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Whatcom County No. 12-2-02406-1

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COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON

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SUDDEN VALLEY COMMUNITY ASSOCIATION, a Washington  
homeowner's association,

Appellant,

v.

CURT CASEY, DAVE SCOTT, BARBARA VOLKOV, Washington  
residents,

Respondents.

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RESPONDENTS' RESPONSE BRIEF

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COURT OF APPEALS DIV I  
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## I. INTRODUCTION

The Legislature intended the Homeowners' Association Act (RCW 64.38 et seq, the "Act") to provide consistent laws for the administration of homeowners' associations. The Legislature also intended the Act to provide members of such associations with legal protections. Consistent with this intent, the Legislature enacted RCW 64.38.025, which requires an association to submit any proposed budget to its membership for ratification according to its specified procedures.

Historically, SVCA has submitted two proposed budget measures for a membership vote at its annual meeting: (1) a measure that contains proposed expenditures for the upcoming year, and (2) a measure that contains the proposed dues for the upcoming year. Taken together, the proposed budget is balanced, because the amount of the proposed expenditures is based on the amount of the proposed dues.

Historically, SVCA has applied two very different standards to determine the outcome of the membership votes on the two budget measures: (1) it has applied RCW 64.38.025(3) to determine whether the membership vote ratified or rejected the measure on proposed expenditures, and (2) it has applied Article III, Section 19 of its Bylaws to determine whether the membership vote approved or rejected the measure on proposed dues. Because these two standards are so different – RCW

64.38.025(3) makes it very easy to ratify a budget measure and Article III, Section 19 of SVCA's Bylaws make it very hard to approve a dues increase – the determined outcomes of the two votes have frequently been contradictory: namely, SVCA has determined that the membership vote ratified the measure on expenditures (per RCW 64.38.025(3) and rejected the measure on dues (per Article III, Section 19). As a result, the proposed annual budget has been out of balance because there are not dues to support the approved expenditures.

Historically, SVCA has responded to this awkward situation by adopting “spending plans” based on the pre-existing dues structure. The problem with these “spending plans” is that they are never submitted to the membership for ratification and they ignore the budget measure on expenditures that the membership actually ratified.

The Plaintiffs filed this lawsuit and secured the following declaratory relief in the trial court:

1. Any dues and assessment measure proposed by the Sudden Valley Community Association must be ratified by membership vote in accordance with the requirements of RCW 64.38.025. To the extent that RCW 64.38.025 (the “statute) and Article III, Section 19 of the SVCA Bylaws are inconsistent, the statute governs.
2. RCW 64.38.025 requires SVCA to submit to its membership for ratification vote a unified budget proposal that includes both proposed expenditures and proposed revenues in a single measure.

3. The SVCA Board's practice of adopting "spending plans" without submitting such plans to a ratification vote of the membership violates RCW 64.38.025.

On appeal, SVCA argues that the trial court erred because the "budget" referenced in RCW 64.38.025(3) is simply a planning tool and does not apply to an association's imposition of dues and assessments through dues measures. SVCA argues that nothing in the Act limits an association's authority to impose dues and assessment on its members. The upshot of SVCA's argument is that the state's various homeowners' associations would be free to impose dues and assessments on their members howsoever their various boards or their various governing documents provide and the members would have no recourse other than whatever protection might – or might not – be contained in the association's governing documents.

By contrast, the Plaintiffs argue that SVCA's dues measures are "budget" measures to which RCW 64.38.025(3) applies. Moreover, Plaintiffs argue that the Legislature intended the Act to provide members with the right to ratify or reject not only how the association proposes to spend its members' money but also how the association proposes to raise money from its members. Furthermore, the Plaintiffs argue that the Legislature intended the Act to provide the same standard for determining

when a membership vote ratifies a spending measure and when a membership vote ratifies a revenue measure: namely, RCW 64.38.025(3).

On appeal, SVCA offers no argument to rebut the trial court's declaration that RCW 64.38.025(3) requires an association to submit a single, unified budget measure – that includes both expenditures and revenues – for membership ratification rather than bifurcated budget measures (one for expenditures, another for revenues). In support of the trial court's declaration, the Plaintiffs argue that a “budget” by definition includes both revenues and expenditures -- not one or the other. Consistent with that definition, RCW 64.38.025(3) specifies that in the event the members reject the “budget” proposal, the association is to operate according to its last ratified budget until such time as a new budget is ratified, and RCW 64.38.035 specifies that whenever any change in an approved budget result in a change in the assessments of the members, the budget change must be presented to the membership for ratification or rejection. Clearly the Legislature intended such a “budget” to include both dues and expenditures – not one or the other.

Finally, on appeal, SVCA argues that its “spending plans” do not violate RCW 64.38.025(3) because they are no different than any other adjustment to the budget that a board might make to address a change in fiscal circumstances, and such adjustments do not require membership

approval. In contrast, the Plaintiffs argue that the “spending plans” ignore RCW 64.38.025(3) (which requires membership ratification of any budget), ignore RCW 64.38.035 (which require any “changes in the previously approved budget that result in a change in assessment obligation” to be submitted to the membership for a membership vote), and make a mockery of any notion that the Act gives members *any* control over the association’s budget. If an association is free to ignore the membership ratification of the budget by way of adopting a “spending plan,” what’s the point of submitting the proposed budget to a membership vote? If SVCA’s interpretation of RCW 64.38.025(3) is correct then the Act provides members with no real right to ratify or reject dues, and no real right to ratify or reject proposed budgets for expenditures, because the board is always free to disregard a budget that has been ratified by the members in favor of a “spending plan” that has been prepared by staff. This cannot be what the Legislature intended.

This court should affirm the trial court and award Plaintiffs their reasonable attorney’s fees on appeal in an amount to be determined.

## **II. STATEMENT OF THE CASE**

Historically, SVCA has applied different standards for determining whether the membership vote ratified or rejected the respective budget measure: (1) it has applied RCW 64.38.025(3) to

determine whether the membership vote ratified the budget measure for expenditures, (CP 218) and (2) it has applied Article III, Section 19 of its Bylaws to determine whether the membership vote approved or rejected the budget measure for dues (CP 218). The two standards are very different. RCW 64.38.025(3) makes it very easy for an association to pass a dues increase: unless a majority of the votes that could possibly be cast at an association meeting (not a majority of the votes actually cast at the meeting) vote to reject the measure, the proposed dues increase is ratified. Article III, Section 19 of the SVCA Bylaws makes it very difficult to pass a dues increase: unless sixty percent (60%) of the votes actually cast at the association meeting vote in favor of the dues increase, the dues increase fails.

