No. 1019831

SUPREME COURT
OF THE STATE OF WASHINGTON

DONALD COLEMAN and SUE WRIGHT, individuals, and THE HAWK HILL ASSOCIATION, a corporation
Petitioners,

v.

DICK COOK, JOHN CRESS, MARIE EVANS, RAY GOFF, DAVE GULLO, RON HINES, JIM MURPHY, CASSIE SIEGAL, and SCOTT TOWSLEE, individuals, and THE VILLAGES OF GARRISON CREEK MASTER PROPERTY MANAGEMENT ASSOCIATION, a corporation.
Respondents.

THE VILLAGES OF GARRISON CREEK MASTER PROPERTY MANAGEMENT ASSOCIATION'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners[1] are disgruntled homeowners who disagree with the decisions made by The Villages of Garrison Creek Master Property Management Association (MPMA), an overwhelming majority of the homeowners, the trial court, and, most recently, an unpublished decision of the Court of Appeals. In making their case for further review, plaintiffs omit salient facts that shaped the decision below. The Court of Appeals' decision does not conflict with applicable case law. RAP 13.4(b)(1), (2). Further, no issues of substantial public interest exist. RAP 13.4(b)(4). MPMA asks that the Petition be summarily denied.

II. RESTATEMENT OF THE CASE

In the late nineteen-nineties, Doug Botimer and other developers planned The Villages of Garrison Creek (VGC) in College Place, Washington. CP 1386. The planned residences would entail attractive well-maintained homes in a parklike environment along Garrison Creek, restrictions on use of

[1]Hereafter referred to as "plaintiffs." It is telling that the second named individual plaintiff, Sue Wright, has apparently chosen not to participate in this Petition.

residential properties, and harmonized exterior designs. CP 693-94. Mr. Botimer served as "declarant," a position that essentially provided him veto power over all activities of the MPMA. CP 956-960, 1386.

The MPMA is governed by Articles of Incorporation, CP 724-32; Bylaws, CP 712-22; the Restated[2] Declaration of Covenants, Conditions, and Restrictions of The Villages of Garrison Creek (CCRs), CP 734-51; and chapter 64.38 RCW. The MPMA maintains the trails, parks, roads, irrigation, and other common areas with revenue received through dues paid by members. CP 708. The MPMA has the power to make assessments against its members to accomplish the purposes and objectives of the Association. CP 728. The Bylaws specifically allow the Board to establish the allocation of assessments which can differ between phases. CP 717.

[2] The original Covenants, Conditions and Restrictions were redrafted and adopted as the Restated Covenants, Conditions and Restrictions in 2002. For clarity purposes the Restated Covenants, Conditions and Restrictions will be referred to as CCR's unless it is necessary to distinguish them from the earlier document.

The original planned use development had discrete areas with mixed uses. Phase 3 consisted of a nursing home. CP 1019. The CCRs provided autonomy for this phase and specifically exempted it from "any dues or assessments of operation of the Association or for the maintenance of any areas used solely for the residents of the planned unit development, residential areas and commercial areas, including park areas green belts, etc." CP 742.

Phase 4 was comprised of affordable housing units operated by the Housing Authority. CP 522. The Housing Authority did not pay any dues or assessments for common areas in other parts of the development. CP 1132. In 2016, the Board approached the Housing Authority about paying assessments and was met with a stern letter from its attorney explaining that even if a right to assessment had existed in the past, that right was explicitly waived years ago. CP 1132-33.

The CCRs also singled out commercial property, stating MPMA "shall have no control over the development of such

land....” CP 742. “The land within the commercial areas shall not be responsible for any dues and assessments for other operations of the Property Management Association or for the maintenance of any areas used solely by the residents of the planned unit development, including park areas, green belts etc.” CP 742. Phase 9 included residential properties and an undeveloped commercial property known as “Myra Road Commercial.” Myra Road Commercial stopped paying assessments in 2008 or 2009. CP 870.

