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APPELLATE CASE NO 59211-4

COURT OF APPEALS
DIVISION ONE,
OF THE STATE OF WASHINGTON

SANDRA LAKE

Appellant

v.

WOODCREEK HOMEOWNERS ASSOCIATION,
A Washington homeowners association

And

GLEN R. CLAUSING,
a single man

Respondents

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2007 JUN -1 PM 3:39

BRIEF OF RESPONDENT GLEN R. CLAUSING

Attorneys for Respondent Clausing:

Oseran, Hahn, Spring & Watts., P.S.
Charles E. Watts
10900 NE Fourth Street #850
Bellevue WA 98004
425-455-3900

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II. INTRODUCTION

Citations to the record of authority are omitted
In the Introduction as provided in RAP 10.3

Summary Judgment in favor of Respondent Clausing dismissing all of Appellant Lake's claims was proper because applicable state statutes and Woodcreek's governing documents give the Woodcreek Board of Directors authority to approve bonus rooms. Further, though homeowner approval of bonus rooms is not required, the Woodcreek homeowners ratified and approved the Board's approval of Respondent Clausing's bonus room and all other bonus rooms the Board approved for other owners since 1978 by an affirmative vote of 91 to 4. This was an affirmative vote of 95.79% of the owners who voted and an affirmative vote of 60.67% of all owners entitled to vote; the vote exceeded the percentage required by Woodcreek's Declaration and the Horizontal Property Regimes Act (RCW 64.32) to pass this type of resolution. Appellant Lake's claims were also properly dismissed because of laches, estoppel, and/or waiver.



Citations to the record of authority in the remainder of this brief are in square brackets “[]” and include the document's description (if the document is not identified in the text) and the

assigned page number(s) e.g. [Declaration of Wayne Huseby / CP 152-174 at 168]. Because of its importance, the Declaration of Wayne Huseby is attached as Appendix A, pages A1-A23.¹

III. RESPONDENT CLAUSING'S STATEMENT OF FACTS

Appellant Lake's Statement of Facts is incomplete. Respondent Clausing's Statement of Facts is divided into three sections: A. Time Table; B. Overview of Woodcreek Condominiums; and C. Optional Bonus Rooms. None of the facts are in dispute.

A. Time Table

10-19-72 Original Declaration for Woodcreek Condominiums is filed in King County, Washington. It is amended several times during the condominium's development. Approximately 25% of the units at Woodcreek are built with optional bonus rooms. [Exhibits 2, 3, 5, 7-9, 11-13, 15-17 & 20 to Declaration of Glen Clausing / CP 204-208; 210-212; 217-266; 272-335; 340-376; 382-405; 423-424.]

09-10-74 Bylaws written by the homeowners (not the developer) are adopted by the Association. [Declaration of Mary Bassetti and Exhibit 21 of Glen Clausing's Declaration / CP 126-127; and 426]

¹ The attached appendices also include excerpts from Woodcreek's Declaration, Woodcreek's Bylaws and other documents. See page vii for a table of appendices.

07-11-78 Woodcreek's Board of Directors approves an application submitted by unit owner Dave Judkins to add a bonus room to his existing unit, unit 12. [Declaration of Joseph Rogel and its Exhibit A / CP 180-184]

09-20-85 Glen Clausing purchases unit 109 at Woodcreek. [Exhibit 22 to Glen Clausing's Declaration / CP 428-429]

06-25-86 Woodcreek Board of Directors approves an application submitted by unit owner Milton Share to add a bonus room to his existing unit, unit 125. [Declaration of Gloria Share / CP 562-570]

09-07-88 Sandra Lake purchases unit 88 at Woodcreek Condominiums. She then purchases unit 108 and sells unit 88. [Exhibit 22 of Glen Clausing's Declaration / CP 430-436] Sandra Lake's unit (unit 108) has an existing bonus room. [Declaration of Patricia Minkove / CP 175-176]

03-21-91 Woodcreek Board of Directors approves an application submitted by unit owner Lynn Davidson to add a bonus room to her existing unit, unit 123. [Declaration of Lynn Davidson / CP 140-147]

04-28-95 Woodcreek Board of Directors approves an application submitted by unit owner Jeannette Privat to add a bonus room to her existing unit, unit 119. [Declaration of Jeannette Privat / CP 177-179]

04-16-98 Woodcreek Board of Directors approves an application submitted by unit owners Mr. and Mrs. William Clarke to add a bonus room to their existing unit, unit 124. [Declaration of Lynn Davidson / CP 140-147]

09-xx-01 Woodcreek Board of Directors approves an application submitted by unit owners Belinda and John Sherwood, Sr. to add a bonus room to their existing unit, unit 91. [Declaration of John Sherwood / CP 138-139]

05-20-04 Woodcreek Board of Directors approves an application submitted by unit owner Glen Clausing to add a bonus room to his unit, unit 109. [Declaration of Woodcreek Board President Wayne Huesby / CP 152-174 / Appendix A pgs. A1-A23]

Last week

of May '04 The Board of Directors distributes its May 20, 2004 meeting minutes to all Woodcreek owners, including Sandra Lake. The minutes reflect the Board's approval of Glen Clausing's request to add a bonus room to his unit. [Declaration of Wayne Huseby and its Exhibit B / CP 152-174 at 161 / Appendix A pg. A-10]

06-09-04 City of Bellevue issues the required building permits to Glen Clausing. [Exhibit 23 to Glen Clausing's Declaration / CP 185-561 at 437-438]

07-11-04 Glen Clausing notifies all persons living on his street, including Sandra Lake, in writing, that construction is going to begin

on his bonus room later that week. [Declaration of Wayne Huseby / CP 152-174 at 166 / Appendix A pg. A-15]

07-13-04 Construction begins on Glen Clausing's bonus room. [Declaration of Damin Cady / CP 124-125; and Declaration of Glen Clausing / CP 185-196]

07-15-04 Sandra Lake attends the Woodcreek Board of Directors meeting and complains about the construction noise and claims she did not receive either of the pre-construction notices regarding Glen Clausing's bonus room. [Declaration of Wayne Huseby and its Exhibit C / CP 152-174 at 162-164 / Appendix A pgs. A11-A14]

08-15-04 Construction of the exterior of the Glen Clausing's bonus room is finished and the exterior siding is painted. [Declaration of Damin Cady / CP 124-125 and Exhibit 24 and 31 of Glen Clausing's Declaration / CP 440 and 442-448] The Interior painting is finished and light fixtures are installed by September 2, 2004. The cost of the bonus room remodel is in excess of \$150,000.00. [Exhibit 25 of Glen Clausing's Declaration / CP 442-448]

Between

10-19-72 (The date Woodcreek's original Declaration is filed)

and

08-26-04 No owner, including Sandra Lake, who has lived at Woodcreek since September 1988, has challenged the Board's authority to approve owners' requests to add bonus rooms to their units. [Declaration of Wayne Huseby / CP 152-174 / Appendix A;

Declaration of Wayne Smith / CP 88-100; Declaration of Mary Bassetti / CP 126-137; & Declaration of Clausing / CP 185-196]

08-28-04

or

08-30-04 Wayne Huseby, President of Woodcreek Homeowners Association, receives a letter from Sandra Lake's attorney dated August 26, 2004. The letter challenges the Board's authority to approve Glen Clausing's bonus room. [Declaration of Wayne Huseby and its Exhibit F / CP 152-174 at 169-170 / Appendix A pg. A18-19]

09-22-04 Woodcreek Board of Directors sends a letter in reply to Sandra Lake's attorney's letter stating the Board had authority to approve Glen Clausing's bonus room. [Declaration of Huseby and its Exhibit G / CP 152-174 at 171 / Appendix A pg. A20]

10-21-04 Sandra Lake and her attorney attend the October 2004 Woodcreek Board of Directors meeting and challenge the Board's authority to approve Glen Clausing's bonus room. Sandra Lake and her attorney, Marianne Jones, also demand the Board increase the dues on Glen Clausing's unit because of the added bonus room. [Declaration of Wayne Huseby and its Exhibit H / CP 152-174 at 172-173 / Appendix A pgs 21-22]

10-30-04 Woodcreek Board of Directors again writes Sandra Lake's attorney reiterating its position expressed in its September 22, 2004 letter that the Board had authority to approve Glen

Clausing's bonus room. [Declaration of Wayne Huseby and its Exhibit I / CP 152-174 at 174 / Appendix A pg. A23]

12-05-05 14 months later, Sandra Lake files her suit seeking injunctive relief to have Glen Clausing's (and only Glen Clausing's) bonus room demolished and for other/alternative relief. [Summons and Complaint / CP 1-10]

06-05-06 At the annual Woodcreek Homeowners meeting, the homeowners passed the following resolution by a vote of 91 to 4, which is an affirmative vote of over 60% of all homeowners entitled to vote:

