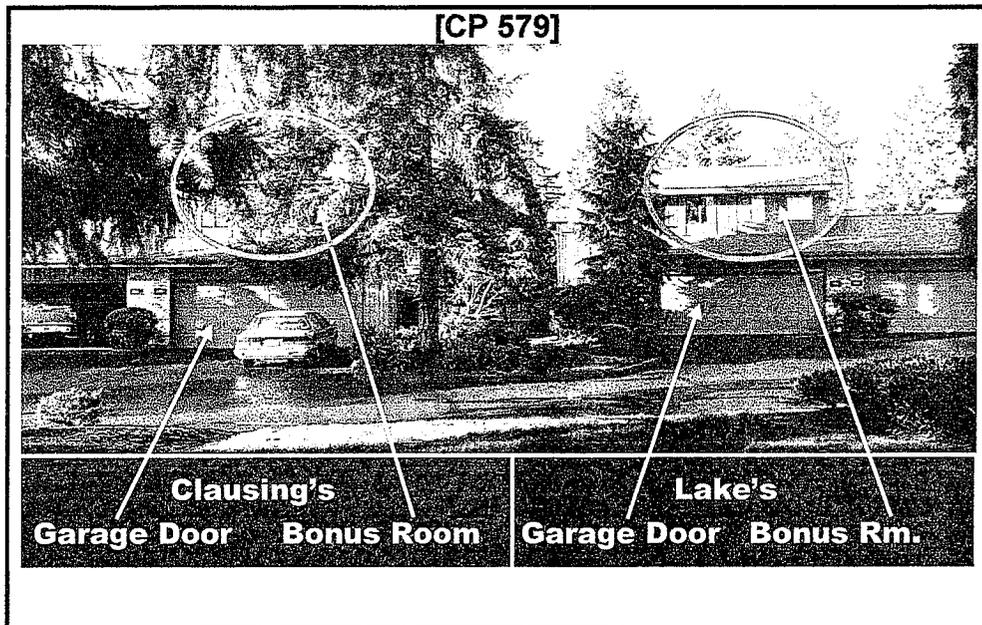
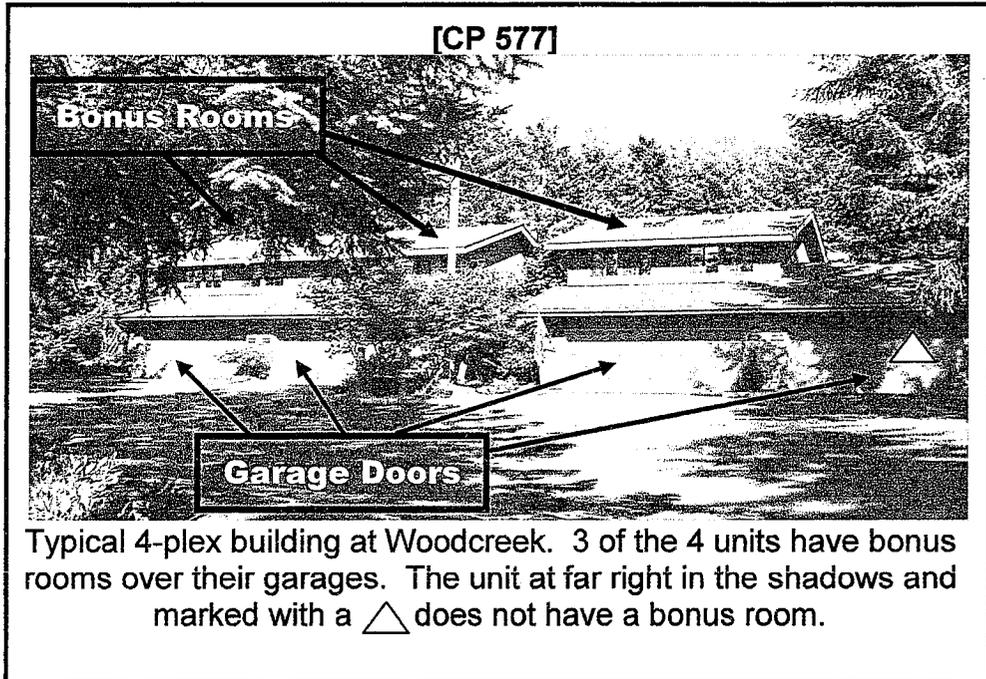
APPENDICES (concluded)

Paragraph 3 of Woodcreek's 1972 Declaration A-44
Paragraph 12 of Woodcreek's 1972 Declaration A-46

III. PRE-PETITION APPENDIX

“Bonus Rooms” are mentioned frequently in this petition.

These pictures are of bonus rooms at Woodcreek.



A. IDENTITY OF PETITIONER

Glen R. Clausing, Respondent, petitions this Court to accept review of the Court of Appeals' decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS' DECISION

In this case, *Lake v. Woodcreek*,¹ Division I of the Court of Appeals reversed a summary judgment in favor of Clausing and Woodcreek based on its interpretation of RCW 64.32.090(10) and the meaning it assigned to the term "value" in RCW 64.32.090(6). Reversal of the summary judgment was NOT based on the existence of disputed facts. Clausing's motion for reconsideration was denied on May 22, 2008.²

C. ISSUES PRESENTED FOR REVIEW

1. Is review of this case required to eliminate the conflict between Division I and Division III as to whether the combining of a condominium common area and a condominium apartment under RCW 64.32.090(10) does, or does not, require unanimous homeowner approval? In *McLendon v. Snowblaze Recreational*,³ Division III held RCW 64.32.090(10) permits the combining of a condominium common area

¹ 142 Wn. App 356 (2007). A copy of the decision is in the Appendix at page A-1.

² A copy of the Order Denying Reconsideration is in the Appendix at page A-15.

³ 84 Wn. App. 626, 929 P.2d 1140 (1997), copy is in the Appendix at page A-16.

with a condominium apartment by less than unanimous homeowner approval. In this case, Division I held that RCW 64.32.090(10), as a matter of law, does not permit the combining of a condominium common area with a condominium apartment except by unanimous homeowner approval. Division I held:

*“It is precisely for this reason that McLendon was wrongly decided. McLendon allowed the combining of a common area storage shed with an apartment on less than a unanimous vote under RCW 64.32.090(10) ”*⁴

2. Under RCW 64.32, the Horizontal Property Regimes Act (HPRA) does combining or “converting” common area to an apartment area change the declared “values” or declared percentages of ownership? Division I in this case held that for condominiums created under the HPRA:

*“Once the declaration is final, the values and percentages are fixed. They are subject to change only by unanimous vote, and converting common area to apartment area necessarily changes them.”*⁵ [Emphasis added]

3. Do the questions presented above involve substantial public interest given that all condominiums built and sold in Washington during the first 27 years that condominiums were developed in Washington are governed by the HPRA?

⁴ *Lake v. Woodcreek*, at 368 / Appendix page A-13.

⁵ *Lake v. Woodcreek*, at 363 / Appendix page A-8.

D. STATEMENT OF THE CASE

Woodcreek is a townhouse condominium community in Bellevue, Washington with 150 townhouses built on 23 acres. [CP 222-23] Woodcreek's original declaration was filed in 1972 [CP 218], and the HPRA governed its development. The HPRA continues to govern Woodcreek to this day. **Glen R. Clausing** (Clausing) purchased his Woodcreek townhouse in September 1985 and has lived at Woodcreek since then. [CP 185 & 428] **Sandra Lake** (Lake) purchased her Woodcreek townhouse in September 1988 and has lived at Woodcreek since then. [CP 430-36 & 76]

Woodcreek's Declaration describes its units (townhouses) and as required by the HPRA, sets forth each unit's "value," as that term is defined in the HPRA.⁶ Each unit's numerical "value" is also expressed as a decimal fraction (declared percentage) as required by the HPRA.⁷

Woodcreek has several styles or types of townhouse units. Each type has a double-car garage and each type is described in the declaration.

⁶ "**Value**" in the HPRA is the voting power, profit and expense sharing, and common area interest assigned by the declarant to a unit. A unit to which the declarant assigned a larger "value" in the declaration has greater voting power, a larger share of profit and expense, and a larger common area interest than a unit to which the developer assigned a smaller "value." By statute, the declarant's assigned "value" is fixed and has nothing to do with actual fair market value that necessarily changes with time, maintenance, obsolesces, and improvements. To emphasize "value" in the HPRA is different from the general use of the word it is placed in quotes here and is referred to as "declared value."

⁷ Woodcreek's declared values and percentages are summarized at CP 378 and detailed at CP 221-22, 228-29, 261-63, 264-66, 278-79, 322-24, 385-86, & 391-93.]

For example, the Declaration in paragraph 3 (see Appendix page A-44) describes Type A units as: “Kitchen, family room, utility room, dining room, living room, two bedrooms, two bathrooms, two car garage with storage area.” After describing each type of unit, the declaration then provides:

“In addition, there is designated in the plans for Type C and D units a room designated as the “Bonus Room.” Upon the option of the purchaser, the second floor plans for the Type C and D Units will include an additional area to be situated directly above the two car garage which is incorporated within the basic structure of the apartment unit. The Bonus Room will increase the square footage of said units by 415 square feet.” [Emphasis added] [CP 222 / Appendix page A-45]

Amendments to the Declaration made the bonus room option available for Type F, G, J, K, L and M style units (in addition to types C and D) and changed the bonus room’s square footage to “approximately 415 square feet.” [CP 343, 376, 386, & 395] Clausing’s unit is a J style. [CP 424 & 428] Forty-three of Woodcreek’s 150 townhouse units have bonus rooms above their garages. [CP 578] See photographs at page vi.

The Woodcreek bonus rooms have no declared “value.” [CP199-202] In 1972 when the developer filed the original declaration, no distinction was made in declared “values” for units of the same style with and without bonus rooms. [CP 214] In 1976 when the developer filed the final amendment to Woodcreek’s Declaration that restated the “values” for all

150 units, including those units already built and sold, again no distinction was made in declared "values" for units of the same style with and without bonus rooms.⁸ [CP 378-80] Included in the appendix at page A-43 is a table [CP 589-90] compiled from the final (1976) declared "values" that shows no distinction in "value" was made for units with and without bonus rooms.

After the developer recorded the 1976 amendment to the Woodcreek Declaration containing the final declared "values," Woodcreek became self-governing through its Board of Directors. [CP 126-27 & 426] After the Board assumed control of the Association, it approved the addition of bonus rooms for seven units. The following table [CP 114] summarizes the Board's approval of bonus rooms during the last 29 years:

CP	Date Board Approved	Unit No	Owner	Purchased From Developer
CP 181 ▶	July 1978	12	Judkins	Yes
CP 562 ▶	June 1986	125	Share	No
CP 140 ▶	Mar. 1991	123	Davidson	No
CP 177 ▶	April 1995	119	Privat	No
CP 141 ▶	April 1998	124	Clarke	No
CP 138 ▶	Sept. 2001	91	Sherwood	No
CP188&428 ▶	May 2004	109	Clausing	No

⁸ The developer reserved the right in the 1972 declaration to re-declare values by amendment to the declaration. In 1976 when the amended declaration was filed, many of the units had already been built and sold and had bonus rooms. [CP 223] When the 1976 amendment was recorded, March 10, 1976, all 50 units in Division I of Woodcreek including 14 with bonus rooms, and 37 of the 50 units in Division II including 12 with bonus rooms had been built, sold and closed. No difference in declared "values" was made or attributed to units with and without bonus rooms by the developer in the 1976 amended declaration. [CP 119, 378-80]

Both Clausing and Lake were unit owners and residents at Woodcreek when all the bonus rooms in the above table were approved by the Board except for one the Board approved in 1978. With the exception of the bonus room the Board approved for Clausing's unit in 2004, Lake did not protest or otherwise challenge the Board's authority to approve any of these bonus rooms. [CP 155-56, 190, 124-5, 192, & 837]

The bonus room the Board approved for Clausing's unit in May 2004 was completed during that summer. [CP 194, 125] After it was built, Lake had her attorney contact the Woodcreek Board to express her opinion that the Woodcreek Board did not have authority to approve its construction and that a bonus room could only be approved with unanimous consent of all Woodcreek owners. [CP 156-57, 169-70, 171, & 174] The Woodcreek Board, twice in writing, informed Lake's attorney that it believed it had acted properly in all respects in approving the bonus room for Clausing's unit and acted properly when in prior years it approved the other bonus rooms. [CP 156, 171 / App. Pgs A-24 & A-29] Approximately 15 months later, in December 2005, Lake filed her suit seeking to have the Board's approval declared invalid and seeking injunctive relief in the form of having Clausing's bonus room demolished. [CP 1-10]

At the June 5, 2006 annual Woodcreek Homeowners' meeting, the first annual meeting held after Lake filed her suit, the Woodcreek

homeowners passed the following resolution by a vote of 91 to 4, an affirmative vote of over 60% of all homeowners entitled to vote:

“The Homeowners hereby ratify and approve the Board’s past approvals of all owner-added bonus rooms built to date and its past approvals of any owner modifications that may have involved or permitted a combining of apartment unit or units with common areas or facilities or limited common area or facilities as provided for in paragraph 12 of the Declarations.” [CP 130]

The homeowners’ resolution in this case should have settled the issue as it did in *McLendon*, supra page 8. Division I, however, specifically rejected the analysis and outcome in *McLendon*, and in this case Division I: (A) Based its decision on the commonly understood or popular meaning of the word “value” instead of the meaning that “value” has in the HPRA (which determines voting power, profit and expense allocation and ownership interest); and (B) added the words “like-kind” to RCW 64.32.090(10) regarding the combining of condominium property. As a result, discretionary review of this case is necessary.