Mr. Botimer confirmed: “[s]ince the inception of the Association (MPMA), Phase III and Phase IV have been treated as if they are not part of the MPMA.” CP 1388.

Mr. Coleman served as the MPMA president from March 2011 until December 2014. He did not collect assessments from Phase 3, Phase 4, or the part of Phase 9, called “Myra Road Commercial.” CP 295; 1170-72.

Although he now argues that these exited properties were integral to the VGC, as president, Mr. Coleman prepared a chart

of the various properties and represented to membership that Phase 3, Phase 4, and the Myra Road Commercial property in Phase 9, were *not* part of the VGC. CP 301, 296.

This lawsuit stems from Mr. Botimer's plan that the nursing home, the Housing Authority affordable housing, the Myra Commercial properties, and his 14-acre undeveloped property (Phase 14) be allowed to exit the MPMA. CP 303, 956-60. Mr. Botimer made it clear that he would not agree to pay future assessments for maintenance and the reserve fund. CP 959. He further threatened that if a vote of the homeowners did not go his way, he "[would] simply cease development of the vacant 14 acre 'Phase 14' parcel, continue to pay his 2 assessments on that parcel and let [the Board] continue operating with him participating unwillingly, and unmotivated in his current Declarant and Chairman of the Architectural Review Committee roles on the MPMA Board." CP 956.

Thereafter, the MPMA, working closely with counsel, followed the amendment procedures set forth in the governing

documents. CP 1021. At no time during the meeting did Mr. Coleman or Ms. Wright object that the vote could not proceed or that the process violated the governing documents. CP 520-525. Mr. Botimer spoke in favor of the exits. *Id.* The MPMA membership approved the exits for all four properties by the following percentages of available votes: Myra Road Commercial property by 82.6 percent, Mr. Botimer's Phase 14 parcel by 81.4 percent, the Phase 4 Housing Authority property by 76.6 percent, and the Phase 3 nursing home property by 76 percent. CP 113.

Because the Phase 3 and Phase 4 had never paid dues and the Myra Road Commercial property had stopped paying in 2008, the exit of these properties was revenue neutral. CP 1020.

The MPMA and Mr. Botimer negotiated a specific agreement for the Phase 14 property. The agreement maintained all of the benefits associated with this residential phase being part of the VGC. CP 597-617. It included provisions for: 1) a road easement and maintenance agreement which specified in detail

the maintenance items that would be shared, CP 1101-14; 2) a reciprocal open space and walking trail easement to allow the residents of the Villages to use trails and recreation areas developed in Mr. Botimer's phase, *Id.*; 3) waiver of all declarant rights under the Declaration, Articles of Incorporation and Bylaws, CP 1116-21; and 4) a written agreement that the properties being developed "would adopt the same Land Use Standards currently used by the MPMA." CP 599, 960.

The properties remaining in the VGC continue to have the same property rights they had prior to the exit amendments. The common areas are intact. They will be able to use the common areas in Mr. Botimer's parcel as well. There is no evidence that the removal of Phase 3, Phase 4 or the Myra Road Commercial property in any way decreased the remaining homeowners' property values or increased their assessments. CP 677.

III. ARGUMENT

A. The Court of Appeals' Opinion is Consistent with *Wilkinson*.

The Court of Appeals' decision does not conflict with this Court's holding in *Wilkinson v. Chiwawa Communities Ass'n*, 180 Wn.2d 241, 327 P.3d 614 (2014) or any other appellate decision. In *Wilkinson,* the pre-amendment covenants contemplated rentals and specifically set forth regulations regarding the size of signage advertising that a property was for rent. As short-term rentals became more popular, a majority of owners in the Chiwawa residential community voted to make vacation rentals of less than one month a prohibited commercial use under the community's covenants. *Id.* at 247-48. The trial court ruled that the bar on short-term rentals was unenforceable. *Id.* at 248. The HOA appealed. This Court rejected the argument that short term rentals were a prohibited commercial use. Noting that short term rentals had been routine under the prior covenants, the Court found that this new restriction deprived the dissenting homeowners of their property rights.