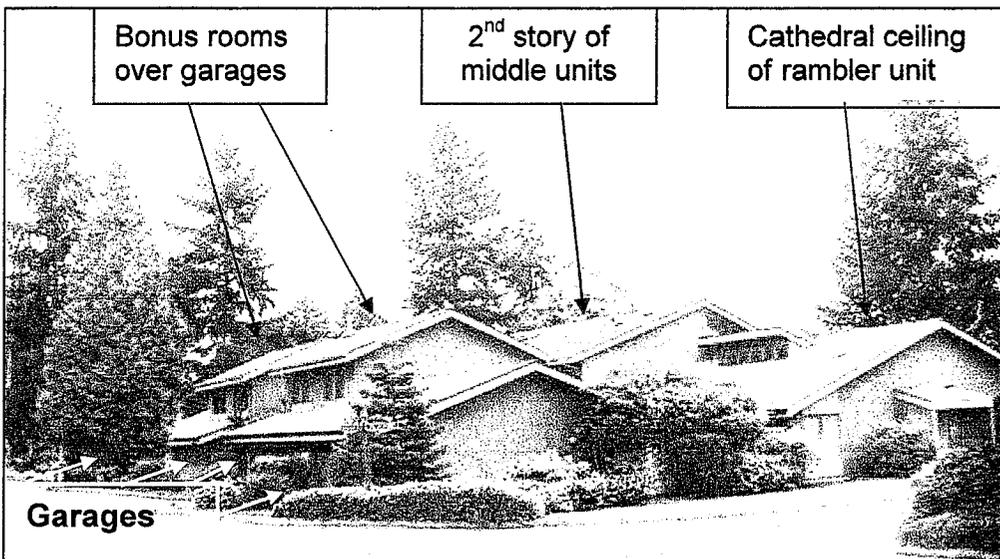
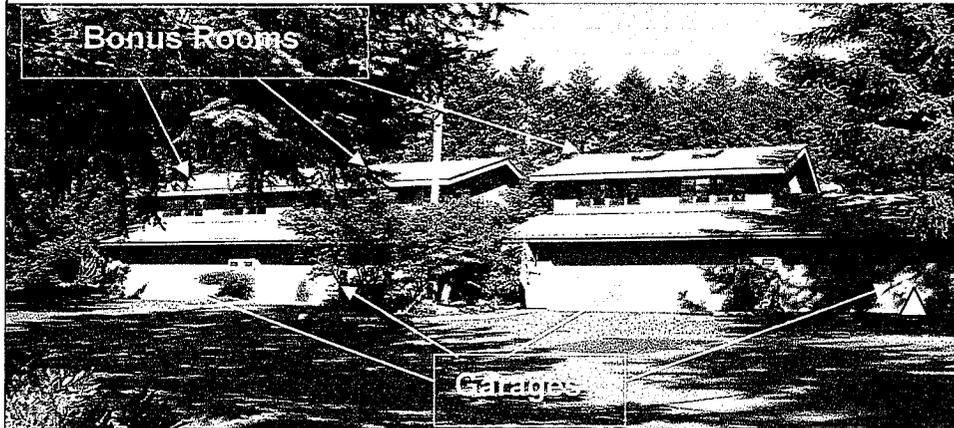
"The Homeowners hereby ratify and approve the Board's past approvals of all owner-added bonus rooms built to date and its past approvals of any owner modifications that may have involved or permitted a combining of apartment unit or units with common areas or facilities or limited common area or facilities as provided for in paragraph 12 of the Declarations." [Declaration of Mary Bassetti and its Exhibit C / CP 126-137 at 137]

B. Overview of Woodcreek

~~Woodcreek is a townhouse condominium community in~~
Bellevue, Washington. Its 150 townhouses (units) are built on approximately 23 acres of property. Some are single story, others have two stories. All have two car attached garages built in front of the units. Per the Declaration, the attached garages are part of the units. [Woodcreek Declaration, Exhibit 5 to Glen Clausing's Declaration / CP 221-222 / Appendix B pg. B5] Per the

Declarations, the bonus rooms, which are built on top of the garages, are also part of the units. [Woodcreek Declaration / CP 221, 279; 343; and 386 / Appendix B pg. B5]

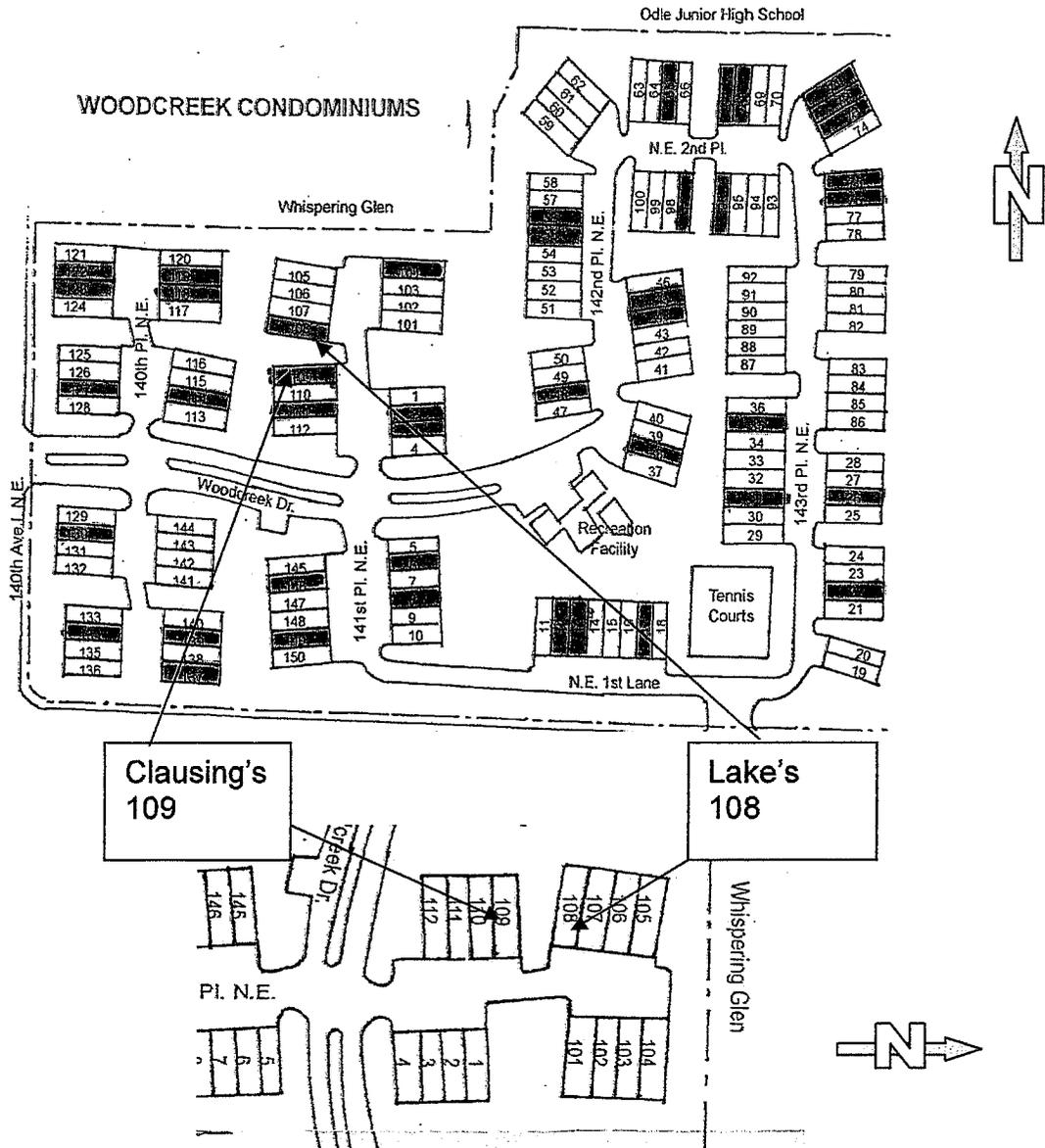
Below: Typical 4-plex building in Woodcreek
 3 of the 4 units in this building have bonus rooms over their garages.
 The unit at the far right (in shadows marked with a \triangle) does not have a bonus room



Above: Another 4-plex building in Woodcreek.
 The two middle units in this building have bonus rooms over their garages. The two middle units also have a second story over the main part (non-garage part) of the units.