Because of this difference in standards, SVCA has frequently determined that the membership ratified the budget measure for expenditures for a given year and rejected the budget measure for revenues for the same year. The upshot has been that SVCA has frequently found itself with annual budgets that are not adequately funded. CP 220-223. Rather than proposing a new budget (based on pre-existing dues and assessments) for membership approval, SVCA's solution to this problem has been to ask its staff to prepare so-called "spending plans" for the upcoming fiscal year based on lower projected

revenues. CP 221, 223, 226. The Board has then adopted the “spending plans” without submitting them to a membership vote. *Id.* These “spending plans” have been contrary to the budgets for expenditures that the membership ratified. CP 339, 341-351, 365-373, 379, 381, 385-387.

SVCA adopted such “spending plans” for calendar years 2010, 2011, and 2012, to address the problem presented by its determination that its members had ratified the proposed expenditure measure (per RCW 64.38.025(3) and had rejected the proposed dues measure (per Article III, Section 19 of its Bylaws) for those calendar years. CP 220-223. Had SVCA applied RCW 64.38.025(3) instead of Article III, Section 19 of its Bylaws to its determinations of the outcomes of the membership votes on the proposed dues measures for calendar years 2010, 2011, and 2012, each of those dues measures would have been ratified, the total proposed budgets for those years would have been balanced, and the circumstances which gave rise to the Board’s decisions to adopt “spending plans” would have been avoided altogether. CP 221 at footnote 1, CP 222 at fn 3, and CP 225 at fn 5.

### **III. ARGUMENT**

The meaning of a statute is a question of law reviewed *de novo*. *State Department of Ecology v. Campbell & Gwinn LLC*, 146 Wn.2d 1, 9 (2002) The court's fundamental objective is to ascertain and carry out the

Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Id.* at 10. In discerning a statute's "plain meaning" the court examines "all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Id.* at 11. If after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Id.* at 12.

The statute in question is RCW 64.38.025(3), which reads as follows:

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

**A. When the Homeowners' Association Act (RCW 64.38 et seq) is read as a whole, it is clear that the Legislature intended the ratification procedures of RCW 64.38.025(3) to apply to any proposed dues measure.**

**1. Any measure to increase or decrease dues is a "budget" measure.**

SVCA argues that RCW 64.38.025(3) does not apply to the membership vote on its dues measures, because the dues measure are not

“budget” measures. This argument flies in the face of common sense and any understanding of what “budget” means. By any definition, a “budget” includes projected revenues as well as projected expenditures.<sup>1</sup> Numerous state statutes mandate that any proposed budget include not only projected expenditures but also projected revenues.<sup>2</sup> What are the most common words associated with a “budget”? Balanced. Out of balance. Deficit. All of these words describe the relationship between revenues and expenditures within the budget. That’s because a “budget” is understood to include both revenues and expenditures. A budget would hardly be a useful planning tool if it only took into account the association’s expenditures irrespective of its revenues.

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<sup>1</sup> Webster’s New Collegiate Dictionary defines “budget” as:

A statement of the financial position of an administration for a definite period of time based on estimates of expenditures during the period and proposals for financing them.

Black’s Law Dictionary, Sixth Edition, defines “budget” as:

A balance sheet or statement of estimated receipts and expenditures. A plan for the coordination of resources and expenditures. The amount of money that is available for, required for, or assigned to a particular purpose.

<sup>2</sup> See, e.g. RCW 36.40.040 (county government’s proposed budget must include both projected revenues and expenditures); RCW 43.88.030 (state government’s biennial budget proposal must include both projected revenues and projected expenditures); RCW 53.35.010 (Port Districts’ proposed budget must include both anticipated revenue and projected expenditures).

The “budget” referenced in RCW 64.38.025 encompasses not only the proposed expenditures (which SVCA concedes) but also the proposed revenues. The dues measures are the proposed revenues. Therefore, RCW 64.38.025(3) applies to the determination of any membership vote on an association’s proposed dues measure.

**2. In RCW 64.38.025(4) the Legislature demonstrated that it intended the membership vote on the “budget” to include a vote on any “additional dues” and the “funding plan” on which the budget was based.**

SVCA does not dispute that the association’s proposed budget must be ratified by a vote of the membership in accordance with RCW 64.38.025(3). CP 218. Instead, SVCA argues that the association’s source of funding – the dues and assessments – is distinct from the “budget” described by RCW 64.38.025(3), and because of this distinction, SVCA is free to apply Article III, Section 19 of its Bylaws to the determination of whether the membership approves new dues and assessments.

SVCA’s position is contradicted by the plain language of RCW 64.38.025(4) which requires that the “budget” submitted to the members for ratification includes any “additional regular or special assessments”.

It reads (with emphasis added):

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

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

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

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

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

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

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

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

If the members vote to reject the “budget,” then clearly the “additional regular or special assessments [that were] scheduled to be imposed” ((4)(b)) would be rejected. If the members vote to reject the “budget”, then clearly that portion of “[t]he current amount of regular assessments budgets for contribution to the reserve account . . . and the funding plan upon which the recommended contribution rate is based” ((4)(a)) would be rejected. The Legislature clearly intended the imposition of dues to be part of the “budget” submitted to the membership for a vote per RCW 64.38.025(3). Otherwise, it would not have required the regular assessment to be included in the budget.

SVCA correctly points out that the Legislature adopted RCW 64.38.025(4) in 2011 to impose the requirement of a reserve account (as found in the Condominium Act) on homeowners’ associations. *Appellant’s Brief*, pp. 13-19. SVCA argues that because section 4 was adopted later to deal with reserves it sheds no light on the meaning of “budget” in section 3. This is silly. The “budget” referenced in section 4 is the same budget as the “budget” referenced in section 3. Because the Legislature explicitly required the summary of the “budget” to include any “additional regular or special assessments [that] are scheduled to be imposed”, it clearly intended the membership vote on that budget to include a vote on the assessments.

3. **In RCW 64.38.035, the Legislature specifically linked approval of the budget to approval of any increase in the membership's assessments.**

RCW 64.38.025 specifies how an association's budget proposal must be ratified by a membership vote. The original version of RCW 64.38.035, which was adopted in 1995 when RCW 64.38.025(3) was adopted, specifies how an association must provide its members with prior notice of any such budget proposal. It states (with emphasis added):

**64.38.035. Association meetings--Notice--Board of directors**

(1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors **for a vote by the owners**, including the general nature of any proposed amendment to the articles of incorporation, bylaws, **any budget or changes in the previously approved budget that result in a change in assessment obligation**, and any proposal to remove a director.<sup>3</sup>

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<sup>3</sup> In 2013, the Legislature amended RCW 64.38.035 to read (in relevant part) as follows (emphasis added):

**64.38.035. Association meetings--Notice--Board of directors**

(1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association.