In so ruling, this Court recognized that "[w]hen the governing covenants authorize a majority of homeowners to *create* new restrictions unrelated to existing ones, majority rule prevails 'provided that such power is exercised in a reasonable manner consistent with the general plan of the development.'" *Id.* at 255-56 (quoting *Shafer v. Bd. of Trs. of Sandy Hook Yacht Club Estates, Inc.,* 76 Wn. App. 267, 273-74, 883 P.2d 1387 (1994)). "[W]hen the general plan of development permits a majority to *change* the covenants but not create new ones, a simple majority cannot add new restrictive covenants that are inconsistent with the general plan of development or have no relation to existing covenants. *Id.* at 256 (emphasis in the original). This Court reasoned that such a rule protects the landowners' reasonable expectations by allowing them to block unrelated covenants which "***deprive them of their property rights***" or "***subject them to unexpected restrictions of their land****." Id.* (emphasis added) (citing *Meresse v. Stelma,* 100 Wn.

App. 857, 866, 999 P.2d 1267 (2000) (quoting *Boyles v. Hansmann,* 246 Neb. 181, 517 N.W.2d 610, 617 (1994)).

Nonetheless, plaintiffs argue that "[b]y allowing exit (sic) of substantial components of the VGC planned unit development, the remaining homeowners were unreasonably and unexpectedly burdened." Petition at 17. This argument is without merit. These phases simply were not contributing, nor did they participate in the VGC. CP 742, 1132.

Here, the Court of Appeals correctly held that the governing documents gave MPMA the power to act as it did. Article 4 of the CCRs expressly states:

> Duration: These Reservations and Restrictive Covenants shall continue in full force and effect perpetually ***unless otherwise amended as hereinafter provided.***

CP 736 (emphasis added). *See, also,* CP 738 (Article 5(c) of the CCRs).

Article 11 of the CCRs sets forth the amendment procedure. CP 744. It provides that any owner may propose an

amendment to the Board, and if a majority of the Board approves the amendment, it shall be presented to the members for their consideration. CP 744. The amendment can then be approved by an affirmative vote of members who hold at least two-thirds (2/3) of all votes in the Association. CP 744.

In addition, the Bylaws grant the Board the power to allocate expenses among the villages. CP 717. There is no provision requiring equal allocations for common expenses between the villages. Instead, the Bylaws only required that "assessments within each village shall be equal between lots and/or family living units. *Id.* The Board also has the power charge special assessments against a particular village or lot "on the basis of specific benefit or specific allocation of expense to such village or lot." *Id.*

The Articles of Incorporation also grant the MPMA broad powers, including but not limited to the power to manage the affairs of the villages under the CCRs "***together with any amendments thereto***," the right to sell, lease, convey, encumber

and manage real or personal property of every kind, and the right "to have and exercise ***all powers as allowed by law*** for a non-profit corporation and to have and exercise all powers necessary and convenient to effect any and all purposes for which property management is organized." CP 725-26 (emphasis added). The Articles of Incorporation even permit dissolution of the entire MPMA by written assent of 90 percent of the membership. CP 729.

Unlike the covenants at issue in *Wilkinson,* the broad language in MPMA's governing documents put its members on notice that the MPMA has the power to make any amendment permitted by law. Furthermore, even assuming *arguendo* that the governing documents only give MPMA the power to change existing restrictions, the Court of Appeals' decision does not conflict with *Wilkinson* because the exit amendments did not place any new restrictions on plaintiffs' property rights. *See, e.g., Bellevue Farm Owners Association v. Stevens,* 13 Wn. App. 2d 1052 at *16 (2020) (unpublished) (rejecting argument

approval by majority vote was unenforceable where amendment did not impose any new restrictions on property rights).