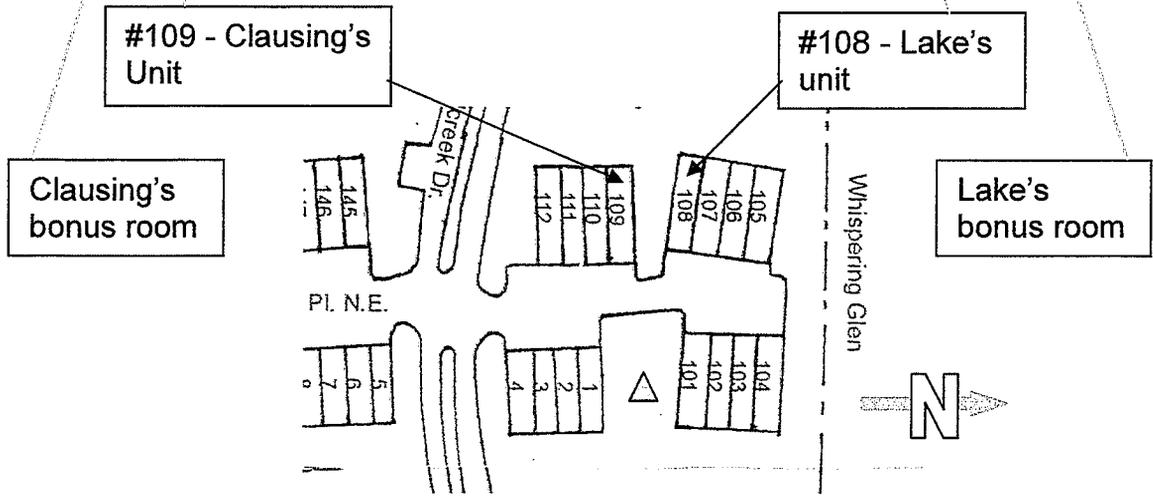
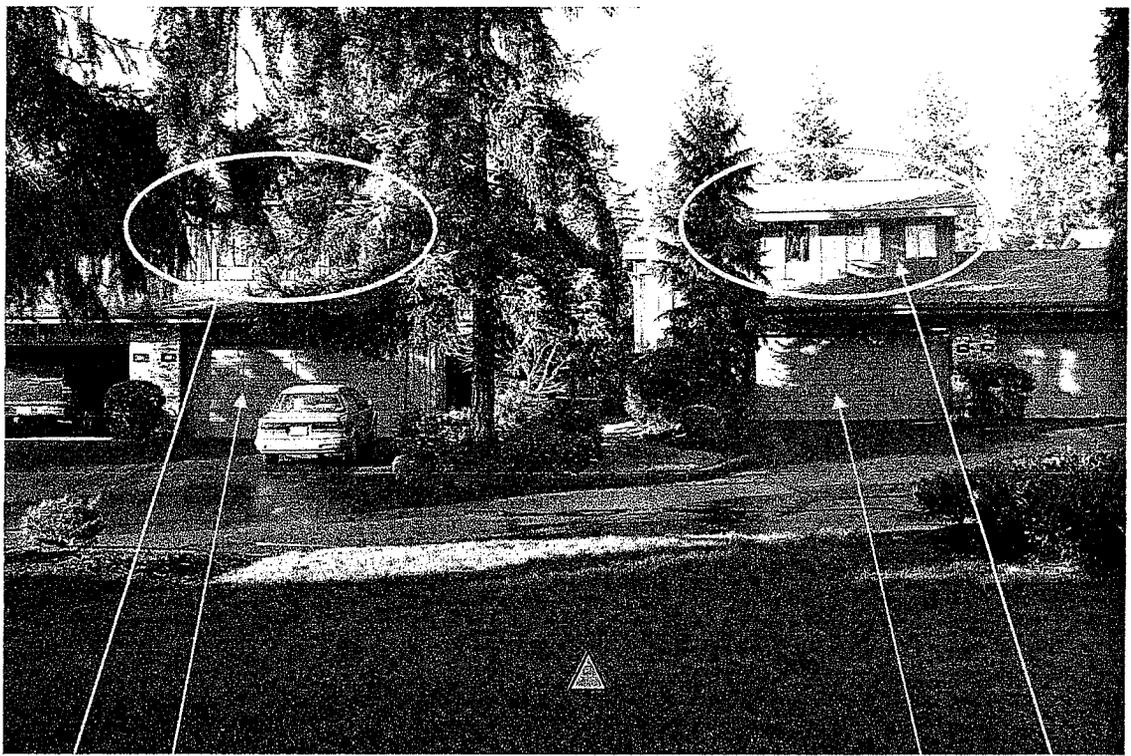
The visible end unit in this building is a rambler. Rambler style units have cathedral ceilings. [Photo is CP 577; 194]

Some ramblers in Woodcreek have bonus rooms and some two story units do not. Some units with bonus rooms are in the middle of the buildings, some are at the ends. 43 of Woodcreek's 150 units have bonus rooms. On the map of Woodcreek below [CP 578] the shaded units have bonus rooms and Appellant Lake's unit and Respondent's Clausing's unit are identified.



Glen Clausing's unit and Sandra Lake's unit are in different buildings separated by a greenbelt.

Below: Looking from green belt area between units 1 and 101 towards green belt area between units 109 (Clausing's) and 108 (Lake's). [Photo is CP 579, 194]



C. Optional Bonus Rooms

Woodcreek was built in divisions. The units in each division are described in paragraph 3 of the original 1972 Declaration, [CP 222], paragraph 3 of the Declaration's 1973 Amendment, [CP 279], paragraph 4 of the Declaration's 1974 Amendment, [CP 343], and paragraph 4 of the Declaration's 1976 Amendment. [CP 386] They are also described on page 5 of 5 of the 1977 Amended Survey Maps and Plans. [CP 376] Every place in Woodcreek's Declaration where the units are described, the bonus room is described as being optional, and if added, is described as being over the garage and incorporated within the basic structure of the apartment unit.

All of Woodcreek's recorded Survey Maps and Plans show separate floor plans for each style of unit without a bonus room and then show a separate drawing of the optional bonus room. [Woodcreek Survey Maps and Plans / CP 205-209; 211-212; 328-332; 334-335; 366-370; and 372-376]

The units in all divisions are similar but there are several different floor plans or styles. Division I (units 1-50) contains A, B, C and D style units. Division II (units 51-100) contains E, F and G style units. Divisions III-A and III-B (units 101-150) contain J, K, L and M style units. The bonus room option is available for C and D

style units in Division I, F and G in Division II and J, K, L and M in Divisions III-A and III-B. [Woodcreek Declaration / CP 222, 279, 343, and 376] Paragraph 4 of the 1976 Amended Declaration [CP 385-386 / Appendix B pgs. B1-B2] states:

“4. The residence apartments are generally divided into four types as follows:

- J Single story, two bedrooms . . . [balance of description omitted]
- K [description omitted]
- L [description omitted]
- M [description omitted]

“In addition there is designated in the plans for Type L [and] M units a room designated as the ‘bonus room’. At the option of the purchaser the floor plans for Types L and M Units will include an additional area to be situated directly above the car garage area which is incorporated within the basic structure of the apartment unit. The bonus room will consist of one of four alternate floor plans and will increase the square footage of said units by approximately 416 square feet. A more particular description of each apartment by unit type is shown on Sheet 5 of 5 of the Survey Map and Plans.” [*underscore emphasis added*]

As a result of the Amendment filed in 1977 and the Amended Survey Maps and Plans filed in 1978, the optional bonus rooms in Division III were not restricted to L and M style units but were optional for J, K, L and M style units. The 1977 Amendment to the Declaration at page 1 [CP 395 / Appendix B pg. B-3] states:

"In addition on page 5 of 5 of the Survey Map and Plans there is designated in the plans for Type J, K, L and M units, a room designated as the Bonus Room."

Between October 1972 when the original Declaration was filed and June 1975 when the Association was formed, Woodcreek was under control of the developer. During this period purchasers of various units throughout Woodcreek opted for a bonus room. Page 5 of the Survey Map and Plans [CP 376 Appendix B pg. B15] referenced in the above quoted 1977 Amendment reflects that bonus rooms were built on all of the four unit styles (J, K, L & M) within Division III-A and III-B. There is no recorded document, survey map or plan that identifies the units in Division I or II that the developer built with bonus rooms.²

After control of the Association was passed from the developer to the homeowners' elected board of directors, June 1975, seven different owners at various times opted for bonus rooms and obtained permission of the Board of Directors to add them to their units. One was approved for a unit in Division I, one for a unit in Division II, and five for units in Division III. [Declarations of Rogel, Share, Davidson, Privat, Sherwood and

² Woodcreek's own unrecorded "as built survey" [CP 424] shows the units in all three divisions that have bonus rooms as does the map of Woodcreek, at page 9, *supra*.

Huesby / CP 180-184; 562-570; 140-147; 177-179; 138-139; and 152-174 respectively / See also table at page 15 *infra*.]

The Board approved the first owner added bonus room in 1978. All of the bonus rooms the Board³ has approved for various owners between 1978 and 2004 have these attributes in common:

- They were all approved by the Board.
 - They were all approved for owners that had purchased their units several years earlier. [See table at page 15 *infra*]
 - They were not presented to or voted upon by the homeowners at large.
 - They were approved without the Board seeking any advice from Respondent Clausing or advice from anyone else.
 - Their approval by the Board is recorded in the Board's meeting minutes, (the Board meets monthly), which are distributed to all owners shortly following each Board meeting.
-
- Their approval by the Board (beginning in 1978) has not triggered any challenge by any homeowner of the Board's authority with the exception of Lake as to the 7th bonus room the Board approved, the one for Glen Clausing, in 2004.

[Declaration of Wayne Huseby, Wayne Smith, and Shirley Hueffed / CP 152-174, 88-100, and 148-151]

³ Woodcreek has a 9 member board elected from and by the homeowners. Each Board member's term is 3 years. Terms are staggered so each year 3 new Board members are elected.