E. ARGUMENT

Issue 1: Is review of this case warranted to eliminate the conflict between Division I and Division III?

The decision in this case creates a split of authority between Division I and Division III regarding the correct interpretation of RCW 64.32.090(10) and other provisions of the HPRA. Division III in *McLendon* held that RCW 64.32.090(10) permits a condominium common

area and an apartment to be combined without unanimous homeowner approval.⁹ Division I in this case held RCW 64.32.090(10) permits the combining of a condominium common area and an apartment only with unanimous homeowner approval. Statutory construction is a question of law reviewed de novo and this court should accept review to resolve the conflict between the Divisions.¹⁰

In *McLendon* the condominium board leased a storage room, a common area per the declaration, to a unit owner and permitted the unit owner to remodel it to incorporate it into the owner's unit as an additional bedroom. Subsequently, the homeowners ratified the board's action by more than a 60% affirmative vote. Mr. McLendon challenged the board's action claiming that a combining of a common area and an apartment had occurred, that the combining had resulted in changing the declared "values" and resultant percentages of ownership set forth in the declaration, and the changing of the declared "values" was illegal because it was not done with unanimous approval of the homeowners.

⁹ RCW 64.32.090(10) provides: "The [condominium] declaration shall contain the following: . . . (10) A provision authorizing the establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description."

¹⁰ "Statutory construction is a question of law reviewed de novo. . . . The primary objective of any statutory construction inquiry is "to ascertain and carry out the intent of the Legislature." *Rozner v. City of Bellevue*, 116, Wn. 2d 343, 347, 804 P.2d 24 (1991)." *In re Detention of Martin*, 182 P.3d 951, Wash., 2008. May 01, 2008.

Division III in *McLendon* held that: (A) Common area had been combined with an apartment; (B) The HPRA, specifically RCW 64.32.090(10), requires every condominium to have as part of its declaration a provision allowing for the combining and subdividing of common areas and apartments; (C) The combining of a common area and an apartment unit does not change the “values” or the percentages based on them set forth in the declaration; (D) Since the combining did not change “values,” unanimous consent of the homeowners was not required; (E) In this particular condominium’s declaration the combining and subdividing provision mandated by RCW 64.32.090(10) required a 60% affirmative vote; and (F) The after-the-fact homeowner ratification vote of the board’s approval exceeded the 60% vote requirement thereby approving the Board’s earlier action.

In the present case Lake challenged the Woodcreek Board’s approval of the addition of a bonus room to Clausing’s Woodcreek apartment. Ms. Lake, like Mr. McLendon, claimed unanimous consent of the apartment owners was required because the bonus room addition changed the declared “values.”

In this case Division I held that: (A) A common area at Woodcreek had been combined with an apartment because the bonus room had enclosed airspace above the apartment (a common area) and combined it with the apartment unit; and (B) unanimous consent was required to

combine the common area and an apartment because they were not “like kind” properties. Division I further held *McLendon* had been “wrongfully decided” by Division III because RCW 64.32.090(10) only allows “like kind” properties to be combined without unanimous approval.

“This statute [RCW 64.32.090(10)] . . . must be read to apply only to combining or dividing like-kind properties.”¹¹

Division I held in this case that RCW 64.32.090(10) allows “like-kind” properties (*i.e. a common area and a common area, or an apartment and an apartment*) to be combined without unanimous approval, and does not allow “unlike” properties (*i.e. a common area and an apartment*) to be combined without unanimous consent.¹² Division I in this case held invalid exactly what Division III held to be valid in *McLendon*.

Issue 2: Does “converting” common area to an apartment area change the declared “values” or declared percentages of ownership?

Division I in this case held:

“Once the [condominium’s] declaration is final, the values and percentages are fixed. They are subject to change only by unanimous vote, and converting common area to apartment area necessarily changes . . . [the declared values and declared percentages].”¹³

¹¹ *Lake v. Woodcreek*, 142 Wn. App 356 (2007) at 368 / Appendix page A-14

¹² There is no such “like-kind” language in the statute. There is no such “like kind” language in Woodcreek’s declaration.

¹³ *Lake v. Woodcreek*, at 363-4 [emphasis added] / Appendix page A-8

The first part of the above quoted holding that “values” and resultant percentages are “fixed” and subject to change only by unanimous vote is correct and is in accordance with RCW 64.32.090(13).¹⁴ An affirmative vote by 100% of the homeowners is required by statute to change the declared “values” because the “values” set forth in the declaration by the developer determine each apartment owner’s (A) voting power; (B) share of common expenses and distributed common profits; and (C) undivided interest in the common areas.¹⁵ The unanimity required to change “values” and resultant percentages prevents oppression of a minority by a majority in the three fundamentally important areas of voting, assessments, and liquidation participation. There has been no amendment to the Woodcreek Declaration that changed declared “values” (and resultant percentages) since the developer recorded the final “values”

¹⁴ RCW 64.32.090(13) provides: “[The declaration must contain] [t]he method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners.”

¹⁵ RCW 64.32.090(6) ties voting power to the percentages, RCW 64.32.080 ties profits and expenses to the percentages, and RCW 64.32.050(1) ties interest in the common areas to the percentages. The unanimity required to change “values” and resultant percentages prevents oppression of a minority by a majority in the three fundamentally important areas of voting, assessments, and liquidation participation.

in 1976 for all of Woodcreek's 150 units. The Woodcreek homeowners have never been asked to vote or voted to amend the declared "values."

The second part of the holding, that "converting" common area to apartment area necessarily changes them [the declared values and resultant percentages] is patently incorrect. When (what was) common area becomes an apartment, (or part of an apartment, or is incorporated into the apartment), the declared "values" of the apartments do not change. It is of no importance whether the process of a common area becoming an apartment is called a "combining" or a "converting" because the legal consequence is the same: The declared "values" of the apartments, their voting power, share of expenses and profits, and percentage interests, do not change.¹⁶ The square footage, and/or market value of an apartment may change but its declared "value" does not.

There is no provision in the HPRA that states that combining a common area with an apartment ("converting") changes declared "values," and that statute does not contain the words "like-kind." Nowhere in Woodcreek's Declaration does it provide that combining a

¹⁶ "Converting" is a term the Court of Appeals used in its decision in this case. (See for example Appendix page A-4.) The word "converting" does not appear in RCW 64.32 nor does it appear in Woodcreek's Declaration. RCW 64.32.090(10) provides that every condominium's declaration must contain a provision setting forth the procedures for combining and subdividing. Woodcreek's Declaration, paragraph 12, contains such a provision. The procedure for combining set forth in paragraph 12 is the approval by at least 51% of the homeowners, not unanimity. The procedure in paragraph 12 does not include a restatement or recalculation of "values." Paragraph 12 of Woodcreek's Declaration is in the Appendix at page A-46.

common area with an apartment (“converting”) changes declared “values” and resultant percentages, nor does it contain the words “like-kind.” Woodcreek’s declaration does provide, in paragraph 12, that in the case of a combining, the declared “values” do not change and the required vote to combine a common area with an apartment is 51%. [232-33CP / appendix page A-232-33]¹⁷

Not only does Woodcreek’s Declaration specifically provide that in the case of a combining the declared “values” do not change, [CP 232-233cp] based on its provisions the declared “values” at Woodcreek cannot change. At Woodcreek: (A) The sum of the declared “values” of all Woodcreek’s apartments is equal to the declared “value” of the property; [cp 379-80 & 391-93] and (B) the sum of the percentages of ownership for each Woodcreek apartment computed from the “values” is equal to 100%, [cp 379-80 & 391-93] that is 100% of the voting, profits and expenses, and common area interests are allocated to the Woodcreek apartments. In accordance with RCW 64.32.050(1) and RCW 64.32.010(14), at Woodcreek no “value” or percentage is allocated to the common areas

¹⁷ Paragraph 12 of Woodcreek’s declaration provides that “values” change only if an apartment is subdivided. In the case of subdividing, understandably the declared “value” of the apartment subdivided has to be allocated to the additional apartment(s) created.

because 100% of the property's "value" is allocated to the apartments.¹⁸ Accordingly, at Woodcreek if a common area is improved and then combined with an apartment, or a portion of the existing common area is combined with or "converted" to an apartment, the declared "value" for that apartment cannot change because the added/combined common area has no declared "value." Adding zero (the common area's declared "value") to any other number (the apartment's declared "value") does not change that other number.

The declared "values" are not based on fair market value and they are not tied to or governed by fair market value. The HPRA does not require that the developer base declared "values" on any criteria, formula, appraisal, survey or economic factor. As provided in RCW 64.32.090(12), Woodcreek's Declaration contains the following provision:

"The values placed upon the residence apartment units by this declaration are for the purpose of determining each apartment unit owner's undivided percentage interest in said condominium development and said values shall not be construed to be a limitation or restriction on the sales price." [Paragraph 4 of 1972 declaration, emphasis added.]

Declared "values" (and resultant percentages) do not change if the unit owner remodels the kitchen, bathrooms, and/or replaces "builder's

¹⁸ The HPRA does allow a developer to declare a separate value for various components of the apartments and/or the limited common areas assigned to an apartment. If this is done the declared (total) value of the apartment is the sum of the values of its components. This was not done at Woodcreek but was at Lake Villas Condominiums discussed infra at page 15.

standard carpeting” with custom hardwood flooring and marble. The declared “values” do not change with any factor that influences or determines the fair market value of condominiums generally and/or of one particular condominium unit. These issues, while of interest to the County Assessor, are irrelevant to the voting power, profits and expenses, and ownership interest of a unit that are based on its declared “value.”¹⁹

Creating (improving) common area²⁰ and combining it with an apartment or combining existing common area with an apartment may change the fair market value of the common area and/or the apartment, but it does not change declared “values.” *McLendon* correctly distinguished between “value” as used in the HPRA and fair market value, and it correctly decided that “converting” (combining) unlike properties is permitted under the HPRA with less than unanimous approval.

Division I had previously decided *Bogomolov v. Lake Villas Condominium Association of Apartment Owners*.²¹ The Court of Appeals in that decision analyzed what the developer had set forth in that

¹⁹ RCW 64.32.090(6) ties voting power, RCW 64.32.080 ties profits and expenses, and RCW 64.32.050(1) ties ownership interest in the common areas to the declared values.

²⁰ “Creating” is a term Division I used in this case to mean “improving.” Building a gazebo along a common area walkway does not “create” common area -- it improves it.

²¹ 131 Wn. App 353, 127 P.3d 762, (2006)

condominium's declaration including its provision regarding the formula to calculate the declared "values" of the apartments.

"Section 7 of the [Lake Villas'] Declaration provides that 'the total percentage of any apartment will be the combined percentages of the apartment and the open parking spaces and dock spaces assigned to it, if any.' . . . Schedule A reflects that dock spaces 1-18 have a value of .035 percent, and dock spaces 19-24 have a value of .06 percent.' . . .²²

Division I correctly concluded that the addition of a dock space to an apartment changed the declared "value" of that apartment because the Lake Villas' Declaration [CP 734] provides that a dock space has a declared "value" and the total declared "value" of an apartment is equal to the sum of declared "value" of the unit itself, the declared "value" of the parking space (if any) assigned to that unit, and the declared "value" of the dock space (if any) assigned to that unit. To the contrary, the Woodcreek Declaration does not assign any "value" to bonus rooms and the Woodcreek Declaration does not provide that the "value" of a Woodcreek apartment is calculated or based on the presence or absence of a bonus room.²³

²² *Bogomolov* at 356

²³ Another difference in Woodcreek's declaration and Lake Villas' is Woodcreek's requires a 51% vote to combine or subdivide. Lake Villas' requires a 100% vote. [CP 746]

Even though Division I in *Bogomolov* analyzed and based its holding on provisions the developer had set forth in that condominium's declaration, including and most importantly the provisions assigning a "value" to a dock space and prescribing the methodology for calculating an apartment's total declared "value," here Division I held:

"Clausing and Woodcreek argue that common area interests did not change because unit value determines percentage interest in common areas, and the developer did not tie unit values to bonus rooms. It may be true that the developer's declared values did not reflect a consistent difference based on the presence or absence of a bonus room, but what the developer considered in declaring the unit values and ownership percentages is irrelevant."²⁴

The decision in this case created a split of authority between the Divisions regarding the interpretation of RCW 64.32.090(10) and it also is inconsistent with its earlier decision in *Bogomolov*.