Plaintiffs argue that the exit amendments create additional financial burdens on the dissenting homeowners, which in effect creates a new covenant. As the Court of Appeals observed, this argument is not supported by citation to authority or logic. Slip Op. at p. 20. If the exiting properties were not paying assessments, exit from the MPMA would not increase the assessments of the non-exiting phases.

Further, the Court of Appeals correctly concluded that the exit amendments were consistent with the general plan that the residences would entail attractive well-maintained homes in a parklike environment, with harmonized exterior design, and landscaping, private streets, and common areas for the use of members and their guests. CP 693. If anything, the exit of the Myra Road Commercial property, the Housing Authority and the nursing home, enhance that general plan, by removing properties that were not contributing dues and incompatible with the single-

family residences in the remaining areas of the villages. Finally, when Mr. Botimer surrendered his position as declarant, the MPMA moved from a developer-controlled association to one controlled by the homeowners.

Because the Court of Appeals' decision does not conflict with *Wilkinson* review should be denied.

B. The Court of Appeals' Opinion Does Not Conflict with Decisions Regarding the Allocation of Assessments.

Plaintiffs cite *Meresse v. Stelma, supra,* and *Fawn Lake Maintenance Commission v. Abers*, 149 Wn. App. 318, 202 P.3d 1019 (2009) to support their argument in favor of an alleged conflict. Neither case is on point. Neither case involved a situation where assessments had not been collected for years.

Meresse involved a private road in a small subdivision where five of the six homeowners voted to relocate the course of the road and create a scenic easement on either side of it. 100 Wn. App. at 862. The cost of that project was to "be shared equally by all lot owners within Constant Oaks

Subdivision." *Id.* The court held that the relocation of the road was an unexpected expansion of the owners' obligations to share in road maintenance. *Id.* at 866. While the covenants allowed assessments for maintenance costs, they did not contemplate construction of a new road and expanded easements. The expansion imposed a new burden not contemplated by the original covenants. *Id.* at 867. Here, the amendments do not impose the cost of new improvements on the remaining phases so they do not create unexpected burdens.

Fawn is also not on point. In *Fawn*, the homeowners attempted to decrease their assessments by combining lots and paying for just one lot. 149 Wn. App. 318. Fifty-two Fawn Lake lot owners had combined lots and paid dues for each lot as configured in the original subdivision. The court held that the covenants which imposed the dues on each lot, controlled. *Id.* at 326.

Unlike the cited cases, the alleged increased financial burden is entirely speculative. The undisputed evidence

establishes that the exiting properties had not paid assessments for years. There was no clear path to change that course. Any attempt to suddenly force these properties to pay dues would cost thousands in legal expenses and would be frustrated by Mr. Botimer's ability and intent to veto any action by the Board to force collection against his properties. CP 959, 1540-41.

C. The Court of Appeals Decision Does Not Conflict with *Ebel.*

Plaintiffs take issue with the Court of Appeals' interpretation of "actual notice." "Actual notice must be given to each member before an amendment may be adopted." CP 207. Citing *Ebel v. Fairwood Park II Homeowners' Ass'n,* 136 Wn. App. 787, 792, 150 P.3d 1163 (2007), plaintiffs contend that the Court of Appeals' finding that the MPMA need not provide the exact language of a proposed amendment conflicts with Washington's rule that amendments must be adopted according to the procedures set up in the covenants. This argument ignores the court's role in interpreting ambiguities. Where ambiguity exists in the language of governing documents, the court's

objective is to determine the intention of the original parties. *Riss v. Angel,* 131 Wn.2d 612, 621, 934 P.2d 669 (1997). The Court of Appeals correctly applied the rule that to ascertain intent the governing documents must be read together and construed in their entirety. *Id.; Rodruck v. Sand Point Maintenance Commission,* 48 Wn.2d 565, 577, 295 P.2d 74 (1956).