The table below summarizes the Board's approval of bonus rooms over the last 28 years after the developer turned control of Association over to the homeowners:

CP *	Date Bonus Rm. Approved	Unit No Style	Div	Stories	Owner	Year Owner Acquired Unit
181 ▶	July 1978	12/D	1	2	Judkins	1973
562 ▶	June 1986	125/J	3	1	Share	1979
140 ▶	Mar. 1991	123/M	3	2	Davidson	1978
177 ▶	April 1995	119/M	3	2	Privat	1976
141 ▶	April 1998	124/K	3	1	Clarke	1995
138 ▶	Sept. 2001	91/E	2	1	Sherwood	unknown
188&428 ▶	May 2004	109/J	3	1	Clausing	1985
[* All data in each row of the table is from the CP referenced in the first column of the table]						

Glen Clausing's unit, no. 109, is a J style unit. J style units were built with bonus rooms by the developer. [CP 395 / Appendix B pg. B-3] As set forth in the above table, the Board approved a bonus room for another J style unit, unit 125 in 1986. As also set forth in the table, the Board has approved bonus rooms for both single story and two story units and for units in all divisions of Woodcreek.

IV. REBUTTAL OF APPELLANT'S ARGUMENTS

- A. **Appellant Lake's claim that bonus rooms require 100% homeowner approval and therefore the Board lacked authority to approve Respondent Clausing's bonus room is based on her erroneous supposition that a bonus room changes the undivided percentage interest each owner has in the common areas.**

Based on an incorrect supposition that a bonus room changes the undivided percentage interest each owner has in Woodcreek's common areas, Appellant Lake argues that because paragraph 19 of Woodcreek's Declaration provides that the undivided percentage interest each owner has in the common areas can only be changed by unanimous consent of the homeowners, the Woodcreek Board did not have authority to approve Respondent Clausing's bonus room. [See pages 15 and 25 of Appellant Lake's opening brief] The falsity of her supposition that a bonus room changes the undivided percentage interest each owner has in the common areas, and the error of her argument based on it that bonus rooms require 100% homeowner approval, is proved by examining how the values in the Declaration were originally established and by examining the definition of "value" in the Declaration.

In 1972, before construction of Woodcreek began, the original Declaration for Woodcreek was filed. [CP 218-266] The Declaration sets forth what the developer declared to be the total value of Woodcreek, the value of each unit (all 150), and the percentage ownership of each unit. The percentage of ownership of each unit is computed by dividing a unit's declared value by the declared total value of Woodcreek (which is the sum of the declared values of all units) and is expressed as a decimal fraction.

In 1972 when the original declaration was filed, no distinction in value or percentage of ownership was made for units with and without a bonus room. [See Tables of Woodcreek's Declared Values by Unit / CP 193; 198-203; 214-216; 268-271; 337-339; and 378-380] Declaring different values (and resultant percentages of ownership) for units with and without bonus rooms would not have been possible because when the original declaration was filed none of the units had been built and the bonus rooms were optional.

The developer reserved the right to re-declare values during the development of Woodcreek's remaining divisions. In 1976, the values of all 150 units including those units that had already been built and sold (some with bonus rooms) were re-stated by the

developer. [CP 383-393] The 1976 post-construction amended declaration, like the original 1972 pre-construction declaration, makes no distinction between same units with and without a bonus room as far as "value" and resultant percentage of ownership is concerned. [See Tables of Woodcreek's Declared Values by Unit / CP 193; 198-203; 214-216; 268-271; 337-339; and 378-380]

Below (and continued on the following page) is a table that compares the developer's final (1976 post-construction) declared values and percentages of same style units with and without bonus rooms.

CP	Unit	Style	Div	Bonus Rm. (yes/no)	Declared Value	Declared Percentage
◆	2	C	I	Y	49,000	0.694
◆	7	C	I	N	49,000	0.694
◆	3	D	I	Y	54,000	0.77
◆	9	D	I	N	54,000	0.77
◆	52	E	II	Y	42,900	0.607
◆	55	E	II	N	42,900	0.607
◆	66	F	II	Y	47,900	0.678
◆	67	F	II	N	47,900	0.678
◆	54	G	II	Y	49,900	0.707
◆	53	G	II	N	49,900	0.707

CP	Unit	Style	Div	Bonus Rm. (yes/no)	Declared Value	Declared Percentage
◆	139	J	III	Y	41,289	0.584
◆	107	J	III	N	41,289	0.584
◆	137	K	III	Y	46,364	0.656
◆	120	K	III	N	46,364	0.656
◆	146	L	III	Y	49,989	0.708
◆	102	L	III	N	49,989	0.708
◆	130	M	III	Y	41,289	0.584
◆	115	M	III	N	44,189	0.626 ⁴
<p>[◆CP: All data in table is from CP 198-203; 391-393; & 424] Per the declaration, bonus rooms are not available for A and B style units so those unit styles are omitted from the table.</p>						

In all three divisions of Woodcreek units built by the developer with bonus rooms and without were in all respects identical except for the absence of a bonus room. The developer treated these units as having the same "value" (and resultant percentage of ownership) for purposes of assessment, common area and voting.

Starting in 1978, Woodcreek's various Boards have approved bonus rooms for owners, and like the developer, have

⁴In the 1976 (post-construction) Amended Declaration some units with a bonus room actually have a *smaller* declared value and percentage than a unit of the same style without a bonus room. See units 115 and 130 in the table as an example.

treated these units as having the same "value" (and resultant percentage of ownership) for purposes of the Declaration. No unit with a bonus room that is in all other respects identical to another unit without a bonus room has been treated any differently for purposes of "value" under the Condominium Declaration by either the developer or subsequent Boards of the Association. There is no reason why the Board's approval of Glen Clausing's bonus room in 2004 should be treated any differently than how the developer (between 1972 and 1976) and the previous Boards (beginning in 1978 and during the next 26 years) treated all other bonus rooms. No challenge to the Board's treatment of bonus rooms (the same as the developer's treatment of bonus rooms) has ever been made by any owner including Appellant Lake until she challenged the Board's approval of Respondent Clausing's bonus room 18+ months after it was approved and over a year after it was built.⁵

Appellant Lake's argument that a bonus room changes the declared value of the unit and the resultant percentage of ownership assigned to the unit is also based on her unsupported claim that the word "value" in paragraph 19 means the same as

⁵ Clausing's bonus room was approved May 20, 2004. Its exterior was finished and painted by mid August 2004. Appellant Lake filed her suit December 5, 2005. [CP 152-74 & 1-10]

“square footage area” or “size and composition of common area” or “maintenance cost,” or “market value” or that “value” in paragraph 19 is tied to or based on a formula involving those factors. Nothing in the Declaration, the statutes governing condominiums, the actions of the developer and subsequent Boards of the Association, and the plain reading of paragraph 19 supports her claim that “value” in paragraph 19 means the same as, is dependent upon, or is tied to “square footage area”, “size/composition of common area” or “maintenance cost” or “market value.”

The word “value” in paragraph 19 refers solely to the “value” assigned (“declared”) by the developer for each unit in all three divisions of Woodcreek for purposes of allocating percentage interests in common areas, voting and percentage of responsibility for assessments as set forth in paragraph 4 of Woodcreek’s Declaration. Nowhere in the statutes or the Declaration is the Association or the developer required to determine “value” pursuant to any formula or to take into account square footage, amount and composition of common areas or maintenance costs. The “values” established by the developer did not require an appraisal or other

evidence of actual fair market value. Paragraph 4 of Woodcreek's Declaration [CP 222-3 / Appendix B pgs. B5-B6] provides:

"Attached hereto as Annex B and by this reference incorporated herein as though fully set forth, is a listing of the undivided percentage interest of each residence apartment unit by phase within the 150 unit development together with a statement of its value. The values placed upon the residence apartment units by this declaration are for the purpose of determining each apartment unit owner's undivided percentage interest in said condominium development and said values shall not be construed to be a limitation or restriction on the sales price."
[emphasis added]

Appellant Lake cites *Bogomolov v. Lake Villas Condominium Association*, 131 Wn. App 353, 127 P.3d 762 (2006) as authority for her claim that a bonus room changes the declared values and resultant percentages of ownership. Appellant's reliance on *Bogomolov* is misplaced because of the marked differences in Lake Villas' Declaration and Woodcreek's Declaration.

Bogomolov involved the proposed building of new boat slips at the Lake Villas Condominiums. Lake Villas' Declaration defines the area where the docks and boat slips were to be built as common areas and defines the individual docking spaces as limited common areas. [Lake Villas' Declaration / CP 734 / Appendix C pg. C-1]. Paragraph 4 Woodcreek's Declaration defines bonus

rooms as part of the apartments. [CP 386 / Appendix B pg. B2].

Lake Villas' Declaration (paragraph 7) assigns a value to the boat slips and provides that the declared value of each unit at Lake Villas is the sum of the declared value of the unit itself, the declared value of the parking area assigned to the unit, and the declared value of the docking space assigned to that unit. [Lake Villas' Declaration / CP 734 / Appendix C pg. C1]. Woodcreek's Declaration does not assign any value to bonus rooms. Identical units with and without bonus rooms at Woodcreek have the same declared value. [CP 199-203, 391-393; see also table of like units with/without bonus rooms *supra*].