Issue 3: Do the questions presented involve substantial public interest to warrant review by this Court?

The HPRA was enacted in 1963. All condominiums created under the HPRA are still governed by the HPRA.²⁵ The number of condominiums created since 1963 in Washington is not known, but the *Seattle Daily Journal of Commerce* reported that since the HPRA was

²⁴ *Lake v. Woodcreek*, at 363, Appendix page A-7.

²⁵ The Condominium Act, RCW 64.34., only governs condominiums created after June 30, 1990, RCW 64.34.010.

enacted there have been about 69,000 units recorded as condominiums in King, Snohomish, Pierce, Thurston and Kitsap counties alone.²⁶

Condominiums governed by the HPRA are now between 18 and 45 years old. As a practical matter, updating these older condominiums to meet current building codes and/or to make them desirable to buyers is impossible if (as held by Division I here) a common area and an apartment cannot be combined without unanimous vote because they are not "like-kind" properties. A unit's electric hot water tank cannot be replaced with a natural gas or a tank-less one because these energy saving water heaters vent through the common area roofs and airspace. Double pane windows impinge upon the common area. A skylight has a glass "roof" that is above the original roof line and to let in the light, new walls must be built inside the apartment to create the "well" between the original ceiling and the new, higher glass "roof"²⁷

Condominiums created under the HPRA that were updated before this decision in any manner or fashion that arguably combined or "converted" common area to an apartment now face problems regarding

²⁶ *Seattle Daily Journal of Commerce* Commercial Marketplace, "Seattle Area Condominium Market Subdued," Fahey, Tim, 1996.

²⁷ Almost all units at Woodcreek, including Lake's, have added skylights. Many units, with Board approval, have been improved in various ways that "converted" common area to apartment area. [CP 92, 829, 830 / Appendix page A-21 ¶6]

resale certificate disclosures of possible declaration violations with resulting negative impact on buyers. Lenders' concerns about a possible combining or "converting" in a condominium's history makes re-financing and purchase money financing more difficult.

As a result of the conflict between Division I and Division III, a condominium created under the HPRA located in Spokane, Washington may combine a common area and an apartment, but a condominium created under the HPRA located in Seattle, Washington may not.²⁸ The decision in this case should be reviewed by this Court so the thousands of condominiums created under the HPRA in Washington are governed by the same legal standards regardless of their geographical location.

For those condominiums created after June 30, 1990, whether in Spokane or Seattle, it is clear a common area can be combined with an apartment because when the legislature adopted RCW 64.34, the Condominium Act, RCW 64.32.090(10) was replaced with RCW 64.34.228(3). The newer statute provides:

"Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner to which the limited common element will be assigned or incorporated must agree to reallocate a common element as a limited common element or to incorporate a common element or limited common element into an existing unit." [Emphasis added]

²⁸ Condominiums located in Division II are left in legal limbo with this unresolved split in authority.

The official commentary to the Condominium Act does not indicate RCW 64.34.228(3) was intended to be a departure from the law under the HPR. "It is an overarching principle of statutory construction that related statutory provisions be read as complementary rather than conflicting"²⁹ In this case Division I also ignored other principles of statutory construction, *i.e.* Courts are not to add words to a statute that changes what the legislature intended, as Division I did when it added the words "like kind" to RCW 64.32.090(10).³⁰ Review of this case will resolve the split between the Divisions that involves a subject matter that significantly affects and impacts the residents of Washington.

F. CONCLUSION – RELIEF SOUGHT

Petitioner requests his petition for review be granted, that the Superior Court summary judgment in his favor be reinstated, and then for this case to be remanded to Superior Court for an award of attorney fees and costs to petitioner/respondent as provided in RCW 64.34.455.

Dated this 20th day of June 2008.

OSERAN, HAHN, SPRING, STRAIGHT & WATTS, P.S.

by Paul C. Holman WSBA 02331
Charles E. Watts, WSBA 02331
Attorney for Respondent/Petitioner Clausing

²⁹ *Preserve Our Island v. Shoreline Hearing Board*, 133 Wn. App. 503, 137 P.3d 31 (2006) at 524. See also *Beckman v. Wilcox*, 96 Wn.App 355, 979 P.2d 890 (1999), and *Waste Management v. WUTC*, 123 Wn.2d 621, 869 P.2d 1034 (1994).

³⁰ *In re Detention of Martin*, 182 P.3d 951 (2008) and *Pierce Co. v. State*, ___ P.3d ___, Wn. App Div 2, May 28, 2008 (No. 34423-8-II)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SANDRA LAKE, individually,)	No. 59211-4-1
)	
Appellant,)	
)	
v.)	
)	
WOODCREEK HOMEOWNERS)	PUBLISHED OPINION
ASSOCIATION, a Washington)	
homeowners association; GLEN R.)	
CLAUSING, a single man,)	
)	
Respondents.)	FILED: December 31, 2007
)	

ELLINGTON, J. — With permission of the condominium board of directors, a unit owner built a second story “bonus room” above his garage. This both converted common area (air space) into apartment area, and created new common area (e.g., walls), thus changing the character of the property and altering all of the owners’ undivided percentage interests in the common areas. Under the condominium declaration, such a change requires unanimous consent of all owners, which was not obtained. The board’s authorization of the bonus room was therefore improper. We reverse the superior court and remand for further proceedings.

BACKGROUND

Glen Clausing and Sandra Lake own townhomes in Woodcreek Condominiums

in Bellevue. When the development was built in 1972 through 1977, the developer offered an option with certain types of units for a bonus room—an extra room above the garage.¹ Some purchasers opted for bonus rooms at the time of construction. As required by law, at the end of construction, the developer declared the value of each unit and the total value of the development. The ratio of each unit's value to the total determined each owner's undivided percentage interest in the common areas.

Clausing's unit is one of those for which a bonus room was originally an option. In mid-May 2004, Clausing obtained approval from the board of directors of the Woodcreek Homeowners Association to build a bonus room. When construction began, Lake, who lives across from Clausing, realized the new room would affect her natural light and block part of her territorial view. She complained immediately to two board members and at the next board meeting a few days later, she formally objected. The board refused to withdraw its approval. Within four weeks, the bonus room's siding was up and the roof was complete.

Lake consulted her attorney, who wrote to the board on August 26 contending the board's action was unauthorized and seeking withdrawal of the board's approval and removal of the new room. The board again refused.

As of September 1, the board increased Clausing's dues to cover the common

¹ The original declaration provided: "[T]here is designated in the plans for Type C and D units a room designated as the 'Bonus Room.' Upon the option of the purchaser, the second floor plans for the Type C and D Units will include an additional area to be situated directly above the two car garage which is incorporated within the basic structure of the apartment unit. The Bonus Room will consist of one of four alternate floor plans. The Bonus Room will increase the square footage of said units by 415 square feet." Clerk's Papers at 222. The declaration included this language each time it was amended to reflect a new phase of construction.

expenses associated with the new structure.

In December 2005, Lake filed this action against the Woodcreek Homeowners Association and Clausing. She moved for partial summary judgment, arguing that approval and construction of a bonus room violated the Horizontal Property Regimes Act, chapter 64.32 RCW, and the condominium declaration. Clausing and Woodcreek also moved for summary judgment, contending the Board's action was proper. The trial court agreed with Clausing and Woodcreek, awarded fees and costs against Lake, and dismissed. Lake appeals.

ANALYSIS

The usual standard for summary judgment applies.²

"All condominiums are statutorily created."³ The rights and duties of condominium unit owners are not the same as those of real property owners at common law, and are instead determined by the governing statutes, the condominium declaration, and the bylaws of the condominium association.⁴ In exchange for the benefits of association with other owners, condominium purchasers "give up a certain degree of freedom of choice which [they] might otherwise enjoy in separate, privately

² We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court and viewing the facts and the reasonable inferences from those facts in the light most favorable to the nonmoving party. Overton v. Consol. Ins. Co., 145 Wn.2d 417, 429, 38 P.3d 322 (2002). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c).

³ Shorewood West Condo. Ass'n v. Sadri, 140 Wn.2d 47, 52, 992 P.2d 1008 (2000).

⁴ Id.

owned property.”⁵ The Horizontal Property Regimes Act, Washington’s first law authorizing condominiums, governs the Woodcreek development.⁶ All owners are subject to the condominium’s declaration and bylaws.⁷

The Woodcreek declaration provides that any alteration in the percentage of undivided interest in common areas must be unanimously approved by all owners:

[A]n amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous written consent of all apartment owners.^[8]

The principal question here is whether building the bonus room converted common area into private apartment area or created new common area. If so, it changed each owner’s percentage of undivided interest in the common areas without the necessary consent.⁹

The Woodcreek declaration defines apartments, common areas, and limited common areas. Apartments are the area bounded by the interior surfaces of the walls. Common areas include, in addition to those defined in RCW 64.32.010:¹⁰ “[A]ll areas

⁵ Id. (quoting Noble v. Murphy, 34 Mass. App. Ct. 452, 456, 612 N.E.2d 266 (1993)).

⁶ Id.

⁷ RCW 64.32.250.

⁸ Clerk’s Papers at 240.

⁹ Clausen contends the association bylaws govern, and under the bylaws, the board has authority to manage the property and must approve any structural modification to apartments or common areas. But the bylaws do not address the issue presented here—an addition that alters the character of the property—and the declaration controls.

¹⁰ RCW 64.32.010 provides: “Common areas and facilities’, unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended,

not expressly described as part of the individual residence apartments or as limited common area,"¹¹ as well as "roofs, walls, foundations, studding, joists, beams, supports, main walls, . . . pipes, conduits and wire, . . . and all other structural parts of the buildings to the interior surfaces of the apartments' perimeter walls, floors, ceilings, windows and doors[,] . . . [t]he green belt areas, other yard areas, all garden areas [and] [a]ll other parts of the property necessary or convenient to its existence, maintenance, safety and use not otherwise classified."¹² Limited common areas, assigned to each unit, include a patio/garden, attic storage, a crawl space, an entrance area, and a driveway parking area.

Air space above an apartment unit is not part of the apartment and is not limited common area. It is a part of the property necessary to its existence and is not otherwise classified. Air space is therefore common area. By eliminating the air space above his garage, Clausung converted common area to apartment area and thus put common area to his sole benefit.

includes: (a) The land on which the building is located; (b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobb[ie]s, stairs, stairways, fire escapes, and entrances and exits of the building; (c) The basements, yards, gardens, parking areas and storage spaces; (d) The premises for the lodging of janitors or persons in charge of the property; (e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating; (f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use; (g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended; (h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use."

¹¹ Clerk's Papers at 282 (emphasis added).

¹² Id.

A somewhat similar situation arose in Bogomolov v. Lake Villas Condominium Association of Apartment Owners.¹³ There, 60 percent of owners approved an amendment to Lake Villas' declaration allowing for construction of a new boat dock with slips to be leased to individual apartment owners. Because the dock was to be

¹³ 131 Wn. App. 353, 127 P.3d 762 (2006).

constructed on common area shore lands, renting slips to individual owners would convert common area into limited common area.¹⁴ As some individuals would gain exclusive use of what were previously common areas, the conversion would necessarily change the value of individual owners' percentage interest in the common areas. Consequently, the court held that approval of 100 percent of the owners was required to authorize the change:

[I]t is the fact that newly constructed common areas proposed here are in reality being converted to limited common areas under the proposal that requires the values stated in the Declaration to be changed. Values set forth in the Declaration are to accurately reflect the unit and limited common area interests of the owners. That change requires unanimous consent of the owners.¹⁵

The result is the same here.¹⁶ Clausing gained individual use of what was previously common area. As a result, the common area interests, and thus unit values, were altered. Woodcreek's declaration requires unanimous agreement of all owners for this type of change.

Clausing and Woodcreek argue that common area interests did not change because unit value determines percentage interest in common areas, and the developer did not tie unit values to bonus rooms. It may be true that the developer's declared values did not reflect a consistent difference based on the presence or

¹⁴ Id. at 363.

¹⁵ Id. at 367.