. . . .

(3) The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the

This notice provision clearly links “budget” and “change in assessment obligation.” If a proposed change in the previously approved budget results in a change in assessment obligation, the association must provide its members prior notice and submit the proposed budget to a membership vote. Clearly, the Legislature intended the members’ vote on the “budget” proposal (per RCW 64.38.025(3)) to include a vote on the “change in assessment obligation.” Otherwise, it would not have required notice and a membership vote whenever an association’s proposed budget changes the assessment obligation.

If, as SVCA argues, the Legislature did not intend the Act to regulate how an association imposes and collects dues, why did the Legislature require an association to submit any budget proposed that “results in a change in assessment obligation” to a membership vote? If, as SVCA argues, the Legislature did not intend the word “budget” in RCW 64.38.025(3) to include the imposition of dues and assessments, then the relevant portion of RCW 64.38.035 would have read:

The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles

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articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

The same relevant language is found in both the original and the amended statute.

of incorporation, bylaws, any budget ~~or changes in the previously approved budget that result in a change in assessment obligation~~, and any proposal to remove a director.

Just as RCW 64.38.035 requires the association to provide its membership with notice and the opportunity to vote on any “changes in the previously approved budget that result in a change in assessment obligation”, RCW 64.38.025(3) requires the association to submit any proposed dues measure to a membership vote. The outcome of such a vote is determined by RCW 64.38.025(3) – not the association’s bylaws.

- 4. In RCW 64.38.005, the Legislature stated that it intended the Act to provide consistent laws for the administration of homeowners’ associations. This consistency includes how association members ratify or reject dues measures.**

The Legislature’s stated intent for the Act is found in RCW 64.38.005, which states (emphasis added):

The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations.

Clearly, a central function to how a homeowners’ association is administered is how it raises revenues from its members. Plaintiffs argue that RCW 64.38.025(3) gives members the right to ratify or reject dues measures. This is consistent with the intent stated in RCW 64.38.025(3): namely that the same law apply to all associations.

SVCA argues that nothing in the Act governs how an association raises dues and nothing in the Act gives the members the right to reject or ratify any dues measure. *Appellant's Brief*, pp. 21-24. Instead, SVCA argues that every association is free to impose dues in accordance with whatever standard might be set forth in its governing documents. How is it “consistent” to let homeowners’ associations across the state adopt whatever standard they see fit (per their Bylaws) for the imposition of assessments? How is it “consistent” to apply one standard to expenditures (per RCW 64.38.025(3)) and another to dues (per any given association’s Bylaws)?

SVCA’s reading of RCW 64.38.025(3) would result in wildly inconsistent rules for how associations impose dues. This is clearly inconsistent with the intent set forth in RCW 64.38.005: to provide consistent laws.

5. **In RCW 64.38.030 the Legislature did not require an association’s bylaws to have any rules relating to how dues are imposed on the membership. This is because the Legislature intended the imposition of dues to be regulated by RCW 64.38.025(3) – not an association’s bylaws.**

RCW 64.38.030 specifies certain minimum requirements for any association’s bylaws.

**64.38.030. Association bylaws**

Unless provided for in the governing documents, the bylaws of the association shall provide for:

- (1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;
- (2) Election by the board of directors of the officers of the association as the bylaws specify;
- (3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;
- (4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;
- (5) The method of amending the bylaws; and
- (6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate.

None of these requirements include how dues are imposed on members.

From the Plaintiffs' perspective this makes sense, because Plaintiffs argue that the requirements with respect to the imposition of dues is not a matter left to an association's bylaws. Because RCW 64.38.025(3) specifies how such dues are imposed, associations are not free to adopt conflicting bylaws on this issue.

The absence of any requirement that the bylaws provide for the imposition of dues and assessments presents a problem for SVCA. If neither the statute (RCW 64.38.025(3)) nor the bylaws make any provision for how dues are imposed, then presumably, a board of an association is free to impose dues *willy nilly* or howsoever the board sees fit. This is

hardly consistent with the Legislature’s stated intent “to provide consistent laws regarding the formation and legal administration of homeowners’ association.” RCW 64.38.005.

**6. No reading of RCW 64.38.020 overcomes the overwhelming evidence that the Legislature intended the “budget” measure of RCW 64.38.025(3) to include dues measures.**

The best evidence that SVCA musters in support of its argument that the ratification procedures of RCW 64.38.025(3) does not apply to dues measures is its discussion of RCW 64.38.020(2), which states:

**64.38.020. Association powers**

Unless otherwise provided in the governing documents, an association may:

...

(2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;

SVCA argues that because the Legislature makes separate reference in RCW 64.38.020 to “budgets for revenues” and “impose and collect assessments” that the Legislature intended the word “budget” in RCW 64.38.025(3) to be distinct and different from the imposition of dues and assessments. *Appellant’s Brief, pp. 10-12.* There are several problems with this argument.

First, the Legislature included the power to “adopt and amend budgets for revenues” and the power to “impose and collect assessments

for common expenses from owners” in the same sentence of the same subsection of the statute. RCW 64.38.020(2). This indicates that the Legislature intended this to be part and parcel of a single power – not distinct powers as SVCA argues.

Second, SVCA’s reading ignores the obvious: RCW 64.38.020(2) specifically provides for “budgets for revenues.” Dues are revenues. RCW 64.38.020(2) states that such dues/revenues should be adopted as part of a budget. RCW 64.38.025, in turn, specifies how such budgets are to be adopted.

Third, RCW 64.38.020(2) only specifies what powers the association has – not how those powers are to be exercised. The question of how the power to “impose and collect assessments” is exercised is specified in RCW 64.38.025: namely, the board proposes a dues measure as part of a “budget”, and the membership ratifies the measure or rejects it.

Fourth, SVCA’s reading of RCW 64.38.020(2) conflicts with RCW 64.38.035, *supra*. In RCW 64.38.035, the Legislature clearly links the association’s power to adopt budgets with the association’s power to impose dues. Indeed, when read together, RCW 64.38.035 and RCW 64.38.025(3) require the association to give its members notice of any proposed dues increase and subject that proposed increase to a membership vote as part of the budget ratification process.

**7. The Legislature’s intent to apply RCW 64.38.025(3) to any measure that imposes dues is clear enough. The fact that it did not explicitly abrogate inconsistent bylaws – as it did with flags and political yard signs -- is not persuasive.**

SVCA argues that if the Legislature intended RCW 64.38.025(3) to apply to dues measures, it would have made its intent clearer because such application is “radical” and would have surprised the members of SVCA. *Appellant’s Brief*, pp. 25-26. This argument is unpersuasive for several reasons.