Lake Villas' Declaration (paragraph 27) provides that the common areas, limited common areas, and apartments at Lake Villas cannot be partitioned or combined without 100% affirmative vote of the Lake Villas apartment owners. [Lake Villas' Declaration / CP 746 / Appendix C pg. C-2]. Woodcreek's Declaration, paragraph 12, provides that common areas, limited common areas, and apartments at Woodcreek can be partitioned or combined with a 51% affirmative vote of the Woodcreek homeowners. [CP 232 / Appendix B pg. B-7].

The decision in *Bogomolov* was based on the unique provisions of Lake Villas' Declaration. The *Bogomolov* decision is an interpretation of Lake Villas' Declaration. *Bogomolov* does not apply to other condominiums unless the condominium in question has the same provisions in its Declaration as those in Lake Villas' Declaration. Woodcreek's Declaration does not contain these same provisions.

Based on the definition of "value" for purposes of Woodcreek's Declaration (including paragraphs 4 and 19), and the methodology of assigning values in the original (pre-construction) and amended (post-construction) Declaration, at Woodcreek a bonus room does not change the value of the property or the value of any unit. Because a bonus room does not change either of these values, it does not (cannot) change the undivided percentage interest each owner has in the common areas as that percentage is computed by dividing the value of the unit by the total value of the property.

Appellant Lake's argument that paragraph 19 applies fails because it is based on her erroneous supposition that a bonus room changes value and resultant percentage of ownership. Her supposition is false, her argument fails, and the 100% homeowner

approval provision of Paragraph 19 of Woodcreek's Declaration [CP 240/Appendix B pg. B-4] does not apply.

- B. Appellant Lake's claim that the Board lacked authority to approve Respondent Clausing's bonus room because a bonus room creates common area and converts common area to limited common area ignores various provisions of the HPRA, Woodcreek's Declaration, and its Bylaws. It also ignores the homeowners' ratification and approval of bonus rooms.**

The authority of the Board to approve bonus rooms is set forth in Woodcreek's Bylaws. Bonus rooms, per Woodcreek's Declaration, do not create common areas and/or limited common areas and/or combine common areas, limited common areas and apartments. Nonetheless, any conversion or combining of common areas, limited common areas, and/or apartments that may have occurred by the Board approving bonus rooms was ratified and approved by the Woodcreek owners as provided for and authorized in RCW 64.32.090(10) and paragraph 12 of Woodcreek's Declaration [CP 232 Appendix B pg. B-7]

- 1. The Bylaws are the primary governing instrument for condominiums, like Woodcreek, that are created under the Horizontal Property Regimes Act.**

Because Woodcreek was created prior to July 1, 1990 it is governed by the Horizontal Property Regimes Act (HPRA), RCW 64.32 and only certain sections of the newer Condominium Act, RCW 64.34. The HPRA does not require that a condominium be governed by a Board of Directors and does not provide any powers to a Board of Directors should there be one. The HPRA does require a set of bylaws but the HPRA does not specify what provisions are to be included in a condominium's bylaws. RCW 64.32.090 provides a condominium's declaration must contain only:

"(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto."
[Emphasis added]

Woodcreek's Declaration contains the HPRA's required provision for the adoption of Bylaws. Like the HPRA, Woodcreek's Declaration does not provide what provisions are to be contained in the Bylaws. Paragraph 14 of Woodcreek's Declaration [CP 235] provides:

"The owners of all apartments in the buildings in Woodcreek Division No. 1 shall adopt by-laws for the administration of the property or for other purposes

not inconsistent with the laws of 1963, Chapter 156 [RCW 64.32].” [Emphasis added]

Under the HPRA and Woodcreek’s Declaration the homeowners were given the authority and the responsibility to formulate Woodcreek’s governance and to decide how they wanted their affairs and property managed by their elected Board. Since the HPRA and Woodcreek’s Declaration are silent as to these matters, the Bylaws adopted by the homeowners are Woodcreek’s primary governing instrument

2. The Board’s authority to approve bonus rooms is set forth in Woodcreek’s Bylaws.

The Woodcreek homeowners wrote and adopted their Bylaws in 1974. [See Minutes of Adoption / CP 126-127] In the Bylaws the Woodcreek homeowners gave their Board the power to manage, alter, improve, and/or modify the common areas, limited common areas and the apartments. They also provided that if a homeowner wanted to modify the common areas, limited common areas and/or apartments, the Board’s approval was required.

Article II, Section 7, of Woodcreek’s Bylaws [CP 410-11 / Appendix D, pgs. D1-D2] provides:

“Power and Duty of Board. The Board shall have the following powers and duties: . . .

(b) To administer the affairs of the Association and the property. . . .

(d) To formulate policies for administration, management, operation of the property and the common and limited common areas thereof,

(e) To adopt administrative rules and regulations governing the administration, the management, the operation and the use of the property and to amend such rules and regulations from time to time as required.”

[emphasis added]

Article V, of Woodcreek’s Bylaws [CP 415-16 / Appendix D, pgs. D-3 & D-4] provides:

“Use of Property and Apartment Architectural uniformity.

“Section 1: Conformance. The Board shall regulate the use of the property and the apartment units in accordance with Paragraph 9 of the Declaration.”

“Section 2: Rules of Conduct.

“(f) No owner, resident or lessee shall make any structural modification or alteration to the apartment unit and/or common and limited common areas of the unit without the prior written approval of the Association through its Board of Directors. . . .” *[Emphasis added]*

The common sense and plain reading of these Bylaws is that if a unit owner wants to make a modification to an apartment and/or the common and limited common areas (the “property”), the

Board's permission is required and it is the Board that has authority to give the required permission. Further, any time a governing instrument such as a condominium's Bylaws is in issue the conduct of the persons who wrote it is given great weight. See *Riss v. Angel* 131 Wn.2d 612, 934 P.2d 669 (1997), *Parry v. Hewitt*, 68 Wn. App. 664, 847 P.2d 483 (1992), and *Kershaw Sunnyside Ranches v. Yakima Interurban Lines Assoc.*, 121 Wn. App. 714, 91 P.3d 104 (2004).

The Woodcreek homeowners for 28 years, since 1978 when the Board approved the first bonus room, have continuously conducted themselves on the basis the Board had authority under Woodcreek's Bylaws to approve bonus rooms. Appellant Lake has conducted herself on this same basis for 17 years (she purchased her unit in 1988) as during this 17 year period the Board approved 4 more bonus rooms and she did not object to the Board's approval or their construction in any fashion.

The Bylaws as written and the longstanding, continuous conduct of those governed by them make it clear that the Board has authority to approve the bonus rooms. Ms. Lake's claim that the Board lacked authority is contrary to the HPRA, Woodcreek's Bylaws, and her own conduct. Her claim is without merit.

3. At Woodcreek, bonus rooms are not "common areas," or "limited common areas". Bonus rooms are part of the "apartments."

Under the HPRA, the definitions of apartments, common areas and limited common areas can and do vary from one condominium's declaration to the next. In the declaration for a high rise condominium with elevators and a lobby, those items are probably defined as part of that condominium's common areas. Since Woodcreek does not have elevators or a lobby, they are not mentioned in Woodcreek's Declaration. The words "bonus room" are probably not found anywhere in a high-rise's declaration but they are found in Woodcreek's Declaration.

Paragraph 4 of Woodcreek's Declaration [CP 385-86 / Appendix B pgs. B-1 & B-2] contains the definition of a Woodcreek apartment. Paragraph 4 also defines bonus rooms as part of the basic structure of the apartments. Paragraph 4 provides:

"The resident apartments are generally divided into four types . . .

In addition there is designated in the plans for Type L and M⁶ units a room designated as the 'bonus room.' At the option of the purchaser the floor plans for

⁶ As discussed earlier, page 12, the 1977 Amendment to the Declaration [CP 395 / Appendix B pg. B3] made bonus rooms available for J, K, L and M style units.

Types L and M units will include an additional area to be situated directly above the car garage area which is incorporated within the basic structure of the apartment unit. The bonus room will consist of one of four alternate floor plans and will increase the square footage of said units by approximately 416 square feet.⁷ A more particular description of each apartment by unit type is shown on Sheet 5 of 5 of the Survey Map and Plans.” [Underscore and italicized type added]

Paragraph 5 of Woodcreek’s Declaration [CP 225 / Appendix B pg. B-16] excludes from the definition of “common areas” and “limited common areas” anything that is described in Woodcreek’s Declaration as part of the apartments. Paragraph 5 of Woodcreek’s Declaration [CP 225 / Appendix B pg. B-16] provides:

“The common areas and facilities shall be those areas and facilities as defined in the Act (RCW, Chapter 64.32) and all areas not expressly described as part of the individual residence apartments or as limited common areas or property of the Association of Apartment Owners, and include, but are not limited to . . .” [underscore added.]