The Court of Appeals simply applied this rule to ascertain intent by looking at prior versions of the CCRs and the amendment provisions in the Articles of Incorporation and Bylaws. A comparison of the original CCRs to the restated CCRs demonstrates that the parties intended to liberalize the amendment procedure. The original CCRs required 60-day notice and that the notice of the meeting contain the text of the proposed amendment. CP 316-17, 744-45. The restated CCRs do not contain these restrictions.

Both the trial court, RP 58,and the Court of Appeals, Slip Op. at pp. 24-25, looked to the entire set of governing documents. The written notice provisions for proposed amendments in both

the Articles of Incorporation and the Bylaws may be satisfied with a simple "summary of changes." CP 316-17, 720, 730, 744-45. The Court of Appeals properly interpreted the governing documents and correctly concluded that the language on the ballots gave the membership "actual notice" of the purpose of the exit amendments. The court's opinion does not conflict with *Ebel.*

Plaintiffs also criticize the Court of Appeals' conclusion regarding the type of communication device used to confirm the votes of the Board members. Plaintiffs assert that the covenants required communication equipment that allows all persons participating in the meeting to hear each other at the same time. This argument elevates form over substance. As demonstrated by the word "may" in the Bylaws, the directors' use of such communication equipment is permitted but not required. CP 715. More importantly, there is no question that the MPMA Board understood the amendment proposal and the related arguments

for and against. Indeed, the issues had been discussed for well over a year. CP 102, 956-60.

Moreover, the record evidence demonstrates that all directors were present on December 8, 2017, in person or by proxy. CP 216, 1036. Plaintiffs' objection only applies to the events of the following day, when the meeting was held open solely so that Mr. Botimer's attorney could review the exit resolutions. CP 216, 1036. On that next day, three directors again met in person, confirmed their approval of the exit resolutions, and contacted the other four directors. Plaintiffs challenged the fact that these directors were contacted by telephone for the simple act of confirming their final approval of the exit resolutions. CP 216, 1036.

The mere fact that all the directors could not all hear one another during the December 9 telephone calls is inconsequential. The discussion regarding the merits of the proposals had been taken place at the in-person meeting on December 8. Finally, six of the seven directors were also present

in person at the annual meeting on December 10, 2017, for the presentation to the homeowners. CP 109. There is no evidence that anyone objected to the proceedings of the board meeting, or that any director was not fully informed about the import of their vote. CP 109-12.

D. The Court of Appeals Decision Does Not Conflict with the Rules Governing Summary Judgment Motions.

Plaintiffs incorrectly contend that review is warranted because the Court of Appeals purportedly made inferences in favor of the moving party. "[W]hile all reasonable inferences must be drawn in favor of the nonmoving party on summary judgment, ***'[u]nreasonable inferences that would contradict those raised by evidence of undisputed accuracy need not be so drawn.***'" *Cornish College of the Arts v. 1000 Virginia Ltd. Partnership,* 158 Wn. App. 203, 226, 242 P.3d 1 (2010) (emphasis added) (quoting *Snohomish County v. Rugg,* 115 Wn. App. 218, 229, 61 P.3d 1184 (2002). The five purported inferences that plaintiffs claim should have been viewed in their favor are unreasonable and do not justify additional review.

First, plaintiffs challenge the Court of Appeals' statement that "Doug Botimer made an oral agreement with the Housing Authority that it was not required to pay any assessments or common expenses." Slip Op. at p. 4. Plaintiffs contend that whether an oral agreement existed is disputed, citing some a portion of the deposition testimony of the MPMA's 30(b)(6) representative. Contrary to plaintiffs' contention, the MPMA's 30(b)(6) representative did not testify that no agreement was ever made with the developer. Rather, he testified that his knowledge of the handshake agreement between the developer and the Housing Authority was based on correspondence he had seen from the Housing Authority's attorney (who had also represented the original developers, including Mr. Botimer). CP 1022-23.