¹⁶ Woodcreek contends the result in Bogomolov derived from unique aspects of the declaration, which expressly tied dock space to percentage interest, provided for transfer of such spaces among owners, and required unanimous consent for combining or subdividing like areas. We fail to see how these aspects of the declaration led to the holding cited above.

absence of a bonus room, but what the developer considered in declaring the unit values and ownership percentages is irrelevant. Once the declaration is final, the values and percentages are fixed. They are subject to change only by unanimous vote, and converting common area to apartment area necessarily changes them. Clausing also argues that the board approved bonus rooms without challenge seven times previously, but erroneous past practice does not enlarge the board's authority.

Clausing and Woodcreek next contend the bonus room was properly authorized under section 12 of the declaration, which requires approval of only 51 percent of owners to combine and subdivide apartment units. But section 12 permits combining or subdividing areas of like quality, such as apartments and apartments.¹⁷ Such combinations and subdivisions do not change the total ownership interests in the property, they merely realign them. Section 12 does not authorize combining areas of different ownership quality, such as common areas and apartments.

Clausing and Woodcreek contend that such a combination of unlike areas was permitted in McLendon v. Snowblaze Recreational Club Owners Association.¹⁸ There, a condominium association board leased a common storage area to the owner of an adjacent unit, who planned to convert the area into a bedroom. The declaration required 60 percent of the owners in the building to approve the "subdivision of[r] combination or both, of any apartment or apartments or of the common areas, or any

¹⁷ "[N]o subdivision or combination of any apartment unit or units or of the common areas or facilities or limited common areas or facilities may be accomplished except by authorization by the affirmative vote of 51% of the voting power of the owners." Clerk's Papers at 232.

¹⁸ 84 Wn. App. 629, 929 P.2d 1140 (1997).

parts ther[e]of, and the means for accomplishing such subdivision or combination or both.”¹⁹ McLendon argued that the declaration required unanimous approval to combine an apartment with common area. Division III of this court rejected his argument on the ground that the unanimous approval section “control[led] amendment of the entire declaration. It [did] not address the question before us: voting requirements for combining a common area and an apartment.”²⁰

The court’s opinion does not quote the portion of the declaration relied upon by McLendon. But if it is similar to the Woodcreek declaration requiring unanimous approval for changes to the value of the units or the owners’ undivided interest in the common areas, we must disagree with the McLendon court. The declaration provision permitting combinations and subdivisions and its governing authority, RCW 64.32.090(10),²¹ allow for subdividing apartments, combining apartments with apartments, or combining common areas with other common areas, all of which cause no net difference in the total for each type of area. Combining common area with an apartment, however, increases the private area of the apartment and reduces the total common area in which all owners have an interest.²² Approval of such a combination is

¹⁹ Id. at 632.

²⁰ Id. at 633.

²¹ “The declaration shall contain . . . [a] provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description.” RCW 64.32.090(10).

²² RCW 64.32.040 (“Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities.”); 8-54A Powell on Real Property, § 54A.01 (2005) (unit owners possess nonexclusive right to use and

not within the authority conferred by the statute or section 12.

Constructing a bonus room also creates new common area (walls and roof, for example) and thus increases the common expenses. RCW 64.32.080 provides that “[t]he common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.” Keller v. Sixty-01 Associates makes clear that the relationship between percentage of undivided interest and common expenses is such that “one could not be changed without the other.”²³ The allocation of common expenses thus cannot be altered without changing owners’ percentages of undivided interest.

To cover the new expenses, the board increased Clausing’s dues. Woodcreek contends the holding in Keller invalidates Clausing’s dues increase, not the authorization to build.²⁴ We disagree. An increase in common expenses owing to construction of a new private area reflects a change in the undivided interests in the property, however it is allocated. Under the declaration, unanimous approval was required.

By approving Clausing’s bonus room without obtaining the unanimous consent of all owners, the board acted outside its authority.²⁵

enjoy common areas subject to community rules and regulations).

²³127 Wn. App. 614, 623, 112 P.3d 544 (2005).

²⁴ Clausing does not address Keller.

²⁵ Given our conclusion that the board acted outside its authority, we decline to address Lake’s contention that the trial court abused its discretion by allowing Woodcreek to amend its answer.

Alternatively, Clausing notes that we may affirm on any proper ground, whether or not considered by the trial court, and contends summary judgment was justified by laches, estoppel or waiver.²⁶ His arguments here and below address only laches, and we confine our consideration to that issue.²⁷

Laches is an “implied waiver arising from knowledge of existing conditions and acquiescence in them.”²⁸ To establish laches, the defendant must show the plaintiff (1) knew or reasonably should have known the facts constituting the cause of action, (2) unreasonably delayed commencing the action, and (3) caused resulting damage to the defendant.²⁹ It is the defendant’s burden to show whether and to what extent he or she has been prejudiced.³⁰ Clausing does not specify the damage resulting from Lake’s delay, but implies it was the expense of construction.³¹

Lake did not become aware of the project until she received a letter dated July 10, 2004, in which Clausing gave notice to his neighbors that he was beginning construction of a bonus room in two days.³² It was thus a practical impossibility for

²⁶ The summary judgment order is silent as to the court’s rationale, but a review of the oral ruling makes clear the court did not rely upon equitable grounds.

²⁷ RAP 10.3(a)(5) (failure to provide argument or authority in support of an assignment of error precludes review).

²⁸ Buell v. Bremerton, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972).

²⁹ In re Marriage of Watkins, 42 Wn. App. 371, 374, 710 P.2d 819 (1985).

³⁰ Clark County Pub. Util. Dist. No. 1 v. Wilkinson, 139 Wn.2d 840, 849, 991 P.2d 1161 (2000).

³¹ See Clerk’s Papers at 193 (“The cost of my bonus room remodeling was in excess of \$150,000. . . . I would not have built the bonus room had the Board not given me permission to do so.”).

³² The board approved the bonus room at its May 20, 2004 meeting. According

Appelwick, C.J.

Colman, J.

Appelwick, C. J. (Concurring) — I fully concur with the majority opinion. I write to emphasize additional reasoning for the result.

First, a condominium is real property. That real property interest includes an ownership interest in, right to share in, and an easement to use the common areas and facilities. RCW 64.32.030, .040, .050(4). Further, common areas shall remain undivided and any covenant to the contrary is void. RCW 64.32.050(3). According to the declaration here, the common areas include everything not an apartment or designated limited common area.

When construction on the units was complete, any optional bonus room shown on the plans that had not been constructed was not within an apartment. It was also not designated as limited common area. Therefore it was common area. Later enclosing this common area to add a bonus room onto an adjacent apartment is a taking of a common area interest owned by all members of the condominium. This may not be done without the consent of all owners.

It is precisely for this reason that McLendon was wrongly decided. McLendon allowed the combination of a common area storage shed with an apartment on less than a unanimous vote under RCW 64.32.090(10) (authorizing the declaration to

provide combining or dividing apartments, common areas and limited common areas on less than unanimous vote of owners). This statute and section 12 of the declaration must be read to apply only to combining or dividing like-kind properties. Otherwise, the other owners are deprived of a portion of their real property ownership interest in common areas without consent, let alone compensation.

Further, I would hold that the addition of a room at the expense of common area necessarily increases the value of that apartment and of the condominium as a whole. It also necessarily changes the ownership interests of all owners relative to one another. This in turn requires amendment to the declaration. Unanimous consent of the owners is required for amending the declaration. RCW 64.32.090(13).

If the additional room was built on new footings off the end of a one story building eliminating a prized common area garden and blocking the exclusive view of the sound for other owners, the facts would tug more at the emotions. But the loss of real property interests are just as real on these facts where the additional room is built on a second story of a townhouse condominium above a garage blocking light. These real property interests cannot be taken. Consent of all of the owners is required. For these reasons and the reasons stated by the majority, I concur.



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SANDRA LAKE, individually,)
)
 Appellant,)
)
 v.)
)
 WOODCREEK HOMEOWNERS)
 ASSOCIATION, a Washington)
 homeowners association; GLEN R.)
 CLAUSING, a single man,)
)
 Respondents.)
)

No. 59211-4-1

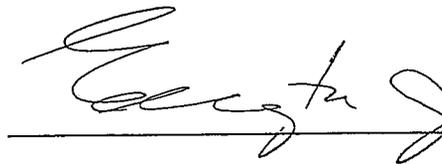
ORDER DENYING MOTION
FOR RECONSIDERATION

Respondent Glen Clausing filed a motion for reconsideration of the court's opinion filed December 31, 2007. The panel has considered the motion and determined it should be denied. Now, therefore, it is hereby

ORDERED that respondent Clausing's motion for reconsideration is denied.

Dated this 22nd day of May, 2008.

FOR THE PANEL:



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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 MAY 22 PM 2:40

84 Wn. App. 629; McLENDON v. SNOWBLAZE RECREATIONAL; 929 P.2d 1140

 Page 629

84 Wn. App. 629, McLENDON v. SNOWBLAZE RECREATIONAL

[No. 14411-9-III. Division Three. January 21, 1997.]

RICHARD McLENDON, Appellant, v. SNOWBLAZE RECREATIONAL CLUB OWNERS ASSOCIATION, ET AL., Respondents.

[1] Judgment - Summary Judgment - Issues of Fact - Undisputed Facts - Effect. A court may decide that a party is entitled to judgment as a matter of law if the material facts of the case are undisputed.

[2] Condominiums - Associations - Governing Rules - Invalidation - Effect - Ratification. When the rules governing a condominium owners association are invalidated, the rules in effect immediately preceding the enactment of the invalidated rules govern decisions made while the invalidated rules were operative and any later ratifications of those decisions.

[3] Contracts - Validity - Subsequent Validation - Effect. An agreement may be made fully operative by a subsequent validation.

 Page 630

[4] Condominiums - Lease of Common Area - Validity. A condominium owners association rule that permits a unit owner to lease a common space and combine it with owned space is authorized by RCW 64.32.090(10) and does not necessarily violate the RCW 64.32.050(3) prohibition on the partition of common areas and facilities upon, the petition of a unit owner.

Nature of Action: A condominium unit owner sought the invalidation of a lease of common area that the condominium owners association had agreed could be converted into living space by another unit owner. The association's approval had been given under the terms of a governing declaration that was later ruled invalid. The lease agreement was subsequently ratified by a vote of the association membership that exceeded the voting requirement in the governing declaration that immediately predated the invalidated governing declaration.

Superior Court: The Superior Court for Spokane County, No. 93-2-00066-3, Tari S. Eitzen, J., on September 27, 1994, entered a summary judgment in favor of the owners association.

Court of Appeals: Holding that the governing declaration that immediately predated the invalidated declaration governed the lease agreement, that the association's approval of the lease and conversion satisfied the voting requirements of the prior governing declaration, and that the agreement permitting the storage area to be converted into living space did not violate a statute prohibiting the partition of condominium common areas, the court affirms the judgment.

Dustin D. Deissner, for appellant.

Brad E. Herr; Patrick J. Downey; and James B. King, Christopher J. Kerley, and Keefe, King & Bowman, for respondents.

Appendix Page A-16

SWEENEY, C.J. - In 1987, the owners of the Snowblaze condominium units formed an organization now called the Snowblaze Recreational Club, Inc., to govern the affairs of the Snowblaze condominiums (the 1987 Declaration). Management is by a board of directors. The 1987 Declaration authorizes the subdivision and combination of apartments, common areas and facilities by a 60 percent vote of all apartment owners.

In 1990, Snowblaze owners adopted a new declaration (the 1990 Declaration). In 1991, the Board of Directors agreed to lease Ruth Branson a common storage area next to her unit. She planned to convert the storage area into a bedroom for her unit. The 1990 Declaration required approval of 67 percent of the owners in the involved building only to combine an apartment and a common area. Fourteen of the fifteen owners in her building approved.

Later, in an unrelated lawsuit, a Spokane County Superior Court ruled the 1990 Declaration invalid. In 1993, the Board submitted a new declaration to all owners for approval. In the same election it asked the owners to ratify its actions during the period between the ineffective 1990 Declaration and the new declaration. Of the total membership, 67 percent approved the new declaration and 63.45 percent ratified the Board's actions.

Richard McLendon, a condominium owner, sued Ms. Branson and Snowblaze to declare the lease invalid and to get a permanent injunction. Snowblaze and Ms. Branson answered, alleging, among other things, that Snowblaze had authority to enter into the lease under the 1987 Declaration and the 1993 ratification. Mr. McLendon and Snowblaze moved for summary judgment. The court granted Snowblaze's motion for summary judgment. Mr. McLendon appeals.

The case presents two questions: (1) Did the owners properly ratify the Board's decision to lease the common area to Ms. Branson under the 1987 Declaration, and (2)

does the lease violate the prohibitions of RCW 64.32.050(3), which bars partitioning of common areas.