First, it is far from clear that SVCA’s members should be “surprised” by any requirement imposed by the Act, because Appendix J to SVCA’s ACC Guidelines explicitly states that the Act takes precedence over SVCA’s bylaws:

The Homeowners’ Association Act (Revised Code of Washington {RCW} 64.38) became effective July 23, 19905 and takes precedence over SVCA Bylaws.

CP 218, 257-302.

Second, even if Plaintiffs’ reading of RCW 64.38.025(3) were to upset whatever expectations SVCA members had in Article III, Section 19 of their Bylaws, there is no evidence to suggest that Plaintiff’s reading of RCW 64.38.025(3) would have any impact on the expectations or bylaws of any other homeowners’ association in Washington. SVCA provided no such evidence in the trial court. There is no such evidence in the record

before this court. This court should resist SVCA's "Chicken Little" argument that adopting the Plaintiffs' reading of RCW 64.38.025(3) will have a radical impact on anything other than SVCA, which has chosen to ignore RCW 64.38.025(3) in favor of its Bylaws.

Third, the Legislature did make its intent clear. An association cannot have a budget without revenues. A dues measure is a budget measure. Any proposed budget must be put to the members for a vote. RCW 64.38.025(3). And any change in a previously approved budget that results in a change in the assessments of members must be put before the members for a vote. RCW 64.38.035. The Legislature's intent is clear enough.

SVCA argues that the Act's explicit abrogation of an association's governing documents with respect to flag display (RCW 64.38.033) and political yard signs (RCW 64.38.034) is evidence that the Legislature did not intend RCW 64.38.025(3) to abrogate an association's governing documents with respect to the imposition of dues. *Appellant's Brief*, pp. 26-28.

RCW 64.38.025(3) made the requirement that a board submit its proposed budget to a membership vote mandatory. It did not use "may"; it

used “shall.”<sup>4</sup> If, as Plaintiffs argue, a dues measure is a budget measure then the association must submit the dues measure to a membership vote per the statute. This is sufficient and conclusive evidence that the Legislature intended to abrogate any inconsistent provisions of an association’s governing documents.

The fact that the Legislature chose to make such abrogation explicit with respect to flag display and political yard signs is not evidence of its intent with respect to the “budget” in RCW 64.38.025(3). RCW 64.38.005 explicitly stated that the Legislature intended the Act to provide consistent laws for the formation and legal administration (including the imposition of dues) of all homeowners’ associations when the Act was passed in 1995.<sup>5</sup> The obvious explanation for the explicit statements of abrogation in RCW 64.38.033 and RCW 64.38.034 is that neither of those

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<sup>4</sup> (3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board **shall** set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners **shall** be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

<sup>5</sup> **RCW 64.38.005. Intent**

The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners’ associations.

provisions were part of the Act when it was first adopted. RCW 64.38.033 was adopted in 2004 (eff. June 10, 2004) and RCW 64.38.034 was adopted in 2005 (eff. July 24, 2005). By making explicit its statement of abrogation in 2004 and 2005, the Legislature avoided any confusion about whether its stated intent from 1995 (RCW 64.38.005) applied to the later enactments. Moreover, it is not entirely clear that regulations governing flag display and political signs involve “the formation and legal administration of homeowners’ associations.” RCW 64.38.005.

**B. If after reading RCW 64.38.025(3) in light of the entire Act the court still finds the meaning of “budget” to be ambiguous, then it should look to the legislative history and other statutes. Such a broader interpretation also supports the Plaintiffs’ position.**

If after reading RCW 64.38.025(3) in light of the entire Act, the court finds “budget” to be ambiguous, it should look to the Act’s legislative history and other related statutes. *State Department of Ecology v. Campbell & Gwinn LLC*, *supra*, at 12.

**1. The legislative history clearly indicates that the Legislature intended the Act to provide membership protections like the right to ratify or reject any proposed dues measure.**

The clearest statement of what the Legislature intended with respect to RCW 64.38.025(3) is found at RCW 64.38.005: “to provide consistent laws regarding the formation and legal administration of homeowners’ associations.” (See Section A.4 above.) In addition to RCW

64.38.005, the court can look to the Act's legislative history. The House Bill Report for the Act, HB 1471, states in relevant part (emphasis added):

The bill provides a set of basic rules and procedures by which homeowners' associations must operate in order to protect individual association members.

CP 81-84.

The Plaintiffs argue that RCW 64.38.025(3) provides a set of rules and procedures by which members are given the right to ratify or reject any dues increase proposed by the board. This is consistent with the intent to protect individual members.

SVCA argues that nothing in the Act gives the members the right to ratify or reject any such proposed dues increase. *Appellant's Brief*, pp 21-24. SVCA defends its reading of RCW 64.38.025(3) by pointing out that its Bylaws happen to provide greater protection for its members against dues increases than RCW 64.34.025(3). *Id.*, pp. 21-23. This is not a sound argument for statutory interpretation. RCW 64.38.025 is to be construed according to what the Legislature intended – not according to the SVCA Bylaws. If SVCA's reading of the Act is correct, another association might have bylaws that give members no right to approve or reject a dues increase. SVCA's reading is contrary to the intents expressed by RCW 64.38.005 (“consistent laws”) and HB 1471 (protection of members).

2. **The closely related Condominium Act (RCW 64.34 et seq) specifies that assessments can only be made by adoption of a budget that is ratified by the unit owners. This is strong evidence that the Legislature also intended dues and assessments by homeowners' associations to be subject to ratification by the members.**

Washington's Homeowners' Association Act, which was adopted by the Legislature in 1995, is closely related to Washington's Condominium Act (RCW 64.34 *et seq.*), which was adopted in 1989. Indeed, RCW 64.38.025(3) and (4) (which are the subject of this dispute) are virtually identical to RCW 64.34.308(3) and (4).<sup>6</sup> Because the two

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<sup>6</sup> **64.34.308. Board of directors and officers**

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(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

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

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

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

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year

statutes are closely related, it is appropriate to look to the Condominium Act for guidance in determining what the Legislature intended by “budget” in RCW 64.38.025(3). *Campbell, at 11.*

The Condominium Act clearly states that assessments against condominium owners can only be “based on budget adopted by the association.”