Plaintiffs also improperly rely on the hearsay testimony of plaintiff, Mr. Coleman, who contends that Mr. Botimer told him he never made such an agreement with the Housing Authority. CP 1510-11, 1549. Only admissible evidence can be considered in reviewing a motion for summary judgment. *Lynn v. Labor*

Ready, Inc., 136 Wn. App. 295, 306, 151 P.3d 201 (2006). In addition to being inadmissible hearsay pursuant to ER 801, plaintiffs' position is contradicted by Mr. Botimer's signed declaration stating that "[s]ince the inception of the Association (MPMA), Phase III and Phase IV have been treated as if they are not part of the MPMA," CP 1388, and by Mr. Coleman's admissions. During his own tenure as MPMA president from 2011-2014, he did not collect assessments from the Housing Authority. CP 295, 1482, 1484-85, 1530. Further, Mr. Coleman prepared a chart of the various properties in 2012 and represented that Phases 3, 4 and Myra Road Commercial were "not part of the VGC." CP 296, 301.

Plaintiffs' criticism also ignores the next sentence of the Court of Appeals opinion. "This agreement has always been recognized by MPMA, in that it has never required Phase 4 to pay assessments or common expenses." Slip Op. at p. 4. Whether or not an oral agreement was made, it is undisputed that the Housing Authority did not pay assessments or common

expenses for at least fifteen years. CP 295, 1132. It would therefore be unreasonable to infer that no agreement to excuse the Housing Authority from paying assessments existed.

Second, plaintiffs take issue with two sentences in the Court of Appeals' opinion regarding Dick Cook's stated reasons for the proposed exits. CP 983. The Court of Appeals amended one of these sentences to correctly reflect the property Mr. Cook's statement referenced. As amended, the Court of Appeals opinion accurately reflects Mr. Cook's statements as memorialized in the December 2017 meeting minutes. CP 983. Plaintiffs' contention that Mr. Cook's statements were misleading does not make the Court of Appeals' representation that such statements were made, an unfavorable inference within the meaning of CR 56 jurisprudence, much less warrant acceptance of review under RAP 13.4(b).

Third, plaintiffs take issue with the Court of Appeals description of the presence of a nursing home, affordable government housing, and commercial properties as "not

integral" to the complaining residential phase. As recognized by this Court, no Washington case has described the precise contours of when an amendment would be consistent with the general plan of development. *Wilkinson,* 180 Wn.2d at 256. That notwithstanding, plaintiffs' criticism of the Court of Appeals' purportedly unfavorable inference ignores the undisputed fact that these properties had never paid assessments or stopped paying assessments years ago. The suggestion that what might be "integral" under such circumstances somehow conflicts with Washington law ignores this undisputed evidence.

Moreover, the Court of Appeals' reasoning is sound. It acknowledges the obvious, a homeowner's association is for homeowners, not commercial properties, nursing homes or government housing.

Fourth, Plaintiffs take issue with the Court of Appeals' conclusion that "the membership was adequately informed of the purpose of the exit amendments and was not required to approve the specific language eventually used." Slip Op. at p. 25.

Plaintiffs confuse factual inferences with legal conclusions. All legal conclusions are unfavorable to some party in contested litigation. If a court were not permitted to reach a legal conclusion after applying the law to the undisputed evidence, it would undermine the purpose of summary judgment proceedings. Here, the undisputed evidence is that the MPMA members were presented with very specific information on each individual ballot along with the presentations made at the annual meeting. CP 225-26; CP 218-223. There is no support for plaintiffs' argument that the membership was misled.

Fifth, plaintiffs take issue with the Court of Appeals' conclusion that "[t]he members decided that the MPMA's proposal was for their benefit." Slip Op. at p. 29. It is undisputed that the overwhelming majority of the membership approved the amendments. It would be unreasonable to infer that they would approve the exits if they were against their own interests. Consequently, none of the purportedly unfavorable inferences

identified by plaintiffs conflict with the principles governing CR 56, and review should be denied.