DISCUSSION

[1] The material facts are undisputed; we decide whether the moving party is entitled to judgment as a matter of law. *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990).

Whether Snowblaze Properly Ratified the Lease. Mr. McLendon first contends the owners did not properly ratify the Branson lease. He claims that the 1987 Declaration required the unanimous consent of all owners in Snowblaze to combine a common area and an apartment.

[2] When the 1990 Declaration was declared invalid, the 1987 Declaration became the governing declaration. See *Rains v. Walby*, 13 Wn. App. 712, 720, 537 P.2d 833 (1975) (finding that when agreement that was to supplement the prior agreement failed for lack of consideration, the prior agreement remained in force), review denied, 86 Wn.2d 1009 (1976). To comply with the 1987 Declaration, more than 60 percent of the apartment owners had to ratify the lease of the common area. "[A]partment owners having sixty percent (60%) of the votes may provide for the subdivision of [sic] combination or both, of any apartment or apartments or of the common areas, or any parts thereof [sic],

and the means for accomplishing such subdivision or combination, or both" Section 16.01 of the 1987 Declaration.

[3] The owners ratified all Board action between the invalid 1990 Declaration and adoption of the 1993 Declaration, with a 63.45 percent affirmative vote. The vote ratified the Branson lease. An agreement may be made fully operative by subsequent validation. See 1 ARTHUR L. CORBIN, CORBIN ON CONTRACTS § 1.6, at 19 (Joseph M. Perillo rev. ed. 1993); see also RESTATEMENT (SECOND) OF CONTRACTS § 380 cmt. a (1979).

Mr. McLendon argues that section 30 of the 1987

Page 633

Declaration requires unanimous approval to combine the apartment and common area. He is mistaken. That provision, or at least the portions addressed by the parties here, controls amendment of the entire declaration. It does not address the question before us: voting requirements for combining a common area and an apartment.

Whether the Lease Is Void as Contrary to RCW 64.32. Mr. McLendon next contends that the contract created under section 16.01 of the 1987 Declaration violates RCW 64.32.050(3) and is therefore void.

[4] RCW 64.32.050(3) provides that "[t]he common areas and facilities shall remain undivided and no apartment owner . . . shall bring any action for partition or division of any part thereof. . . ." But RCW 64.32.090(10) requires that a condominium declaration contain "[a] provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities" Section 16.01 of the 1987 Declaration then is the provision required by RCW 64.32.090(10).

Both statutes are easily reconciled. RCW 64.32.050(3) addresses problems created by the nature of condominiums as a tenancy in common. The right to partition is an established characteristic of tenancies in common. 4B RICHARD R. POWELL & PATRICK J. ROHAN, POWELL ON REAL PROPERTY ¶ 633.11[1], at 806 (1990). But to allow a unit owner to bring an action to partition common areas would disrupt the whole condominium structure. POWELL & ROHAN, at 806. RCW 64.32.050(3) addresses that threat. An apartment owner must not be allowed to bring any action for partition as long as the condominium continues. POWELL & ROHAN, ¶ 633.11[4], at 809. The 1987 Declaration, by section 16.01, establishes procedures required by RCW 64.32.090(10). The contract created under that section is not inconsistent with RCW 64.32.050(3).

Affirmed.

Page 634

THOMPSON, J., and MUNSON, J. Pro Tem., concur.

WA

Wn. App.

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Appendix Page A-18

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

ORIGINAL

Honorable Douglass A. North
Trial: June 4, 2007

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDRA LAKE, individually,

Plaintiff,

No. 05-2-39460-9 SEA

vs.

WOODCREEK HOMEOWNERS
ASSOCIATION, a Washington Homeowners
Association, GLEN R. CLAUSING, a single
man,

**DECLARATION OF
WAYNE HUSEBY**

Defendants.

WAYNE HUSEBY, under penalty of perjury under the laws of the State of

Washington, declares as follows:

1. I am over eighteen (18) years of age and have personal knowledge of the facts set forth herein.

2. I lived at Woodcreek between July 5, 2000, and December 10, 2004. I was President of the Board of Directors of Woodcreek Homeowners Association between July 1, 2003 and December 10, 2004.

Declaration of Wayne Huseby 1

Oseran, Hahn, Spring & Watts, P.S.
10900 NE Fourth Street #850
Bellevue, WA 98004
425 455 8800

1 3. I was present at the May 20, 2004, Board of Directors meeting. Glen
2 Clausing had been requested to attend the May 20, 2004, meeting to give a report on
3 his handling of the "Calvo Matter." Mr. and Mrs. Calvo's unit had been damaged as a
4 result of water supply pipes freezing and bursting. Glen handled Woodcreek's claim
5 against its insurance carrier. Glen Clausing gave his report to the Board on the Calvo
6 Matter and then left the meeting.

7 4. After Glen left the meeting, the Board considered various other matters on
8 the agenda. When it was time to consider "new business," Bob Coffey, Woodcreek's
9 on-site resident manager, presented to the Board Glen's request to add a bonus room
10 to his unit. Glen was not present when Bob made his presentation or at any time that
11 the Board considered Glen's request.

12 5. Bob Coffey was in possession of construction blue prints, engineering, a
13 building permit application, and letter from Glen dated May 19, 2004, regarding his
14 proposed bonus room addition. It is customary for owners to provide such documents
15 to the property manager prior to the Board meeting so that Bob can review them before
16 they are actually presented to the Board. Prior to becoming Woodcreek's on-site
17 property manager, Bob Coffey was a general contractor who built "high-end" houses in
18 Spokane, Washington. The Board relies on Bob's expertise in construction to aid it in
19 considering proposed construction projects and requests received from owners to
20 modify their units.

21 6. It has always been the Board's policy and its prerogative to approve or
22 disapprove modification requests by owners. During my tenure as President, the Board

Declaration of Wayne Huseby 2

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1 approved various owners' requests to add skylights, "solar-tubes," decks, insulated
2 windows, outdoor lighting, plantings, and a variety of other modifications. Not all
3 requested modifications were approved and some were approved conditionally upon the
4 owner agreeing to certain conditions imposed by the Board and/or obtaining a building
5 permit.

6 7. The Board approved Glen's request to add a bonus room to his unit. It did
7 so conditionally upon Glen obtaining the necessary building permit. In approving Glen's
8 request, the Board considered Bob Coffey's comments concerning his review of the
9 materials he received from Glen and the fact the Board had approved several bonus
10 room additions for other owners in the past. The Board did not see any difference in the
11 request it received from Glen Clausing and those it had received from other owners.

12 8. The Board did not seek advice from anyone other than Bob Coffey
13 regarding Glen's request to add a bonus room to his unit. The Board has never sought
14 outside advice regarding any unit modification request, including those requests for
15 bonus room additions. The Board did not ask Glen's advice on the matter and Glen did
16 not provide the Board with any advice. The Board did not deem it necessary to seek
17 the advice from anyone as the Board had exercised its authority to approve unit
18 modification requests many times in the past and there had never been a problem or a
19 complaint received from any unit owner regarding any past approvals by the Board.

20 9. When Glen was present at the May 20, 2004, meeting to discuss the
21 Calvo Matter, the Board considered Glen to be acting in his capacity as our attorney
22 engaged to handle our insurance claim. When Bob Coffey presented Glen's request to

Declaration of Wayne Huseby 3

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1 add a bonus room, the Board was not dealing with its attorney, or any attorney for that
2 matter. Rather, the Board was considering a request from a homeowner. Glen's
3 request to make a modification to his unit was in all respects treated just like any other
4 homeowner's request to do the same thing.

5 10. While Glen's bonus room was under construction, Bob Coffey and I often
6 visited the job site to inspect progress. Glen's contractor, Damin Cady, had previously
7 performed worked at Woodcreek and both Bob and I were impressed with the quality of
8 his work and were impressed with the quality of the work he was doing on Glen's bonus
9 room.

10 11. I was present at the July 15, 2004, Board of Directors meeting. Sandra
11 Lake attended that meeting. During the meeting Ms. Lake complained to the Board that
12 she had not received any advance (pre-construction) notice of the Board's approval of
13 Glen's bonus room. She also complained about the construction noise. Ms. Lake was
14 informed that two written notices were provided to her regarding the Board's approval of
15 Glen's bonus room. The first notice was in the form of a distribution to all unit owners,
16 including Ms. Lake, of the Board's May 20, 2004, meeting minutes. The second notice
17 was in the form of a letter Glen Clausing had delivered to all unit owners on his street
18 regarding the starting date of the construction. Glen had provided Woodcreek with a
19 copy of his letter to his neighbors. Both the meeting minutes and Glen's letter were
20 distributed by putting them in each unit owner's "mail tube." The meeting minutes are
21 always distributed in this fashion, and I know Glen distributed his letter in this fashion as
22 I received a copy of his letter in my mail tube since I lived on the same street as Sandra

Declaration of Wayne Huseby 4

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B

1 Lake and Glen Clausing. The mail tubes (one for each unit located directly below that
2 unit's regular mail box) are used for "Intra-Woodcreek Communications" such as the
3 monthly newsletter, board meeting minutes, notices of special events, and the like.

4 12. When Ms. Lake was informed she had been provided with two written
5 notices, she informed the Board she had not seen the May 20, 2004, meeting minutes
6 because at the time they were distributed she had been in Europe, and that she had not
7 seen Glen's second letter because she does not bother to check her mail tube because
8 "there is nothing in it but junk anyway."

9 13. When I lived at Woodcreek, I lived across the street from Sandra Lake.
10 As a result, I would run into her from time to time and she often complained to me about
11 the construction noise related to Glen's bonus room. I assured her that the noise level
12 was reasonable, all Bellevue construction noise ordinances were being observed by
13 Glen's contractors, and that the disturbance was only temporary.

14 14. In the latter part of August, 2004, I received a letter from Attorney
15 Marianne K. Jones, representing Sandra Lake. Since the Board only meets once a
16 month her letter was considered at the September Board meeting. At that Board
17 meeting, as President I was authorized to prepare and send a letter in reply stating it
18 was the Board's position that it had acted properly in approving Glen's bonus room and
19 that Glen had also acted properly in obtaining the Board's approval to add a bonus
20 room to his unit.

21 15. I was present at the October 21, 2004, Board of Director's meeting. Ms.
22 Lake and her attorney, Marianne Jones, were present at the meeting. Ms. Jones

Declaration of Wayne Huseby 5

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Be

1 restated the points she had set forth in a letter dated August 26, 2004. She also
2 informed the Board that she believed the dues on Glen's unit should be increased as a
3 result of the added bonus room. After Ms. Lake and her attorney left the meeting, the
4 Board discussed the points Ms. Jones had raised. It was obvious that neither Ms. Lake
5 nor Marianne Jones were aware that the Board had already increased the dues on
6 Glen's unit effective as of September 1, 2004.

7 16. At the October 21, 2004, meeting, the Board decided that it should hire
8 legal counsel to respond to Ms. Jones and to otherwise deal with the complaints Ms.
9 Lake was raising regarding Glen's bonus room. However, after the meeting, a
10 telephone poll of Board members was conducted and the Board decided not to hire an
11 attorney. Rather, on behalf of the Board, I was asked to send Ms. Jones another letter
12 regarding the Board's position.

13 ^{wmh 17.} 18. Glen Clausing did not participate in any of the Board's deliberations
14 concerning Sandra Lake and the issues raised by Ms. Jones. He was not present at the
15 ^{wmh} July, August, September, or October 2004 Board meetings when Ms. Lake and/or her
16 attorney were present and/or when any issues related to his bonus room and its
17 approval by the Board were discussed.

18 ^{wmh 18.} 19. Attached hereto as Exhibits are true and correct copies of the following
19 documents referred to or mentioned in this declaration:

20	Exhibit	Document
21	A	Letter from Glen Clausing dated May 19, 2004.
22	B	May 20, 2004 Board of Directors Meeting Minutes.

Declaration of Wayne Huseby 6

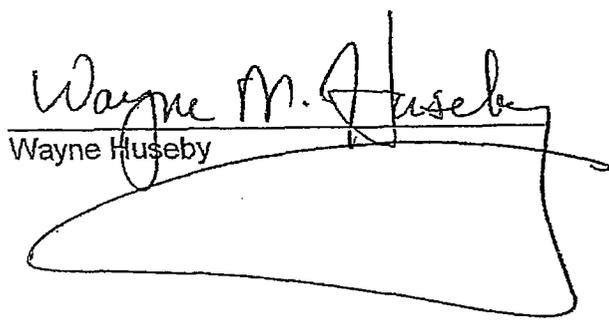
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10900 NE Fourth Street #850

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- C July 15, 2004, Board of Directors Meeting Minutes.
- D Letter from Glen Clausing dated July 10, 2004.
- E August 19, 2004, Board of Directors Meeting Minutes.
- F Letter from Marianne Jones dated August 26, 2004.
- G Letter from Wayne Huseby dated September 22, 2004.
- H October 21, 2004 Board of Directors Meeting Minutes.
- I Letter from Wayne Huseby dated October 30, 2004.