Since ~~paragraph 4 that defines the Woodcreek apartments~~ states the bonus rooms are “incorporated within the basic structure of the apartment unit,” bonus rooms cannot be part of the common areas because paragraph 5 that defines common areas excludes from the definition of common areas anything that is described as

⁷ 416 sq. ft. is the floor area. Clausing’s bonus room floor area is 413.5 sq. ft. Building area for permit purposes (to outside of walls and stairs) was 458 sq. ft.

part of the apartments. Bonus rooms cannot be part of the limited common areas either because Paragraph 7 of Woodcreek's declaration [CP 226-7 / Appendix B, pgs. B17 & B18] defines the limited common areas as: A patio garden area; improvements to limited common areas such as fences; attic storage area; crawl space; entrance area; and driveway parking area.

As set forth in paragraph 5, the terms "apartment," "common areas," and "limited common areas" in Woodcreek's Declaration are mutually exclusive, and when paragraphs 4, 5, and 7 of the Declaration are read together, it is clear that bonus rooms are part of the apartments.

4. The Woodcreek homeowners ratified bonus rooms and any conversion or combining of Woodcreek's common or limited common areas with apartments.

Even if the optional bonus rooms are considered to involve a conversion or combining of Woodcreek's common or limited common areas with apartments, any claim by Appellant Lake that such a conversion or combining was improper fails. Her claim(s) of impropriety fail because the Woodcreek homeowners ratified and approved the Board's approval of Glen Clausing's bonus room, all other bonus rooms built before his with the Board's approval,

and any other owner modifications that may have involved or permitted a combining of apartment units or unit with common areas or facilities or limited common areas or facilities. The Woodcreek homeowners, at their last annual meeting June 4, 2006, passed the following resolution:

“The Homeowners hereby ratify and approve the Board’s past approvals of all owner-added bonus rooms built to date and its past approvals of any owner modifications that may have involved or permitted a combining of apartment units or unit with common areas or facilities or limited common areas or facilities as provided for in paragraph 12 of the Declarations.”⁸ [*Emphasis added*] [Declaration of Mary Bassetti and its Exhibit C / CP 126-137 at 137]

Paragraph 12 of Woodcreek’s Declaration, referred to in the homeowners’ resolution, provides:

“Except as this Declaration may be amended as provided for herein, no subdivision or combination of any apartment unit or units or of the common areas or facilities or limited common areas or facilities may be accomplished except by authorization by the affirmative vote of 51% of the voting power of the owners of the apartment units at a meeting . . .” [CP 232 / Appendix B pg. B-7]

⁸ The ratification was broader than the Board’s approval of bonus rooms. The Board over the last 28 years has approved other modifications including but not limited to: skylights; plantings; garden pools/streams; barbeques; sprinkler systems; awnings; patio covers; entry doors; outdoor lighting; storm windows; French doors; fireplaces; wood stoves; fences; adding insulation in common walls; and enlarging apartments by moving existing and/or building new exterior walls. [See Declarations Mary Bassetti, Glen Clausing (Exhibit 26), Wayne Huseby, and Wayne Smith / CP 126-137; 185-196; 152-174; and CP 88-100, respectively]

The motion passed by a vote of 91 to 4, which is more than the 51% as required in paragraph 12 of Woodcreek's declaration [CP 232-3 / Appendix B, pgs. B7-B8] and more than the 60% requirement set forth in RCW 64.32.090(13), the HPRA's and Woodcreek's general rule for amending a declaration.

The Woodcreek homeowners' ratification and approval of any combining or conversion of common or limited common areas and apartments by the Woodcreek Board is exactly like the ratification and approval by the Snowblaze condominium homeowners of a combining or conversion permitted by the Snowblaze board. The case involving the Snowblaze Condominium is *McLendon v. Snowblaze Recreational*, 84 Wn. App. 626, 929 P.2d 1140 (Div. III 1997).

In *McLendon*, the Snowblaze board leased a storage room, a common area per that condominium's declaration, to a unit owner and permitted the unit owner to remodel it to incorporate it into the owner's unit as an additional bedroom. Snowblaze, like Woodcreek, was formed under the Horizontal Property Regimes Act. Subsequently, the homeowners ratified the Board's leasing the common area to the unit owner by more than a 60% affirmative vote. The court of appeals held this combining of common area

and apartment unit did not violate the HPRA. The court pointed out that the HPRA requires every condominium to have as part of its declaration a provision allowing for "combining and subdividing." The court then held: (1) that the "combining and subdividing" provision in the declaration for the Snowblaze Condominiums required a 60% affirmative vote; (2) the after-the-fact ratification vote exceeded the 60% requirement in the Snowblaze Declaration; and (3) the ratification of the board's action was otherwise proper.

In respect to the after-the-fact ratification argument the Court of Appeals in *McLendon* held:

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

"Mr. McLendon argues that section 30 of the 1987 Declaration requires unanimous approval to combine the apartment and common area. He is mistaken. That provision, or at least the portions addressed by the parties here, controls amendment of the entire declaration. It does not address the question before us." [*McLendon* at page 632, *emphasis added*]

Section 30 of the Snowblaze Declaration is the same as paragraph 19 of Woodcreek's Declaration, [CP 240 / Appendix B

page B-4], the paragraph that Ms. Lake argues requires 100% approval of the Woodcreek Homeowners. Ms. Lake, like Mr. McLendon, is mistaken in her interpretation of it and its applicability. Here, as in *McLendon*, the question is addressed by the HPRA's required "combining and subdividing" provision, which is paragraph 12 of Woodcreek's Declaration [CP 232 / Appendix B, pg. B7].

The requirement of a "combining and subdividing" provision in the declaration for every condominium created under the HPRA is set forth in RCW 64.32.090:

"The declaration shall contain the following:

"(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description."

As set forth in RCW 64.32.090(10) while condominiums are required to have a subdividing and combining procedure in their declarations, the statute leaves to each condominium to decide what that procedure will be. Lake Villas' declaration (the

condominium in the *Bogomolov*⁹ decision) contains a 100% vote requirement for subdividing and combining. [Lake Villas Declaration / CP 746 / Appendix C pg. C-2]. At Snowblaze a 60% vote is required per that condominium's declaration. [*McLendon v. Snowblaze* at page 632]. At Woodcreek a 51% vote is required for subdividing and combining under paragraph 12 of Woodcreek's Declaration. [CP 232 / Appendix B, pg. B-7]

The Court of Appeals at page 371 (footnote 5) of the *Bogomolov* decision stated that *McLendon* did not apply to the situation at Lake Villas because Lake Villas' Declaration contains a 100% vote requirement for subdividing and combining compared to Snowblaze's 60%. Since Woodcreek's subdividing and combining vote requirement is 51%, *McLendon* does apply to Woodcreek.

C. Appellant Lake's argument that Woodcreek's Declaration only authorizes the addition of a bonus room by a "purchaser" and Respondent Clausing is not a "purchaser" is contrary to statutes, case law, and Woodcreek's Declaration.

Appellant Lake argues at page 28 of her brief:

"Pursuant to the unambiguous language of the Declaration, only a 'purchaser' may elect to add a

⁹ *Bogomolov* is discussed in depth at page 22-24 *supra*.]

bonus room *at the time of acquisition.*” [Underscored and italicized type added]

The italicized language, *“at the time of acquisition,”* Appellant Lake claims is “unambiguous” does not appear in the declaration. Her argument is based on language she has added to the Declaration. What paragraph 4 of Woodcreek’s Declaration [CP 385-386 / Appendix B pgs. B-1 & B-2] says is:

“At the option of the purchaser the floor plans for Types L and M Units¹⁰ will include an additional area to be situated directly above the car garage area which is incorporated within the basic structure of the apartment unit.”

The declaration states the purchaser has the “option.” It is undisputed that Glen Clausing acquired his unit by purchase. [CP 428] The declaration does not contain language that limits the option to certain purchasers, such as “*original purchaser,*” “*purchaser from the developer,*” or (as Appellant Lake claims) “*purchaser at time of acquisition.*” It says purchaser. Likewise, the declaration does not contain language that requires the option to be exercised within a certain time frame such as “*for period of 2 years,*” “*during development,*” or “*until the Association is turned*

¹⁰ As set forth earlier, the optional bonus room was made available for J, K, L and M style units by a subsequent amendment of the Declaration.

over by the developer to the homeowners." Condominiums are real property. RCW 64.32.030 provides:

"Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property."

As real property, the conveyances of condominiums are governed by the Recording Statute, RCW 65.08. RCW 65.08.060

(2), the definition section of the Recording Statute, provides:

"The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate."

In *Larrabee Co. v. Mayhew*, 135 Wash. 214, 237 Pac. 308 (1925), the definition of "purchaser" was in issue.

"The general rule as to what is a purchase, and who is a purchaser, is stated in *Younkman v. Hillman*, 53, Wash. 661, 102 Pac. 773. 'Broadly speaking, a purchaser is one who acquires title otherwise than by descent; but in its generally accepted meaning it refers to the acquisition of property for a valuable consideration.'" [*Larrabee* at 220]

"Purchaser" is not defined in the Horizontal Property Regimes Act,¹¹ RCW 64.32, which governs Woodcreek, or in

¹¹ Though not defined in the HPRA, "purchaser" is defined in the Condominium Act, RCW 64.34.020(26) as "any person, other than a dealer, who by means of a disposition acquired a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation."