#### **64.34.360. Common expenses--Assessments**

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

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to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

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

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

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

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

And RCW 64.34.308(3) (see fn 3, *supra*) specifies that budgets (including the assessments) must be ratified by a vote of the unit owners – in the same manner that budgets must be ratified by a vote of the members of the Homeowners’ Association (RCW 64.38.025(3)).

RCW 64.38.025(3) was clearly based on RCW 64.34.308(3). The fact that the Legislature intended (and explicitly provided) for assessments against condominiums to be based on a budget ratified by the members of the condominium association per RCW 64.34.308(3), is strong evidence that the Legislature also intended dues and assessments to be part of the budget that must be ratified by the members of the homeowners’ association per RCW 64.38.025(3).

Why would the Legislature intend to give condominium owners the right to ratify or reject an assessment to pay for common expenses through the budget adoption process (RCW 64.34.308) and not intend to give that same protection to a members of a homeowners’ association? Because the Legislature lifted the language of RCW 64.38.025(3) from RCW 64.34.308(3), it is reasonable to infer that the Legislature intended to give members of homeowners’ associations the same rights as those previously provided to condominium members: namely, the right to ratify or reject a dues increase through the budget adoption process.

SVCA argues that because the Legislature specified that “assessments must be made against all units, based on a budget adopted by the association” in RCW 64.34.360 (the Condominium Act) and included no such qualification in the definition of “assessment” in RCW 64.34.010(1) (the Homeowners’ Association Act), the Legislature intended budgets for homeowners’ associations to be “even further de-linked from the imposition of assessments than with condominiums governed by the WCA.” *Appellant’s Brief*, p. 21. But the text of the Act itself shows no such “de-linkage.” RCW 64.34.020(2) specifies that a homeowner’s association shall have the power to “[a]dopt and amend budgets for revenue.” And RCW 64.38.035 specifies that whenever a budget proposal changes the assessment on the members, the association must submit that proposal to a membership vote. (See Section A.3 above).

**C. SVCA’s practice of adopting “spending plans” without membership approval whenever it finds that its membership has rejected its proposed dues measure violates RCW 64.38.025(3).**

RCW 64.38.025(3) states:

In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

SVCA's practice of adopting "spending plans" without membership approval violates RCW 64.38.025(3) in three ways:

1. The "spending plans" ignore the budget measures that the members ratified per RCW 64.38.025(3);
2. The "spending plans" are never presented to the membership for ratification; and
3. The "spending plans" fail to revert to a budget that was previously ratified by the members "until such time as the owners ratify a subsequent budget proposed by the board of directors."

**1. Calling it a "spending plan" does not mean it's not a "budget."**

SVCA has attempted to skirt the requirements of RCW 64.38.025(3) by calling its staff-generated budgets "spending plans" instead of "budgets". But in the immortal words of Richard Darman, "If it looks like a duck, walks like a duck, and quacks like a duck, it's a duck."<sup>7</sup> SVCA's "spending plans" are "budgets." RCW 64.38.025(3) requires SVCA's "spending plans" be ratified by membership vote.

**2. The "spending plans" are not updated budgets based on changed circumstances; they are the budgets themselves.**

SVCA argues that its adoption of "spending plans" is no different than a mid-fiscal year revision to the budget based on such changed circumstances as members defaulting on their dues or a commercial

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<sup>7</sup> Darman was the budget director for former President George H.W. Bush, and made the comment with respect to how he could recognize a tax increase passed by Congress.

tenant defaulting on its lease. *Appellant's Brief*, p. 34-35. Plaintiffs do not deny that the board has authority to adjust spending to deal with changes in circumstances that take place during the fiscal year after the budget is approved by the membership; such discretion is necessary to deal with circumstances beyond the board's control: e.g. a tenant defaulting on its lease or a downturn in the economy. Indeed, it is precisely such *unanticipated* changes in circumstances – ones that are unrelated to the level of dues assessed by the association – that are not included in RCW 64.38.035(3)'s notice requirement.

(3) The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any **budget or changes in the previously approved budget that result in a change in assessment obligation**, and any proposal to remove a director.

RCW 64.38.035 requires the association to give its membership notice and the opportunity to vote on any “changes in the previously approved budget that result in a change in assessment obligation.” (See Section A.3 above.) RCW 64.38.035 does not require the association to give its membership notice of a change in the budget that is not related to a change in assessments (like the loss of a commercial tenant or a downturn in the economy).

In this case, the “spending plans” were caused by “change[s] in the assessment obligation”; because SVCA determined that its members had rejected the proposed dues measures, its proposed budgets for expenditures (which were based on those proposed dues) were out of whack. This change in circumstance was within the board’s control: what dues are assessed on the members. This is the type of budget that requires notice to the members (RCW 64.38.035) and a membership vote (RCW 64.38.025(3)). The “spending plans” violate the Act.

**3. SVCA’s argument that forbidding its “spending plans” would be impractical is ironic because the “impracticality” is caused by SVCA’s misreading of RCW 64.38.025(3).**

SVCA argues that requiring it to submit a new budget for membership approval whenever its dues measures are rejected is both impractical and expensive. *Appellant’s Brief, p. 26 and fn 23*. This argument is ironic. Had SVCA applied RCW 64.38.025(3) to its determinations of the outcomes of the membership votes on its dues measures in 2009, 2010, and 2011, it would have concluded that all of the dues measures were ratified and all of its proposed budgets were balanced. The source of any “impracticality” has always been SVCA’s bifurcation of its budget proposal into two separate measures for membership votes, and its application of two, wildly different standards for determining the outcome of those votes.

If, as Plaintiffs argue, SVCA submitted a unified budget measure for a membership vote and applied RCW 64.38.025(3) to determine its outcome, then a single membership vote would decide the issue and there would never need to be a “spending plan”. If the membership vote ratified the budget, the issue would be decided; if the membership rejected the budget, SVCA would simply revert to the last budget ratified by the membership. RCW 64.38.025(3).

Even if the court were to declare that the Act permits SVCA to propose bifurcated budget measures for membership votes and that RCW 64.38.025(3) applies to the determination of the outcome of each of those votes, it is highly unlikely that SVCA would ever find itself with a divided outcome (ratification of the expenditure measure and rejection of the dues measure), because RCW 64.38.025(3) makes it very easy to ratify a proposed budget and very hard to reject a proposed budget.<sup>8</sup>

**4. At the very least, SVCA should have reverted to the budget last ratified by the members instead of following “spending plans” generated by staff.**

Even if the court were to find that RCW 64.38.025(3) does not apply to the dues measures and that the SVCA board was justified in

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<sup>8</sup> SVCA argues that applying RCW 64.38.025(3) to dues measures would give boards too much power over the pocketbooks of members because the dues measures would never be defeated. *Appellant’s Brief*, p. 23. This argument is ironic, given that SVCA argues that nothing in the Act gives the members the right to reject a dues measure. If, as SVCA warns, a board runs amok, the Act gives members the right to remove the board. RCW 64.38.025(5)

rejecting the membership's ratification of the budget for expenditures because that budget was later determined to be out of balance, the court cannot find that the board was free to adopt a staff-generated spending plan. RCW 64.38.025(3) specifies that if a budget is rejected, the association must revert to the budget last ratified by the members.<sup>9</sup> At the very least, SVCA should have reverted to the budget last ratified by membership vote. The board's adoption of "spending plans" to solve its budget crises violated RCW 64.38.025(3).