DATED this 13th day of ~~June~~ ^{July} 2006.

Wayne M. Huseby
Wayne Huseby



Declaration of Wayne Huseby 7

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10900 NF Fourth Street #850
Be

GLEN R. CLAUSING

glenclausing@comcast.net

155-141st PL NE

BELLEVUE, WASHINGTON 98007

FAX
(425) 746-2866

TELEPHONE
(425) 746-2784

May 19, 2004

Board of Directors
Woodcreek Homeowners
Association Hand Delivered

Re: Owner Modification Unit 109 - Bonus Room Addition

Dear Members of the Board:

Permission is requested to add a bonus room to my unit. The architectural and construction plans are enclosed together with the engineer's calculations. Salient points of the design include:

- **Architectural Uniformity.** The bonus room has been designed to match the existing bonus rooms. Its placement, dimensions, height, roof slope, window placement, siding, and roofing match existing bonus rooms.
- **View Preservation.** The bonus room will not impact any views presently enjoyed by adjoining units and those in close proximity. The unit next door in "my" building (unit 110) does not have a bonus room. The views from the windows in the unit in the next building to the north (unit 108) are not across the location of the proposed bonus room. Units across the street (units 1 and 101) do not have windows that face in the direction of the proposed bonus room.
- **Current Code Compliance.** Application has been made to the City of Bellevue for a "combo" building permit. A "combo" permit includes building, electrical, plumbing, and mechanical permits. Land Use and Utilities departments have approved the permit. Final approval by the Building Department is pending. The assigned permit number is 04-112703-BR. The objective of maintaining architectural uniformity and the requirement of compliance with current building code (including by not limited to wind and earthquake considerations) required extra design and engineering work. The design/engineering team was able to achieve the objective and to comply with current code.

EXHIBIT A182

Board of Directors
Woodcreek Homeowners
Association May 19, 2004
Page 2

The identities of those involved or will be involved in the project are:

Architectural & Design	David Neiman, Architects, Seattle, WA Terry Designs, 16824 NE 106 th St. Redmond, WA 98052 425-881-8679.
Engineering	Thomas J. Wolfe, 17017 102 nd Ave. SE, Snohomish, WA 98296 360-668-3882
Construction	Cady Built Home Solutions 10130 212 th Ave. NE, Redmond, WA 98053 206-999-8866. Same Contractor that performed all other owner modifications made during 2004.
Mechanical	All Climate Heating & Air Conditioning 4715 NE 95 th , Unit B, Redmond, WA 98052 425-746-3077
Electrical	Final selection pending.
Plumbing	Final selection pending.

Please note, since the city of Bellevue requires the bonus room be built to withstand tornados and earthquakes, those members of the board that vote in favor of this request are welcomed to temporarily camp in my bonus room (which will be still standing proudly though the first floor of my unit may be with Dorothy and Toto in Oz) should such a disaster occur while their units are being re-constructed.

If additional information is required, please feel free to contact me.

Sincerely,

[note: this is a copy of the letter sent to the board that was saved on computer. That computer has been replaced and when the saved letter was transferred to the new computer, the formatting of the letter changed slightly. Otherwise it is identical to the letter actually sent]

Glen R. Clausing

EXHIBIT A-212



WOODCREEK HOMEOWNERS' ASSOCIATION
Minutes of Meeting of Board of Directors
May 20, 2004

The regular meeting of the Board of Directors of Woodcreek Homeowners Association was called to order on May 20, 2004 at 7:00 pm at the Woodcreek Club House by Board President Wayne Huseby.

The following Directors were present: Wayne Huseby, Herb Kotkins, Ralph Miller, Wes Pearl, Rose Maric, Shirley Hueffed and Wayne Smith (arrived late). Absent were Gail Pross and Larry Wilson. Also present were property managers Bob and Mary Coffey.

Guests present were: Mark Kane and Rob Marinelli (speaking on behalf of Dorothy Calvo (58) who was also present); Joe and Ann Lee Rogel (12); Jerry Becker (13); Glen Clausing (109).

OWNERS' COMMENTS

- Rob Marinelli and Mark Kane reported on the costs incurred by the Calvo's as a result of water damage in the Calvo unit (58). They indicated their disagreement with the Board's previous decision to assess the unit owner for all costs of repairs not covered by Woodcreek's insurance. Glen Clausing, Attorney for the Association, requested that he be provided with any repair bills paid by the Calvos not previously submitted. The Board will reconsider the matter and will notify the Calvos in writing of its decision.
- Ann Lee Rogel and Joe Rogel (12) and Jerry Becker (13) reported on damages from continuing water leakage apparently from the roof. They said that such damage included water streaks, carpet stains, and furniture stains. Bob Coffey reported that both he and representatives from Pacific Star Roofing had examined the situation but were unable to determine the source of the leak. They are continuing their attempt to identify the problem. Mary Coffey will arrange an appointment so that Pacific Star representatives can enter the units. To avoid permanent damage, the Rogels were advised to have the stains removed from the rug and furniture by a professional agency of their choice and submit the charges to the Association. The items should then be covered to prevent further damage until the repairs are complete. Jerry Becker also indicated his concern with the appearance and drainage of the flat roof of his unit.
- Glen Clausing requested permission to add a bonus room to his unit. The Board approved his request with the proviso that the exterior of this addition be consistent with other bonus rooms originally built throughout the complex and that all building codes and permits are approved by the city of Bellevue. He also requested permission to install a motorized mechanism in a skylight that had already been approved for installation in his unit. The Board approved the installation of the motorized system providing all codes are met and that the mechanism be the sole and permanent responsibility of the owner of the unit.

MINUTES OF PREVIOUS MEETING

The minutes of the meeting of April 15, 2004, which had previously been provided Board members, were approved.

TREASURER'S REPORT

Treasurer Ralph Miller directed the Boards' attention to his April 30, 2004 financial reports, which had previously been provided. He noted that except for minor deviations, the expenses were as budgeted. Mary Coffey added that there were a few owners who perpetually paid their condo fees after the 15th of the month. She was advised by the Board to consider all unpaid accounts in arrears after the 15th of the month. She was further instructed to add a late fee of \$15.00 to owners' accounts with unpaid balances on the 16th of the month. It was also reported that one unit owner had declared bankruptcy and both regular and roofing payments were in arrears approximately six months. Attorney Glen Clausing has placed a lien on the unit on behalf of the Association, and that the full amount will probably be recovered. The Treasurer's report was approved.

PREPARATION FOR ANNUAL MEETING

The Annual Membership Meeting of Woodcreek will be held on June 6, 2004 at the Club House. Wayne Huseby described his plan to present the budget in two parts: (1) the operating budget. (2) the long-range maintenance reserve plan. Wayne Smith reported that the nominating committee has been unable to secure two candidates for each of the three positions to be voted on at the meeting (Article II, Section 2 of the Bylaws). He was advised to be ready with a motion to temporarily set aside this section of the bylaws for this election and to present the motion if necessary. It will take 51% affirmative vote of owners in attendance to pass.

(over)

EXHIBIT B

Appendix

Woodcreek Homeowners Association
Minutes of Board Meeting
July 15, 2004

Board Attendees: Wayne Huseby, Gail Pross, Herb Kotkins, Shirley Hueffed, Ralph Miller, Rose Marie, , Wes Pearl, Larry Wilson, Ron Brown
Absent: None

Guests: Jerry Clarke, Mary Duffin, Barbara Curran, Ann Lee & Joe Rogel, Dorothy & Jerome Becker, Marge Wood, Lillian crane, Sam Calvo, Gene & Betsy Kindinger, Evelyn & Buddy Salman, Rose & Charles Jasson, Glen Clausing, Leila Miller, Richard Petri, Sandra Lake, Shirley Miller, Glen Young, Robert Capala, Margaret Meriwether, Gail Hansen, Dave Walter.

Called to Order: 7:00 P.M.

Remarks of Guests:

Lee Miller, one year ago she reported a problem with the fence. Manager repaired the fence using the old boards when possible. Wants proper replacement of the fence with new materials. Managers reuse of the good wood saved the association over \$1K. Discussed the pro/cons of reusing some wood slats in rebuilding fences.

Wayne Huseby asked Larry Wilson and Rose Marie to look at fence and give Board an independent opinion.

Joe Rogel #12, Wants refund of \$10K for new roof that leaks had to have furniture and rugs cleaned because of roof leaks. Wants answer in 24 hours on what is being done to repair roofs.

Jerry Becker #13 Roof leaks also, been leaking for 6 months, stains and has no answer to repeated questions. Lack of communications from Board. Need to direct contractors better. Agreement by manager and president. Discussed 6 year fence replacement cycle and how the replacement of fences are managed. #12 also talked again about roofs and demanded immediate replacement. What is the Mfg guarantee on the roofs? Discussion of roof repair, contractor management, communications. billing of association for damaged home contents. drains on flat roofs?

Wayne directed Bob to create a letter to contractor, step by step to solve the problem, Bob will light a fire under contractor. Keep Board and homeowners informed.

Gail Hansen #145 demanded units downspouts be upgraded to "best there is". Discussion of restoring to original vs. higher standard. downspouts not part of roofing work. flooding problem

Manager stated that painting inside of #12 and #13 will be done immediately.

EXHIBIT C-194

Jerry Clarke #50 unhappy with annual meeting, PA system didn't work, couldn't hear. Future Budget Reserve is topic: handout at annual meeting did not address Future Reserve Budget of \$30K, Why? "12 days after Ann Meeting handout given to homeowners contrary to association rules." "Was not proper notice." Vigorous discussion by many homeowners ensued. #145, unhappy with "huge increase" in dues. #50 tried to bring #145 back on topic. Reminded that we cannot change the vote in this meeting. Request to read back the amendment to the motion at the annual meeting be read back. Minutes of June 7th read by a board member. Reminded homeowners that the increase in dues was approved. A recap of the reserve was reviewed, year by year. Discussion of many homeowners, request to use parliamentary procedures to try and get the discussion back on track. Wayne again summarized the information sent out prior to the Ann Meeting. Angry conversation, name calling, anger, Wayne tried to restore order to meeting. #128 asked members to support board and stop the name calling and recognize that the Board is trying to do what is in the best interest of all homeowners.

Wayne: a deterioration in one house affects the values of all the units. Some asked why they should pay for something that will occur 20 years from now. Explained they are paying for what is needed now to maintain value of the association of the coming years. The Board did not want to "nickel and dime" the homeowners with assessments.

Lengthy discussion of reserves vs. assessments and how to maintain the value of the association. Larry explained fiduciary requirement to maintain reserves and proper maintenance.

Wayne brought the discussion back to Mr. Clarke by asking "What do you want?" Clarke stated he wants a "revote". Glen Clausing clarified the issue: Was the notice adequate? If it was not the entire meeting was invalid. It requires 25% of Homeowners to have a Special Meeting or the President/Board can call a special meeting. Notice of meeting is not required to disclose every detail of what is going to be presented at the meeting. The Homeowners are responsible to ask and be involved in the meeting to discuss and bring out what they need to cast a vote on the issue. Board should address the issue and if 25% of homeowners disagree with the Board decision they can call a special meeting. Third alternative (Glen) live with the budget for 12 months and vote again at the next annual meeting.

Wayne: The Board will take the issues presented under discussion and make a decision. Reminded those present that the budget is an annual process.

Joe Rogel asked for a copy of the reserve study. Wayne OK'ed making the study available to all the homeowners.

NOTE to Wayne: Arrange a presentation to the homeowners from the producer of the Reserve Study.

Sandra Lake #108 Construction started on the unit next to her unit without notice. "Article 5 of the By Laws require "care" in making changes to their units." "I am getting a bum steer", loss of view, loss of light, loss of value. Would have appreciated an opportunity to get used to the construction and changes.

Q. How did the Board come up with the decision to give the building permit?

Wayne: "Glenn came to the Board and followed the guidelines and protocol. Board required licensed, bonded contractor and approved the project. Somebody on the Board

EXHIBIT C 2/4

should have thought about it, but we didn't." All bonus rooms built on top of a garage have been approved. There is no change in assessment.

Sandra wanted the following statement on the record: "I have a very strong objection to this procedure, and I feel that I have not been fairly treated. I have suffered a loss of value." "I feel that I have been treated very poorly".

Gail Pross, requested that in the future notice should be given to homeowners in the area. Sandra wants a copy of the plans and building permit.