Woodcreek's Declaration. Washington courts have looked to and quoted with approval Black's Law Dictionary for the definition of "purchaser" when a document being examined does not contain its own definition of that term. An example is *United Savings v. Pallis*, 107 Wn, App. 398, 27 P.3d 629 (2001). At page 407, the court stated it was relying on the definition of "purchaser" in Black's Law Dictionary, and set forth in a footnote to the opinion:

"Black's Law Dictionary defines 'purchaser' as '[o]ne who obtains property for money or other valuable consideration; a buyer.' Black's Law Dictionary 515" ed. 1996)."

Since 1978, when the Board approved the first bonus room for a purchaser/owner, the homeowners and the Board have continuously conducted themselves on the basis the term "purchaser" in the Declaration means a person who has purchased a unit at Woodcreek. Since 1988 when Appellant Lake acquired her unit, she has conducted herself on this same basis, which is demonstrated by her not objecting to the approval or construction of the 4 other bonus rooms the Board approved after she purchased her unit for various purchasers/owners. She did not object until after Respondent Clausing's bonus room was built (his was the 5th one approved since Lake has lived at Woodcreek), and

then she adopted her new and current definition of the term “purchaser.”

Glen Clausing purchased his unit. He is a “purchaser.” As a purchaser the option for a bonus room inured to his benefit along with and like all other provisions and covenants in Woodcreek’s Declaration.

D. Appellant Lake’s argument that the Woodcreek Declaration contains covenants running with the land that prohibit adding bonus rooms is simply wrong.

There is no argument that a Condominium Declaration is a covenant that runs with the land; it is and it does. However, Appellant Lake is simply wrong when she states at page 37 of her brief:

“The Declaration also states exact height specifications and unit style. (CP 375-76.) These specifications run with the land and are restrictions on the Woodcreek property for the benefit and burden of all the homeowners who live there.” [Emphasis added]

Nowhere in Woodcreek’s Declaration or in the recorded survey maps and plans do the words “restriction,” “maximum,” “limit,” or anything similar appear. Woodcreek’s Declaration is void of any restrictive covenants in respect to views, tree heights,

structure heights, square footages, number of bedrooms, baths, etc.

What Appellant Lake claims are "height restrictions" in the survey maps and plans [CP 375 / Appendix B, pg. B14] is a table of as-built elevation data. This elevation data sets forth the number of FEET (not inches as claimed by Appellant Lake) that the ceiling peaks of the units at Woodcreek are above sea level. The data also includes first floor [plate] elevations, first floor ceiling elevations, and second floor [plate] elevations. This data is based on a benchmark, an engineering monument located in the intersection of 140th Avenue NE and Main Street, Bellevue, Washington, that per a 1925 survey was determined to be 277.64 feet above sea level. [CP 208] If the elevation data was in inches as claimed by Appellant Lake, then her unit's first floor ceiling is only 8 inches above its floor as the elevation data for unit 108's first floor is 277.50 and 285.29 for its ceiling. Obviously the elevation data is expressed in feet.

The elevation data does not include any measurements, much less restrictions, related to garages or the bonus rooms. This is demonstrated by again comparing units that are alike except for

the presence or absence of a bonus room. The table below is based on the as-built elevation data cited by Appellant Lake.

CP	Unit No	Style	Bonus Rm	CP▶	As Built Ceiling Peak Elevation
◆	117	J	No	375▶	302.88
◆	122	J	Yes	375▶	302.88
◆	120	K	No	375▶	301.53
◆	137	K	Yes	375▶	301.53
◆	110	L	No	375▶	304.26
◆	146	L	Yes	375▶	304.58
◆	103	M	No	375▶	301.52
◆	111	M	Yes	375▶	301.52
[◆ Unit no., style & Bonus Room data in table is from CP 193-203, 391-393 and 424. As built ceiling peak elevation data is from CP 375]					

The table makes it clear that the as-built ceiling peak elevation data is for the ceiling peak of the main part of the unit and not for the attached garages where the bonus rooms are located.¹²

It is equally clear by reading the Declaration that this elevation data and general descriptions of the units by style (number of bedrooms, number of baths, etc.) are not restrictive covenants. Paragraph 4

¹² See pictures at page 8, *supra* that show main part of unit is behind the attached garages where the bonus rooms are located.

of Woodcreek's Declaration [CP 385-386 / Appendix B / pgs. B1-B2] that describes the apartments provides:

"4. The residence apartments are generally divided into four types . . . "[*Emphasis added*]

If the "as built elevation data" or the unit style designations were intended to be "restrictions on the Woodcreek property" as claimed by Appellant Lake, then the Declaration would state this and the Declaration would set forth the terms and conditions of any such restrictive covenant(s). Once again, Appellant Lake has added language to the Declaration. No restrictive covenant language of any kind appears in Woodcreek's Declaration as claimed by Appellant Lake.

E. The trial court had discretion to permit Woodcreek to amend its Answer and Appellant Lake was not prejudiced.

~~Respondent Clausing moved for summary judgment against~~
Appellant Lake and Respondent Woodcreek before Woodcreek sought leave to amend its answer.¹³ The fact Woodcreek was permitted to amend its Answer after Respondent Clausing filed his motion for summary judgment did not prejudice Appellant Lake in

¹³ Respondent Clausing filed his summary judgment motion on October 23, 2006 [CP 101] and Woodcreek filed its motion to amend its Answer on November 1, 2006. [CP 617]

any way in respect to Respondent Clausing's summary judgment motion.

The trial court dismissed all of Appellant Lake's claims against Respondent Clausing based on the pleadings Respondent Clausing filed in support of his summary judgment motion and the pleadings Appellant Lake's filed in response; the summary judgment against Lake was not based on Woodcreek's original Answer or its amended Answer. Further, at commencement of the summary judgment hearing, Judge North asked counsel for Appellant Lake how she wished to proceed in light of Woodcreek's amended Answer. In response, counsel for Lake informed Judge North she wanted to proceed but asked for leave to re-file Appellant Lake's summary judgment motion if Respondent Clausing's motion was denied. [See Verbatim Report of Proceedings / CP 794 / Appendix E, pgs. E3-4]. Lake's counsel did not ask for a continuance or in any way object to proceeding.

F. The trial court did not abuse its discretion in awarding Respondent Clausing attorney fees as the prevailing party as provided in RCW 64.34.455 and the award is supported by Findings of Fact and Conclusions of Law.

The trial court awarded Respondent Clausing attorney fees and costs against Appellant Lake. The basis for the

award was RCW 64.34.455.¹⁴ Findings of Fact and Conclusions of Law were entered by the trial court in respect to its award. These Findings of Fact and Conclusions of Law [CP 1009-1013] are attached as Appendix F.¹⁵

Standard of Review. The law regarding the standard of review of a trial court's award of attorney fees is well settled and is set forth in *McGreevy v. Oregon Mut. Ins. Co.*, 90 Wn. App. 283, 951 P.2d 978 (1998).

"When reviewing an award of attorney fees, the relevant inquiry is first, whether the prevailing party was entitled to attorney fees, and second, whether the award of fees is reasonable. *Public Util. Dist. No. 1 v. International Ins. Co.*, 124 Wn.2d 879, 814, 881 P.2d 1020 (1994); *Gossett v. Farmers Ins. Co.*, 82 Wn. App 375, 387, 917 P.2d 1124 (1996). Whether a party is entitled to attorney fees is an issue of law. *Tradewell Group, Inc. v. Mavis*, 71 Wn. App. 120, 126, 857 P.2d 1053 (1993). Whether the amount of fees awarded was reasonable is reviewed under an abuse of discretion standard. *American Nat'l Fire Ins. Co. v B&L Trucking & Const. Co.*, 82 Wn. App. 646, 669, 920 P.2d 192 (1996). A trial judge is given broad discretion in determining the reasonableness of an award, and in order to reverse that award, it must be shown that the trial court manifestly abused its discretion. *Scott Fetzer Co., v. Weeks*, 122 Wn.2d

¹⁴ As set forth in RCW 64.34.010, RCW 64.34.455 is one of the sections of the Condominium Act that applies to all condominiums and their owners, including condominiums built before its effective date, July 1, 1990, such as Woodcreek, and their owners.

¹⁵ The Findings of Fact and Conclusions of Law were entered by Judge North after Appellant Lake filed her opening brief.

141, 147, 859 P.2d 1210 (1993).” [McGreevy at page 289]

Basis of the Award. The basis for the award of attorney fees was RCW 64.34.455. That statute provides:

“If the declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney fees to the prevailing party.” [emphasis added]

Appellant Lake does not dispute that Respondent Clausing was the prevailing party. Rather, Appellant Lake, at pages 46 and 47 of her brief, advances three arguments: (1) RCW 64.34.455 does not apply to Respondent Clausing because he “was not the party seeking to enforce the statutory guarantees afforded to condominium owners;” (2) “there was no finding by the trial court that Ms. Lake’s suit was frivolous;” and (3) “the trial court’s order does not state the basis for the award or the method used to calculate the award.”