**5. The membership vote on the Budget does matter. The board is not free to adopt "spending plans" whenever it sees fit.**

SVCA argues that RCW 64.38.025(3) imposes no obligation on a board to follow a budget that has been ratified by the membership vote. *Appellant's Brief*, pp. 34-37. This is clearly contradicted by RCW 64.38.025(3), which states:

In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

The board is not free to adopt whatever budget it sees fit. The board is obligated to follow the last budget that was ratified by the membership.

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<sup>9</sup> "In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors."

If the board had the discretion that SVCA claims, the statute would neither require a membership vote for ratification nor require the board to follow the last budget to be ratified in the event of membership rejection. The membership vote does matter. Both revenue measures and expenditure measures must be put to a membership vote in accordance with RCW 64.38.025(3). To interpret RCW 64.38.025(3) otherwise would render the membership vote meaningless.

**D. If, as SVCA argues, only Article III, Section 19 of the SVCA Bylaws governs the adoption of dues measures, then SVCA collected dues that were never authorized by its Bylaws.**

Under Article III, Section 19 of the Bylaws, “Annual dues and assessment shall be established by the board and approved by the membership by a vote of not less than sixty percent (60%) of the members present in person or by mail-in ballot at an annual or special meeting.” CP 240-241. Unlike RCW 64.38.025(3), the Bylaws have no provision for what happens when the membership rejects a dues increase.<sup>10</sup> A plain reading of the Bylaws is that annual dues are to be

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<sup>10</sup> RCW 64.38.025(3) specifies that “In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.” Thus, in the event the membership rejected a dues increase, RCW 64.38.025(3) provides that the last dues increase to be ratified would remain in effect.

presented to the membership for approval annually. In other words, the membership must approve the annual dues each and every year.

This reading is consistent with the dues measures that the SVCA membership has voted on. At the March 29, 2008, special general meeting the membership voted on the following (emphasis added):

Measure #1: **2008** Dues Increase

The Total Annual Dues **for 2008** shall be approved at \$612.88 for Undeveloped Lots and \$717.56 for Developed Lots with a minimum of \$133.36 allocated to the road reserve and \$95.00 allocated to capital requirements **for the Calendar Year 2008**.

CP 306. The membership approved this dues increase for 2008. Nothing in the proposal indicates that the dues would be imposed in years subsequent to 2008.

In practice, however, SVCA imposed this 2008 dues increase on its members in calendar years 2009, 2010, 2011, and 2012. CP 220, 221, 222, and 227. SVCA justifies its imposition of the 2008 dues in subsequent years by arguing that once a dues measure is passed, it continues in perpetuity. CP 133-132. Thus, even though the SVCA Board found that its members had rejected the dues proposals for 2010, 2011 and 2012, it continued to impose the dues “for the Calendar Year 2008” in the four subsequent years. As a result, SVCA members were

deprived of any opportunity to approve or reject the dues that were actually imposed for calendar years 2009 – 2012.

Under the Plaintiffs' reading, RCW 64.38.025(3) applies to dues measures, and if a dues measure fails to pass in a given year, then the dues measure "last ratified by the membership" will remain in place. Thus, RCW 64.38.025(3) would permit SVCA's practice of carrying over previous dues increases to the following years. Absent the carryover provision of RCW 64.38.025(3) or some similar carryover provision in the SVCA Bylaws, there is no justification for SVCA's imposition of the dues "for Calendar Year 2008" in the subsequent calendar years of 2009-2012. If, as SVCA argues, Article III, section 19 of its Bylaws applies to the determination of whether its members approve a dues increase and its members did not approve dues measures for 2009-2012, then no dues should have been imposed on the members for those calendar years.

The trial court adopted the Plaintiffs' reading of the statute and ruled that RCW 64.38.025(3) applies to the passage of dues measures. If this court overturns the trial court and rules that RCW 64.38.025 does not apply to SVCA's dues measures, then it should also rule that SVCA improperly collected dues in 2009, 2010, 2011, and 2012. Alternatively, it should remand the case to the trial court for such a determination.

**E. The court should affirm the trial court’s declaration that RCW 64.38.025 requires SVCA to present a unified budget – one that includes both expenditures and revenues.**

The trial court declared not only that RCW 64.38.025 applies to SVCA’s proposed dues measures and that SVCA’s “spending plans” violated the Act; the trial court also declared that the Act requires the association to submit a unified budget measure for membership ratification. *Appellant’s Brief* does not address this issue.

RCW 64.38.025(3) specifies that in the event a budget is not ratified by the members, the association is to continue to operate under the last budget that was ratified by the members.<sup>10</sup> Unless the “budget” described by RCW 64.38.025(3) is interpreted to include both revenues and expenditures in a single, unified budget measure, then this statutory mandate for reverting to the “budget last ratified by the owners” carries a likelihood of forcing an association to follow a budget that is not properly funded. In other words, if, as SVCA argues, an association is free to present its membership with bifurcated budget measures -- one for expenditures and another for revenues – then there is a risk that the members will ratify the expenditures but not ratify the revenue, leaving

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<sup>10</sup> “In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.”

the association with the mandate to follow a budget that is not fully funded. This cannot be what the Legislature intended by a “budget” in RCW 64.38.025(3).

The Legislature intended the “budget” described in RCW 64.38.025(3) to be a unified budget that included both revenues and expenditures. Under this interpretation of “budget”, there would never be a situation where expenditures are ratified but revenues are rejected resulting in a “budget” that cannot be properly implemented because it is under-funded. Under the statute, if the membership failed to ratify the unified budget, the association would simply revert to the last unified budget that was duly ratified. RCW 64.38.025(3).<sup>11</sup>

This reading of “budget” is consistent with the legal definition of budget, which includes both revenues and expenditures. (See Section A.1 and fn. 3 and fn 4 above.) This reading is consistent with RCW 64.38.025(4) which makes assessments part of the budget. (See Section A.2 above). This reading of budget is consistent RCW 64.38.035(3), which explicitly links the “budget” to any change in the assessments on members.<sup>12</sup> (See Section A.3 above.)