Dave Walter would like to improve the communication between the association and the manager and the board. Suggestion: improve the communications. Q. Why don't we use email to send notices to homeowners? Discussed and decided to try to communicate with those that want email notices.

Gail Pross, suggested: set office hours aside for emergency only, so that publications and communications can be prepared.

Set a deadline for Woodcroaker. (Mary) set up a "regular flow bases"

Board went into Executive Session: 8:55 PM Bob and Mary Left the room.
General Session Re-convened: 9:20 PM Bob and Mary rejoined the meeting.

Motion to reconsider the Calvo's request to abate or mitigate their uninsured expenses on a Yes or No vote. Motion made by Wes Pearl, Second by Ralph Miller. Vote to reconsider: No, Unanimous.

Minutes of Last Meeting:

Motion to Accept: Ralph Miller, Second, Shirley Hueffed Unanimous.

Treasurer's Report:

Ralph Miller presented the final monthly report for this year. Ending balance for operating account is normal, Reserve account is approximately \$11K lower than we would like to have it, because monies have been spent. Roof account is normal. Some of the line items were placed on the wrong line and a correct page 1 was given to the Board members. Totals were not affected.

Some suggestions as to format were made.

Herb notified the Board that the reports will be changed to fit the Quick Books format. Detailed A/R's and checks will be added to the monthly report. The bank accounts with Commerce and Merrill Lynch require a lot of transfer with minimum numbers of checks per month.

Motion to accept Treasurers Report: Rose Marie, second: Wes Pearl: Unanimous

Resolution: to open an interest bearing account with B of A and close Merrill Lynch, resolution attached:

Motion to approve banking resolution: Larry Wilson, Second Ralph Miller

EXHIBIT C 394

Herb distributed a "Long-Range 20 year maintenance Reserve Program" graph.

Correspondence:

Elinor Updyke, Unit #100, requested a special meeting to reconsider the budget approved at the annual meeting.

Sandra Friedman, #1 Insulation in attic brittle and falling out. Wants re-insulation. #2, back fence is only partially painted. #3, wants screens on the vent holes to prevent creating a home for birds. Manager will address the problem.

Glen Clausing, apologized to neighbors for the inconvenience caused with the construction of a bonus room. - Copy of my letter to all owners on 14th pl that construction was starting next week

Lillian Crain, unhappy with the budget vote at the annual meeting.

Managers Report:

Bob has contacted painters to obtain bids on six year house painting schedule. Discussion ensued as to time frame for the job and the competitiveness of the bids. Board gave the Manager the green light to go ahead with Townhouse Company with the conditions that a timeframe be established and the bid be brought into compliance with the budget.

Motion to proceed with Townhouse: Motion by Wes Pearl, Second by Ron Brown. Approved

A unit has roots in the sewer line and Bob is obtaining bids to correct the problem.

Bob ask that Glen Clausing be present at the next meeting with Star Roofing concerning the leaking roof problems.

A discussion of gutter problems, and moving funds to cover some of the work needed. Motion Allocate \$5K from the Major Projects Reserve fund to get started on gutters. Motion by Larry Wilson, Second by Ralph Miller. Approved.

Bob would like to add a Managers Report section in the Woodcraacker.

Old Business:

None

New Business:

Ralph discussed a July Bonus for the Managers, which has been the practice of the Association.

Motion: That a mid year bonus of \$1,000, total, be awarded to Bob and Mary Coffee, managers. Motion by Ron Brown, Second by Larry Wilson. Approved

Adjourned: 11:38 P.M.

EXHIBIT C-464

GLEN R. CLAUSING

glen_r_anomcast.net

155-141' PL NE

BELLEVUE, WASHINGTON 98007

TELEPHONE (425)746-

2784

FAX (425)746-2866

July 10, 2004

My Woodcreek Neighbors on 141st
PI NE Bellevue, WA 98007

RE: Apology For Any Inconvenience

Dear Neighbors:

On July 11, 2004, construction will begin on a bonus room addition to my unit. Some of you are probably aware I was going to add a bonus room since the board's approval of the project was published in the *Woodcroaker* and Don and I have been discussing the project with our neighbors during the planning stage. I had intended to begin construction before now, but the City of Bellevue took longer to approve the building permit than anticipated.

At the outset of the project, a dumpster and temporary toilet will in my driveway. I know neither is very attractive. At various times, Don and I will be using the guest parking spaces since our driveway and garage will be unavailable. There will, of course, be some noise. I apologize for these inconveniences.

To mitigate these inconveniences, the dumpster will only be on the property during the demolition phase of the project and then promptly removed. As soon as possible, the portable toilet will be moved into the garage. Don and I will park our cars elsewhere on those days you have planned an event and need extra parking places if you will let us know when you are expecting guests. All work hour limitations imposed by the City of Bellevue will be observed to minimize the noise.

I apologize for any inconvenience and thank you for your understanding. If you have any questions, need to notify me of a planned party/guest parking needs, or if something comes up that concerns you, please do not hesitate to contact me.

Your neighbor,

Glen R. Clausing

EXHIBIT D

Woodcreek Homeowners Association
Board Meeting Minutes
August 19, 2004

Board Attendees: Wayne Huseby, Herb Kitkins, Shirley Hueffed, Ralph Miller, Rose Marie, Wes Pearl, Larry Wilson, Ron Brown
Absent: Gail Pross.
Guests: None.
Called to Order: 7:01 P.M.

Minutes of Last Meeting:

Motion to Accept: Ralph Miller, Second, Rose Marie. Unanimous.

Treasurer's Report:

Herb Kitkins handed out an agenda of his report. Is going to modify the monthly treasurer's report to a summary format. Detail report will be available to all homeowners at the office. Board members had no objection to the new format.

Wants to add Mary K. Coffey, Manager as a signer of checks. Motion to approve, Herb Kitkins. Second Ralph Miller, Unanimous.

Requested ability to open a B of A CD. Resolution #4, Motion Herb Kitkins, Second Larry Wilson, Unanimous.

Item: replacing the gutters over the entries of all units at a cost of no more than \$20,000, from the \$90,000 overage in the roof replacement account, or moving the \$10,000 from garage doors and \$13,000 from major repairs and moving it to gutter replacement. Motion: Allocate \$20K, (not to exceed), from roofing fund be used to replace all court yard gutters, \$5K of which is to replace monies used from maintenance fund, subject to managers verification as to the effectiveness of the gutters being installed. Motion, Herb Kitkins, Second, Rose Marie. Unanimous.

Item: Motion to accept Treasures Report: Ron Brown, Second: Ralph Miller. Unanimous.

Correspondence:

- Jerry Clarke, #50, Unhappy with notice and budget presented at annual meeting. Requests a special meeting to reconsider 5 year plan. President will respond to homeowner.
- Daisy Rucinski, #3, Roofing contractors damages ceiling and homeowner is not happy with repairs. Currently withholding money from dues and demands association pay a settlement. Two board members, Rose Marie and Larry Wilson are to inspect the repair work and report back to the president.
- Dolly Ito, #11, Clicking noise in garage door and wants to know when her door is going to be replaced on the normal replacement schedule. A garage door company specialist will check the door in the next week report to the president.
- Follow-up from July meeting, (Lee Miller), Rose Marie and Larry Wilson, inspected the fence and reported to President. Lee Miller is happy with repair work done to date and request matching paint.

EXHIBIT E 192

- Sandra Lake, #108 request for detailed information on all bonus rooms and remodels approved by the board, from 1977. Ms. Lake also requested a permit to replace her back deck and slab. President will respond to the permit issues. Bob will respond to the deck replacement request.
- Virginia Lockwood, #74 common area between her unit and #75. Comcast did not repair after their work, requests drainage and landscaping improvements. Manager agrees with the condition of the area. Gail Press is aware and working on this problem
- Kathleen Bruce, #112, requested that long term parking restrictions be enforced on the streets of the association. Asked that a reminder be given to the homeowners in Woodemaker.
- Dorothy Calvo, #58, requested replacement of rain gutter over front door. Manager will correct the situation.

Managers Report:

- ✓ Painting is almost complete, generally very happy with quality of work. Will have them finish a couple of questioned areas.
- ✓ Fencing is done except for paint. 350 feet / 9 gates for \$7,900.
- ✓ Pool has operated all year with no problems.
- ✓ Unit #44, Betty Arlin is working with the manager to stop some staining on the roof beams.
- ✓ Sewer repair, Frayda Oston, #25, have two bids, will take the lower one and correct the drain problem.
- ✓ Tom Anderson, #147 corrected interior doors sags. Lump in floor checked in crawl space, can be corrected with a shorter support beam.
- ✓ Toilet flange in a unit is too high and needs to be lowered and is in bad shape.

Old Business:

None.

New Business:

- ✓ Rose Marie mentioned the need for additional venting in the crawl spaces in many of the units. This was mentioned in a property inspection on a recent sale.
- ✓ Mary wants to know if we still want to be members of CAI (Community Associations Institute). Yes.
- ✓ Apple tree at unit 4 needs to be trimmed to prevent roof damage.
- ✓ New office hours are working well.
- ✓ Discussed insurance coverage and premium increase.

Adjourned: 10:15 P.M.

EXHIBIT E 282

JONES LAW GROUP, PLLC
11819 N.E. 34TH STREET
BELLEVUE, WASHINGTON 98005

MARIANNE K. JONES
LESA A. HOLLOWAY

TELEPHONE (425) 576-8899
FACSIMILE (425) 576-9898

August 26, 2004

Mr. Wayne Huseby
Woodcreek Homeowners Association
14205 NE 1st St
Bellevue, WA 98007

Re: Sandra Lake, Unit 108; Clausing's Construction on Common Area

Dear Mr. Huseby:

We represent Sandra Lake, a homeowner at within your association. Ms. Lake is protesting the Board's action in allowing Mr. Clausing to construct an addition in the common area above the garage assigned to Mr. Clausing.

We have reviewed the City of Bellevue file, correspondence from Mr. Clausing, pictures of the site, the Association Declarations and Bylaws, and the minutes of the board meeting wherein the action was approved. We have concluded that the action of the Board was not authorized under the Declarations and Bylaws, that the Board did not obtain legal advice in determining if the action was authorized, or if the Board believed that it sought legal advice it was from Mr. Clausing who clearly had a conflict of interest in determining whether his personal construction project violated the Association Declarations.

The Declarations provide for certain Unit Types for each condominium and Appendix A provides the square footage for each unit. This square footage is used for many things included apportioning the common area assessments. Mr. Clausing submitted a permit for an increase in his condominium's square footage by 458 square feet. I might note that the floor plan, which contemplates a bonus room above the garage, only adds 415 square feet. Thus, it appears that Mr. Clausing is extending his bonus room beyond the contemplated floor plans in the Amended Condominium Declarations.

More importantly, the Declarations provide that the square footage of the condominiums is to remain the same and if the Declarations are changed to allow an increase in square footage it must be done with a unanimous written consent of all apartment owners. Specifically, paragraph 19 reads in part: "... any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous written consent of all apartment owners ..."

Clearly, a vote of the association members was required in this instance. Moreover, the change in the square footage is without a doubt a change in percentage ownership. Therefore, Mr. Clausing's addition will change the percentage of ownership for all owners unless he is required to remove the addition.

EXHIBIT E 192

Mr. Wayne Huseby
Woodcreek Homeowners Association
August 26, 2004
Page - 2

We demand that the Board review its action, obtain independent counsel to review it, advise Mr. Clausing of the issue, and ultimately withdraw approval of the construction pending a proper vote on the issue. The construction area should then be restored to its pre-construction condition.

If you or your new independent counsel would like to discuss this matter with me, please contact me at 425-576-8899. Thank you for your prompt attention to this matter.

Very truly yours,
JONES LAW GROUP, PLLC

Marianne K Jones

MARIANNE K. JONES
Attorney at Law

RECEIVED
AUG 27 2004

September 22, 2004

Marianne K. Jones
Jones Law Group
11819 N.E. 34th Street
Bellevue, WA 98005

RE: Sandra Lake, Unit 108; Clausing Construction on Common Area

Dear Ms. Jones,

I am in receipt of your letter of August 26th protesting the Board of Director's decision to approve Mr. Clausing's request to add a "bonus room" above his garage. Contrary to your assertion, the Board feels that its decision was within the confines of the Declarations and By-Laws that govern Woodcreek. Further, the Board's decision and the process that was used are completely consistent with past requests to add space and/or value to Association property. Mr. Clausing met all of the standard state, local, and Association requirements the Board expects of any homeowner seeking approval to improve their respective units. As such, he was given approval for the addition.

In conclusion, the Board sees no compelling reason to rescind the approval given to Mr. Clausing.