E. The Directors' December 2017 Proxy Votes Neither Violated Washington Law nor Involve an Issue of Substantial Public Interest.

Relying on the 2009 and 2018 editions of the Washington Nonprofit Handbook,[3] plaintiffs incorrectly contend that the exit amendments were formulated at an "unlawful" December 2017 board meeting because certain MPMA directors voted to approve the amendments by proxy. Washington law is not codified in handbooks. Neither the legislature nor Washington case law precluded MPMA directors from voting by proxy in December 2017, and the statutes cited by plaintiffs do not state otherwise. *See* former RCW 24.03.085 and RCW 24.03.120.

On the contrary, and as correctly recognized by the Court of Appeals, in December 2017, chapter 64.38 RCW governed homeowner associations (HOAs), and that chapter had no

[3] Plaintiffs raise the 2009 edition for the first time in their petition for review. Prior to that, they relied on the 2018 edition, published after the December 2017 board meeting.

provisions prohibiting HOA directors from using proxies to vote. *See* former RCW 64.38.025 (2011) through former RCW 64.38.035 (2014). The Washington Uniform Common Interest Ownership Act (WUCIOA), chapter 64.90 RCW, became effective on July 1, 2018—more than six months ***after*** the December 2017 board meeting. RCW 64.90.910. Although the Act provided that a director may not vote by proxy, the Act was only applicable to HOAs created ***after*** its effective date. RCW 64.90.445(2)(m). Even if there were record evidence that MPMA amended its CCRs to opt into the WUCIOA, which there is not, it could not have done so before the Act was even effective. RCW 64.90.095(1). The Court of Appeals therefore correctly concluded that WUCIOA did not preclude MPMA's directors from voting by proxy in December 2017.

Similarly, the former Washington Nonprofit Corporation Act, chapter 24.03 RCW, which governed nonprofit corporations at the time of December 2017 board meeting, did not prohibit directors from using proxies. RCW 24.03.120 (2004). That act

was subsequently repealed and replaced with chapter 24.03A RCW in 2021. Although section 24.03A.565(5) of this new statute prohibits directors from using a proxy to count toward quorum or to vote, the statute was enacted three years ***after*** the December 2017 vote at issue. The cited statute is inapplicable.

Furthermore, the use of proxies in 2017 regarding a particular HOA does not create an issue of substantial public interest that should be determined by this Court. Indeed, only the parties to this proceeding, not the public, have any interest in the propriety of the December 2017 vote. Consequently, there is no RAP 13.4 basis for accepting review, and the Petition should be denied.

F. The Court of Appeals Ruling Is Consistent with RCW 58.17.215, and Any Purported Violation of Same Is Not a Matter of Substantial Public Interest.

RCW 58.17.215 sets forth the procedure for alteration of a subdivision and provides in relevant part:

> When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the

> alteration to the legislative authority of the city, town, or county where the subdivision is located. . . ***If the subdivision is subject to restrictive covenants*** which were filed at the time of the approval of the subdivision***, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.***

RCW 58.17.215 (emphasis added).

By its express terms, the statute only requires consent of all homeowners where a covenant will be violated. Because the Court of Appeals correctly found that the exit amendments did not violate the governing documents, RCW 58.17.215 is inapplicable. Moreover, the purported violation of a particular HOA's covenant is not a matter of substantial public interest. As with the proxy issue, any purported violation or RCW 58.17.215 is only of interest to the parties to this proceeding and does not warrant review under RAP 13.4(b)(4).

IV. CONCLUSION

The Petition for Review fails to satisfy any of the standards governing acceptance of review under RAP 13.4(b). Because the Court of Appeals correctly analyzed the legal issues and because no criteria warranting acceptance exist, the petition should be denied.

I certify that this memorandum contains 4,863 words in compliance with RAP 18.17.

Respectfully submitted this 26th day of June 2023.

TYSON & MENDES, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

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