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<sup>11</sup> “In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.”

<sup>12</sup> (3) The notice of any meeting shall state the time and place of the meeting and the

**F. Attorney's Fees.**

**1. The court should award Plaintiffs their attorney's fees on appeal.**

RCW 64.38.050 authorizes the court to award the prevailing party its attorney's fees "in an appropriate case."

**RCW 64.38.050. Violation--Remedy--Attorneys' fees**

Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

This is an appropriate case.

SVCA violated the Homeowners' Association Act by applying Article III, Section 19 of its Bylaws – instead of RCW 64.38.025(3) – to its determination of whether the membership vote approved or rejected its proposed dues measures. This application of the wrong standard was not harmless. On the contrary, it repeatedly resulted in SVCA finding that dues measures that would have been ratified per RCW 64.38.025(3) were rejected per the Bylaws.

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business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget **or changes in the previously approved budget that result in a change in assessment obligation**, and any proposal to remove a director.

SVCA violated the Act by adopting “spending plans” as its annual budgets without submitting those spending plans to membership approval as required by RCW 64.38.025(3).

SVCA violated the Act by submitting bifurcated budget measures – one for expenditures and another for dues – to the membership for approval instead of a unified budget measures (that included both expenditures and dues).

The Plaintiffs ask the court to affirm the trial court’s award of attorney’s fees and to award Plaintiffs their reasonable attorneys’ fees on appeal in an amount to be determined by the commissioner. RAP 18.1.

**2. SVCA is not entitled to recover its attorney’s fees.**

SVCA does not challenge the amount of the trial court’s award of attorney’s fees to Plaintiffs. Instead, SVCA argues that it should be awarded its attorney’s fees because Plaintiffs misinterpreted the Act and because one of the Plaintiffs, Curt Casey, violated RCW 24.03.113. *Appellant’s Brief, pp. 37-38.*

**a. RCW 24.03.113 is no basis for an award of attorney’s fees under RCW 64.38.050.**

SVCA argues that it should be awarded its attorney’s fees because one of the Plaintiffs, Curt Casey, was president of the board of directors during one of the years that the board adopted a spending plan. SVCA

argues that per RCW 24.03.113, Casey was duty bound to dissent from this board action, and because Mr. Casey did not dissent, SVCA appears to argue that it is entitled to recover its attorney's fees under RCW 64.38.050. *Appellant's Brief, p. 38*

This does not make sense. The record is clear. Curt Casey was president of the SVCA board from 2009-2010. While he served as president, he was instrumental in putting before the membership a proposal to amend Article III, Section 19 of the SVCA Bylaws to conform with RCW 64.38.025(3). This proposal was rejected by a membership vote. *Declaration of Curt Casey in Support of Plaintiff's Reply Brief, p. 2, in Appendix.* Casey has always been a strong advocate for Plaintiffs' position in this lawsuit.

While Casey served as president of the board, he only voted on motions brought before the board in order to break a tie vote among the other members; otherwise, he did not vote. *Id. p. 1.* In 2009, the board voted to adopt a "spending plan" for the 2010 calendar year. Casey did not vote on this measure, because the motion passed by a vote of the other members. *Id. p. 2.*

Whether or not Casey was duly bound by RCW 24.03.113 to dissent from the adoption of the spending plan, as SVCA argues, is beyond the scope of this appeal, is not properly briefed, and is not, in any

event, a violation of RCW 64.38.050 that would entitle SVCA to recover its attorney's fees.

- b. Even if the court rules in SVCA's favor, it would not be appropriate to award SVCA its attorney's fees under RCW 64.38.050 because SVCA has not been aggrieved by any violation of the Act.**

RCW 64.38.050 does not mandate an award of attorney's fees to the prevailing party; instead, the statute gives the court discretion to award attorney's fees "in an appropriate case." Even if the court were to rule in SVCA's favor, this is not "an appropriate case" for an award of attorney's fees. The Legislature intended the Act to protect members with certain protections against actions by the association; the Act was not intended to protect associations from actions by their members.

Along those same lines, RCW 64.38.050 itself states that the Act provides "an aggrieved party" to a remedy for "[a]ny violation of the provisions of this chapter."

**RCW 64.38.050. Violation--Remedy--Attorneys' fees**

Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

In this case, SVCA does not claim to be an "aggrieved party" under the Act. Even if the court were to find in SVCA's favor, it cannot also find that SVCA has suffered "any violation of the provision of this chapter."

SVCA is simply the defendant. While they have disagreed with the Plaintiffs' interpretation of RCW 64.38.025(3), they have not alleged – nor could they – that they have “violated any provision of the Act” by bringing this lawsuit.

It is appropriate that members who prevail in their allegations that their association has violated the Act should recover their attorney's fees, for the following reasons:

1. The members are seeking to protect rights that have been granted to them by the Legislature.
2. The members' claims are not personal but adhere to the benefit of all other members in the association. If the members who bring the suit prevail, all other members benefit from the proper enforcement of the law.
3. There is no government agency that oversees or enforces the Act. The only mechanism for enforcing the Act is for members to bring suit. Unless members can recover the cost of the suit, the likelihood of any enforcement action is greatly reduced.

On the other hand, it is not appropriate that associations who successfully defend against allegations that they have violated the Act should recover their attorney's fees from the members, because the Act is not intended to protect associations from their members, and awarding associations their attorney's fees whenever they successfully defend would only discourage such suits and reduce the likelihood that the Act will be enforced.

If a member brings a suit under the Act that is frivolous, the association is allowed to recover its reasonable attorney's fees as provided by Civil Rule 11. If the court grants SVCA its attorney's fees in this case, it will greatly discourage other members from bringing suit to protect their rights under the Act. That is not a consequence of RCW 64.38.050 that the Legislature intended.

## **VI CONCLUSION**

SVCA's reading of RCW 64.38.025(3) renders any membership vote on an association's proposed budget practically meaningless.

On the one hand, SVCA argues that the meaning of "budget" in the statute does not include the imposition of dues and assessments; therefore, nothing in the Act gives members the right to ratify or reject the imposition of dues and assessments, and an association is free to impose dues and assessments according to whatever standards exist in its governing documents.

On the other hand, SVCA argues that the "budget" described in RCW 64.38.025(3) is only a "planning tool", and an association is free to disregard any membership vote on its budget plan in favor of a staff-generated "spending plan" whenever circumstances change – like when the membership fails to approve the dues measure that formed the basis of the budget in the first place.