Respectfully,

Wayne Huseby

Wayne Huseby
President - Woodcreek Homeowners' Association

cc: Woodcreek Board of Directors
Sandra Lake

wmh

EXHIBIT 

Woodcreek Homeowners Association
Board Meeting Minutes
October 21, 2004

Board Attendees: Gail Pross, Herb Kotkins, Shirley Hueffed, Ralph Miller, Rose Marie,
Wes Pearl, Larry Wilson, Ron Brown
Absent: Wayne Huseby, Larry Wilson.
Guests: Sandra Lake, Mary Ann Jones, Dave Walters
Called to Order: 7:00 P.M.

Remarks of Guests:

- Homeowner Sandra Lake, #108 with Mary Ann Jones, Attorney requested the resolution of 3 issues. Ms. Jones referred to her letter of 9/23/04 indicating response was same as before. Also stated that declarations require an increase in the dues on homeowners adding bonus rooms. Ms. Jones informed the Board that she is a trial lawyer and this issue is clear cut. She asked if there were any questions. Hearing no questions, Ms. Lake and Ms. Jones left the meeting.
- Homeowner Dave Walters, #65, expressed dissatisfaction with response to leak in his unit. Discussion ensued between Mr. Walters, Board members and the Manager. A question arose as to rather the tub is an original install. Herb asked Dave if it is established that it is his responsibility, will he take responsibility? He stated Yes.

Second point: Has not received the info he requested earlier. Mary sent it one day after it was asked for. (Has a UPS receipt to prove delivery) Dave was satisfied and left the meeting.

Minutes of Last Meeting:

Motion to Accept: Ralph Miller, Second, Shirley Hueffed Unanimous.

Treasurer's Report:

Herb has no additions to the report he gave the Board members earlier in the month. Gail asked of the dumpster was part of the budget for landscaping. Herb stated that the \$4K for the dumpster was not a part of the landscape budget. Discussion ensued.

Motion to accept Treasures Report: Ron Brown, second: Gail Prosser. Unanimous

Correspondence:

- Homeowner. Frayda Oston, #25 asked that the trees that were removed be replaced.
- Flora, Chuck Louise # 94 when putting in new flooring they had to level the floor first. Wants the association to pay the leveling expense. Bob saw the floor and said it was severe. Ralph stated that replacing with a covering different than the original makes it the homeowner's responsibility. All Board members agreed.
- Homeowner, Margaret Meriwether, #131, requested that board look at a tree in her yard.

1

EXHIBIT: H 112

- Bach, David. (conducted Reserve Study) Asked about payment for the reserve study, expressed a willingness to meet with the board for the final report. Wayne has questions before we make payments. Wes will talk to Wayne to resolve his questions to facilitate the resolution of this issue. Invite Mr. Bach to the November board meeting for a final presentation and ask for a second presentation to the 2005 Homeowners Annual Meeting.

Managers Report:

- ✓ Bob, 33 courtyard gutters done. New work order system is now in operation. Email problem and leak with Dave Walters is escalating to an unacceptable level. An outside professional is to be hired to solve the problem.
- ✓ Brad Hunt, #104 asking approval to remodel, new cabinets, appliances. Approval not needed, Mary is to send letter to homeowner.
- ✓ Anderson, Tom #147, unit has severe dip in the floor. \$3,300 bid to correct severe dip in the floor. Getting more bids to correct the floor. Ralph asked that Larry Wilson get involved.
- ✓ Holland, Jim #49 asking permission for remodel. Mary OK'd to send letter.
- ✓ Bob would like to add a Managers Report section in the Woodcrocker.

Old Business:

Mary: Glenn delivered 3 letters of recommendation. Follow-up: Association Insurance, and corporate status. Ron Brown reviewed his discussion with Glenn Clausing

Motion: The Association is to retain an Attn. specializing in Washington State Condominium Law, to act as its council in the matter of Incorporation, and other matters as directed by the Board of Directors of the Woodcreek Homeowners Association.
Moved, Rose Marie. Second, Ralph Miller Unanimous

Motion: The Association is to refer the Sandra Lake issue to outside council. Moved
Ralph Miller Second, Ron Brown

• Wes conducted a phone survey of the Board Members after the meeting had adjourned re. the matter of council in the Sandra Lake matter. All Board members, except Herb changed the idea of sending a second letter to Ms. Lake in lieu of retaining council. Wes will draft the letter.

New Business:

A thank you note is to be sent to Mrs. Betty Tipp, #47 thanking her for the photos donated to the association and currently displayed in the club house.

Bob and Mary left the room, 9:38. The board discussed the granting of a merit raise. An increase of \$150 per month, \$1,800 a year, effective from their anniversary date, October 1st, was approved Unanimous.

Adjourned: 9:53 P.M.

Handwritten signature/initials

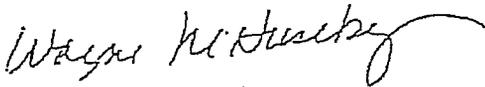
October 30, 2004

Sandra Lake
Unit #108

Dear Ms. Sandra Lake,

The Board of Directors has again reviewed your issues with the Clausing bonus room remodel and confirms the decision communicated to you in my earlier correspondence on this subject.

Sincerely,



Wayne Huseby
President - Woodcreek Homeowners' Association

cc: Woodcreek Board of Directors
Marianne K. Jones

EXHIBIT I

[Table is CP 589-90]

Same style units with and without bonus rooms have the
Same declared "values" & declared percentages.

Unit	Style	Div	Bonus Rm. (yes/no)	Declared Value	Declared Percentage
	-*-				
2	C	I	Y	49,000	0.694
7	C	I	N	49,000	0.694
3	D	I	Y	54,000	0.77
9	D	I	N	54,000	0.77
52	E	II	Y	42,900	0.607
55	E	II	N	42,900	0.607
66	F	II	Y	47,900	0.678
67	F	II	N	47,900	0.678
54	G	II	Y	49,900	0.707
53	G	II	N	49,900	0.707
139	J	III	Y	41,289	0.584
107	J	III	N	41,289	0.584
137	K	III	Y	46,364	0.656
120	K	III	N	46,364	0.656
146	L	III	Y	49,989	0.708
102	L	III	N	49,989	0.708
130	M	III	Y	41,289	0.584
115	M	III	N	44,189	0.626

-* - Per the declaration, bonus room as not available for A and B style units and no A or B style units have a bonus room.

Clousing unit is a J style unit.

721019J

3. DESCRIPTION OF RESIDENCE APARTMENTS: The resi-

dence apartments are generally divided into four types as follows:

Type A - two bedroom, single story

Type B - three bedroom, single story

Type C - three bedroom, two story/townhouse

Type D - three bedroom, two story/townhouse

There is designated on the plan a reverse floor plan for all types of units. When a particular residence apartment unit is designated A-reverse, B-reverse, C-reverse or D-reverse, it is meant that the ground and/or second story floor plans, if applicable, are backward to and opposite to the regular floor plan with relation to the arrangement of rooms and entrances. Room arrangement according to type is as follows:

UNIT TYPE A

Kitchen, family room, utility room, dining room, living room, two bedrooms, two bathrooms, two car garage with storage area

UNIT TYPE B

Kitchen, family room, utility room, dining room, living room, three bedrooms, two bathrooms, two car garage with storage area

UNIT TYPE C

First story

Kitchen, family room, utility room, dining room, living room, one bedroom, 1 1/2 bathrooms, wardrobe area, two car garage with storage area

Second story

Two bedrooms, one bath

(Ground floor and second floor are joined by interior stairway)

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UNIT TYPE D

First story

Kitchen, family room, utility room, dining room, living room, one bedroom, 1½ bathrooms, wardrobe area, two car garage with storage area

Second story

Two bedrooms, one bathroom, one study or den

(Ground floor and second floor joined by interior stairway)

In addition, there is designated in the plans for Type C and D units a room designated as the "Bonus Room". Upon the option of the purchaser, the second floor plans for the Type C and D Units will include an additional area to be situated directly above the two car garage which is incorporated within the basic structure of the apartment unit. The Bonus Room will consist of one of four alternate floor plans. The Bonus Room will increase the square footage of said units by 415 square feet.

A particular description of each apartment unit by number is included in Annex A hereto and by this reference incorporated herein. [The boundaries of each apartment are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof.]

4. DESCRIPTION OF WOODCREEK CONDOMINIUM DEVELOPMENT -

PRESENT AND FUTURE:

The Woodcreek Condominium Development as presently conceived by the owner will be established in three phases and will include a total of 150 residence apartment units of which Woodcreek Division No. 1 is Phase One. Phase Two will consist of 50 residence apartment units to be constructed North

7210190519

10. SERVICE OF PROCESS: William J. Boyce, whose business address is 1164 Olympic National Life Building, Seattle, Washington 98104 is hereby designated as the person to receive service of process in the cases provided in the laws of 1963, Chapter 156.

11. PERCENTAGE OF VOTES REQUIRED IN CERTAIN CASES:
Any decision on the question of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property shall require the affirmative vote of 51% of the voting power of all owners of apartments.

12. PROCEDURES FOR SUBDIVIDING AND/OR COMBINING:
Except as this Declaration may be amended as provided for herein, no subdivision or combination of any apartment unit or units or of the common areas or facilities or limited common areas or facilities may be accomplished except by authorization by the affirmative vote of 51% of the voting power of the owners of the apartment units at a meeting called upon written notice which notice shall contain a general description of the proposed action and the time and place of meeting. If so approved, any such division or combination shall be the subject of a filed revised plan consistent herewith, and such subdivision or combination shall be ineffective for any purpose until so filed of record. When an apartment is subdivided the area deleted from the original apartment shall be described by metes and bounds measured upon the floor of the original apartment, and the new owner, if any, of the area so deleted shall, until the next periodic appraisal, have and acquire a percentage of undivided interest in the common areas and facilities equal to the ratio of the sale price of such deleted area to the value of the property; or in

72101.219
the case of a gift, the new owner's percentage of undivided interest in such common areas and facilities shall equal the ratio of the donor's cost or other basis for the portion of such apartment so conveyed for Federal Gift Tax purposes to the value of the property until the next periodic appraisal; provided, that in no case shall such new owner, if any, of a subdivided portion of an apartment acquire by such transfer an undivided interest in such common areas and facilities greater than that which appertained to the original apartment immediately before subdivision.

Correspondingly, the owner of an apartment from which a portion is subdivided and conveyed shall, until the next periodic appraisal, retain a percentage of an undivided interest in the common areas and facilities equal to his original percentage, less that passing to the grantee of such subdivided portion as set forth above.

An apartment owner who retains title to the whole of a subdivided apartment shall retain his percentage of undivided interest in the common areas and facilities appertaining to said apartment immediately before subdivision.

13. AUTHORITY OF THE BOARD: The Board for the benefit of the condominium and the owners shall enforce the provisions of this Declaration and of the By-Laws and shall acquire and shall pay out of the common expense fund hereinafter provided for, all goods and services requisite for the proper functioning of the condominium, including but not limited to the following:

- A. Water, sewer, garbage collection, electrical, and any other utility service for the common area. If

NO. 59211-4-1

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

SANDRA LAKE, INDIVIDUALLY
Plaintiff/Appellant

v.

WOODCREEK HOMEOWNERS ASSOCIATION,
a Washington Homeowners Association;
GLEN R. CLAUSING, a single man
Defendants/Respondents

CERTIFICATE OF SERVICE

Attorneys for Petitioner:
Charles E. Watts, WSBA #02331
Oseran, Hahn, Spring, Straight & Watts, P.S.
10900 NE Fourth Street #850
Bellevue, WA 98004
425-455-3900
425-455-9201 - fax

CERTIFICATE OF MAILING/SERVICE

The undersigned, Joy Griffin, certifies that on the 20 day of June, 2008, she caused to be served via ABC/LMI Legal Messenger Service and/or U.S. Mail, postage prepaid, a copy of the Petition for Discretionary Review by Supreme Court of Washington to the Court of Appeals/ Division I, Cause No. 59211-4-1 to the following:

VIA ABC/LEGAL MESSENGER

Marianne K. Jones
Jones Law Group, PLLC
11819 NE 34th Street
Bellevue, WA 98005

Christopher Brain
Tousley Brain Stephens
1700 7th Ave., Suite 2200
Seattle, WA 98101-4416

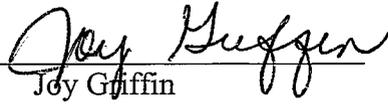
Scott M. Barbara
Johnson Andrews & Skinner, P.S.
200 W. Thomas, Suite 500
Seattle, WA 98119

VIA HAND DELIVERY

The Court of Appeals/State of Washington, Division I
One Union Square
600 University Street
Seattle, WA 98101-4170

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Dated this 20 day of June, 2008.



Joy Griffin