Clearly, the Legislature intended the Act to provide members with the power to ratify or reject any dues measure proposed by the association. Clearly, the Legislature intended the Act to provide a consistent law for how associations across Washington impose dues on its members. Clearly, the Legislature intended the membership vote on a budget to be meaningful and to apply not only to how the association spends the members' money but also to how the association raises money from its members.

The court should affirm the trial court's declaratory judgment and award the Plaintiffs their attorney's fees on appeal.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of August, 2013.

By:   
Murphy Evans, WSBA #26293  
Attorney for Respondents

# APPENDIX





**MINUTES OF THE ANNUAL MEETING OF THE OWNERS, SUDDEN VALLEY COMMUNITY ASSOCIATION, HELD ON SATURDAY, NOVEMBER 6, 2010 AT 1:00 P.M. IN THE DANCE BARN, SUDDEN VALLEY, BELLINGHAM, WA.**

**I. CALL TO ORDER:**

The meeting was called to order by Curt Casey, President of Sudden Valley Community Association at 1:00 p.m.

**II. INTRODUCTION OF PARLIAMENTARIAN**

President Casey introduced Ann McCartney, who acted as the Parliamentarian of the Annual Meeting in accordance with SVCA Bylaws.

**III. CERTIFICATION OF QUORUM:**

Secretary Georgia Allen reported the minimum requirements for a quorum had been met by the presence of 50 or more members in good standing.

**IV. PROOF OF NOTICE OF MEETING:**

Secretary Allen verified that, in accordance with the Bylaws of SVCA, Notice of the Meeting was provided by mail to each property owner 30 days prior to the meeting.

President Casey announced that the minutes of the meeting of the previous Annual General Meeting were read and approved at the first regular board meeting after the AGM of 2009 and are available on the web if desired. The meeting minutes for this AGM will be reviewed at the Board of Directors meeting of December 13, 2010, at 7:00 p.m. in the Multi-Purpose Room of the Community Center.

**V. ELECTION OF BOARD OF DIRECTORS:**

A. Introduction of Candidates:

President Casey announced there are three open positions on the Board of Directors, all three-year terms. He presented the names of the five candidates: Curt Casey, Paul Hope, Joel Rodriguez, Fred Haslam and Grace Shaffner. Each candidate was invited to the podium to speak for a period of two minutes per candidate.

**VI. ELECTION OF THE N&E COMMITTEE MEMBERS:**

Introduction of Candidates:

Board President Casey announced one one-year opening for the N&E committee was available and that the sole candidate for that opening was Susie Harber. Mrs. Harber was invited to the podium to speak for a period of two minutes.

**VII. NEW BUSINESS:**

Measure No. 1: Shall SVCA annual dues be set at \$929.40 per developed lot and \$772.32 per undeveloped lot? This amount includes \$690.40 per developed lot and \$533.32 per undeveloped lot to provide necessary funding of operations. The annual dues include \$95.00 per lot for the Major Repair and Replacement Capital Reserve (no change from 2010) and \$144.00 for the Road Reserve (a \$10.64 change from 2010). ANNUAL MEETING MINUTES 11/06/2010 2

**EXHIBIT 1**

The Measure was brought forward for discussion.

Measure No. 2: Shall the SVCA's Operating Budget for 2011 be adopted in the amount of \$2,996,087?

The Measure was brought forward for discussion.

Measure No. 3: Shall Article III, Section 19, of the SVCA Bylaws be amended to comply with WA State law [RCW 64.38.025 (3)] by specifying the manner by which regular and special budgets, and the dues and assessments to them, as proposed by the board of directors, be ratified by the members?

The Measure was brought forward for discussion.

President Casey directed that all ballots be marked and deposited in the ballot boxes being passed by members of the Nominations and Elections Committee. When all ballots were deposited, the meeting moved on to the next agenda item.

**IX. COMMITTEE REPORTS:**

1. Communications Committee: (Report Attached)
2. Long Range Planning Committee: (Report Attached)
3. Emergency Preparedness: (Report Attached)

4. Architectural Control Committee: (Report Attached)

5. Nominations & Elections Report: (Report Attached)

6. Document Review Commission: (Report Attached)

**X. PRESIDENT'S REPORT**

(Report Attached)

**XI. TREASURER'S REPORT**

(Report Attached)

**XII. GENERAL MANAGER'S REPORT**

(Report Attached)

**XII. PROPERTY OWNER COMMENTS:**

**XIII. ANNOUNCEMENTS/UNOFFICIAL ELECTION RESULTS:**

Nominations and Elections Committee Chair Naomi Bunis presented the results of the voting:

Mail-in Ballots: 1765

In-Person: 104 ANNUAL MEETING MINUTES 11/06/2010 3

**Total: 1869**

Board of Directors: # of Votes

**Joel Rodriguez 1148 3 Year Term**

**Paul Hope 811 3 Year Term**

**Preston Burris 584\*\* 3 Year Term**

Grace Shaffner 576

Curt Casey 571

Fred Haslam 476

At the AGM the Parliamentarian ruled that Preston Burris' withdrawal after the ballots had been printed should be treated as an election and then a resignation. Association attorney Hugh Lewis concurred. We believe that this ruling was the correct one because we have no way to know how the voters who selected Preston would have voted had they known he was not in the race. According to the bylaws the N&E committee will solicit candidates and the board will select one of them.

Nominations & Elections # Votes

**Susie Harber 1072 2 Year Term**

**Measure No. 1:** Shall SVCA annual dues be set at \$929.40 per developed lot and \$772.32 per undeveloped lot? This amount includes \$690.40 per developed lot and \$533.32 per undeveloped lot to provide necessary funding of operations. The annual dues include \$95.00 per lot for the Major Repair and Replacement Capital Reserve (no change from 2010) and \$144.00 for the Road Reserve (a \$10.64 change from 2010).

YES 667 (39%)

**FAILED NO 1027 (61%)**

**Measure No. 2:** Shall the SVCA's Operating Budget for 2011 be adopted in the amount of \$2,996,087?

YES 694 (39%)

**RATIFIED NO 1072 (61%)**

(because not 50% of SVCA total owners, per RCW 64.38.025)

**Measure No. 3:** Shall Article III, Section 19, of the SVCA Bylaws be amended to comply with WA State law [RCW 64.38.025 (3)] by specifying the manner by which regular and special budgets, and the dues and assessments to them, as proposed by the board of directors, be ratified by the members?

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YES 551 (33%)

**FAILED NO 1140 (67%)**

There being no further business, the meeting was adjourned at approximately 4:00 p.m.

Board Approved \_\_\_\_\_ / date \_\_\_\_\_