RCW 64.34.455 applies to all parties to this litigation, including Respondent Clausing and Appellant Lake. On page 47 of her brief Appellant Lake argues RCW 64.34.455 does not apply to Respondent Clausing (who was the prevailing party) but then on

page 48 she argues RCW 64.34.455 applies to her and she would be entitled to an award of attorney fees if she was the prevailing party. Appellant Lake's argument that RCW 64.34.455 applies to her but not to Respondent Clausing completely ignores the language of the statute. All three parties to this litigation are persons that are subject to RCW Chapter 64.34 and this case involved claims and defenses all based on the provisions of Woodcreek's Declaration and its Bylaws.

RCW 64.34.455 provides for an award of attorney's fees to the prevailing party. It does not provide, as Appellant Lake argues (page 47, footnote 9 of her brief), for recovery of attorney fees only by plaintiffs and not defendants. Her argument is contrary to the language of the statute and to this Court's (Division I) decision in *Condo Owners v. Coy*, 102 Wn. App 697, 9 P.3d 898 (2000):

"As a general rule, a prevailing party is one against whom no affirmative judgment is entered. *Anderson v. Gold Seal Vineyards, Inc.*, 81 Wn.2d 863, 505 P.2d 790 (1973). A defendant can be awarded fees as a prevailing party under the Condominium Act. CF. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 822-23, 828 P.2d 549 (1992). . . ."

[*Condo Owners v. Coy* at 706]

RCW 64.34.455 does not require a finding of a frivolous law suit. What the statute provides is:

“ . . . The court, in an appropriate case, may award reasonable attorney fees to the prevailing party.”
[emphasis added]

As set forth in *Condo Owners v. Coy* [*supra*], it is a matter within the broad discretion of the trial court to determine whether a case is an “appropriate” one for an award of attorney fees under RCW 64.34.455.

“To require trial courts to follow Marassi when awarding attorney fees under the Condominium Act to aggrieved purchasers would frustrate the statutory goal of putting them in as good a position as if the defendant had fully performed. It would undermine the statutory purpose of encouraging active enforcement of the warranties. And such a requirement would be inconsistent with the broad discretion afforded by the statute to the trial court to decide whether an award of fees is ‘appropriate’ in a particular case.” [*Condo Owners v. Coy* at page 713, *underscore added*]

Matters within the trial court’s discretion will not be overturned unless the trial court exercised its discretion on untenable grounds or for untenable reasons.¹⁶ An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court.¹⁷ The trial court in this case

¹⁶ See *State ex rel. Carroll v. Junker*, 79 Wn. 2d 12, 482 P.2d 775 (1971); *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 738 P.2d 665 (1987); and *Hope v. Larry’s Mkts.*, 108 Wn. App. 185, 29 P.3d 1268 (2001).

¹⁷ See *Somsak v. Criton Techs/Heath Tecna, Inc.*, 113 Wn. App. 84, 52 P.3d 43 (2002), and *Hope v. Larry’s Mkts.*, 108 Wn. App. 185, 29 P.3d 1268 (2001).

properly exercised its discretion based on several tenable grounds and reasons. These include the uncontested facts set forth earlier in this brief (pages 2-15) and also the following:

- RCW 64.34.100(1).

RCW 64.34.100(1) provides that the remedies of RCW 64.34.455 are to be liberally administered. RCW 64.34.100(1) provides: "The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law."

- Lake's unsupported and erroneous claims.

Lake's claims were based on her erroneous interpretation of Woodcreek's Declaration and her erroneous interpretation of *Bogomolov*, [supra] a case that was not decided until 2 years after the events she complained about took place. Her claims were not supported by any statute, case, or the plain language of paragraphs 4, 5, 7, 12, and 19 of Woodcreek's Declaration.

- Woodcreek's 28 year history / history of its Board.

Woodcreek's history includes the Board's approval of several bonus rooms for various owners. [See table at page 15 supra] Its history does not include anyone objecting the Board's approval of them.

- Clausen's actions.

Clausen submitted construction plans and engineering data to the Board in obtaining its approval of his bonus room, he notified his neighbors in writing the Board had

approved the bonus room, and he obtained the necessary building permits; and

- Lake's actions and inaction.

For 18 years Lake did not challenged the Board's authority to approve bonus rooms. Lake did not commence her suit until 15+ months after Clausing's bonus room was built. However, after commencing her suit, she applied to the Woodcreek Board to modify her own limited common area -- an action that was inconsistent with her claims that the Board lacked authority to approve owner requested modifications.¹⁸

The trial court did not abuse its discretion. The trial court's exercise of discretion is consistent with and is supported by this Court's decisions in *Condo Owners v. Coy*, and in *Homeowners' Ass'n v. Hal Real Estate*. *Homeowners' Ass'n v. Hal* also makes it clear that there is no requirement of a finding of a frivolous law suit as a condition precedent to an award of attorney fees under RCW 64.34.455.

"The fee-shifting provision in RCW 64.34.455 thus serves the general purpose of most fee-shifting statutes, which is to punish frivolous litigation and to encourage meritorious litigation. See Brand, 139 Wn.2d 667. But the Act also directs the court to administer its remedies liberally 'to the end that the aggrieved party is put in as good a position as if the other party had fully performed.' RCW 64.34.100. A statute's mandate for liberal construction includes a liberal construction of the statute's provision for an award of

¹⁸ Ms. Lake applied to the Woodcreek Board for permission to modify the limited common area behind her unit after she filed this suit. [Declaration of Shirley Hueffed, CP 148-151]

reasonable attorney fees. Progressive Animal Welfare Soc.'y v. University of Washington, 114 Wn.2d 677, 183, 790 P.2d 604 (1990)" [*Condo Owners v. Coy*, at page 713, underscore added]

"The condominium act authorizes attorney fees to the prevailing party, but only in 'an appropriate case.' Accordingly, we must next determine whether this is such a case.

In *Eagle Point* [102 Wn. App. at 700] we affirmed the trial court's determination that the case was one for the award of fees in favor of the Homeowners Association. (fn 52) In doing so, we reasoned that, although the defendant's 'argument was not without merit,' the condominium owners 'had to incur substantial professional fees in order to enforce their warranties against the declarant, and that [the defendant's] offers were unreasonably low.' (fn53). We concluded that the fee provision 'reflects a legislative purpose to ensure adequate representation for aggrieved purchasers of condominiums, and to encourage private actions to enforce the act's guarantees.' (fn55)" [*Homeowners' Ass'n v Hal Real Estate*, at page 353, underscore added]

Like the prevailing party in *Homeowners' v. Hal*, Respondent Clausing was forced to expend substantial time and money in order to enforce the act's guarantees (requirements) that all persons governed by it, including Ms. Lake, abide by Woodcreek's Declaration and its Bylaws. The amount of time and money is set forth in the Declaration of Charles E. Watts [CP 892-895] and the Declaration of Glen R. Clausing [CP 896-909] submitted in support of Respondent Clausing's motion for an award of reasonable

attorney fees. These declarations set forth in detail the work that was performed and enabled the trial court to employ the "Lodestar" methodology to determine reasonable attorney fees. Judge North did not award Respondent Clausing all fees he requested. Rather, in the exercise of the trial court's discretion, the award was reduced as set forth in the Order awarding the attorney fees [CP 990-992] and the reason for the reduction is set forth in Judge North's Findings of Fact and Conclusions of Law. [Appendix F]

The trial Court had authority to award Respondent Clausing attorneys fees under RCW 64.34.455. The trial court did not abuse its discretion in determining this was an appropriate case for an award of attorney fees to the prevailing party. The trial court likewise did not abuse its discretion in determining the amount of the award. There is no need to remand this case to the trial court to have Judge North (for the second time) enter Findings of Fact and Conclusions of Law regarding the award of attorney fees to Respondent Clausing as the prevailing party.

V. DISMISSAL OF APPELLANT LAKE'S CLAIMS WAS PROPER, BASED ON LACHES, ESTOPPEL AND WAIVER.

In her complaint Appellant Lake seeks to have Glen Clausing's bonus room demolished. As alternative relief she seeks

damages. [Lake's Complaint / CP 9 & 10] In her deposition, Ms. Lake testified that she has sustained no damages and the only relief she seeks is equitable, specifically the destruction of Glen Clausing's bonus room. [Deposition of Appellant Lake / CP 823-858 / Appendix G pgs. G2-G5]

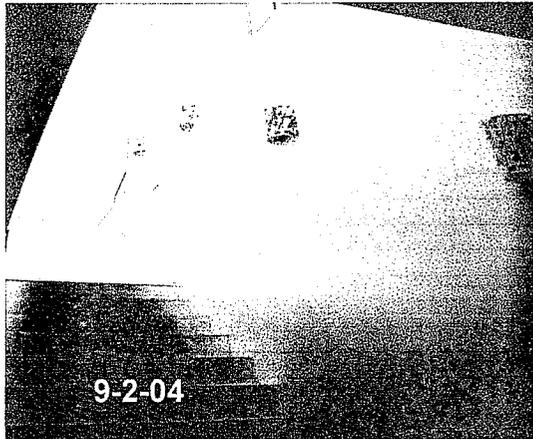
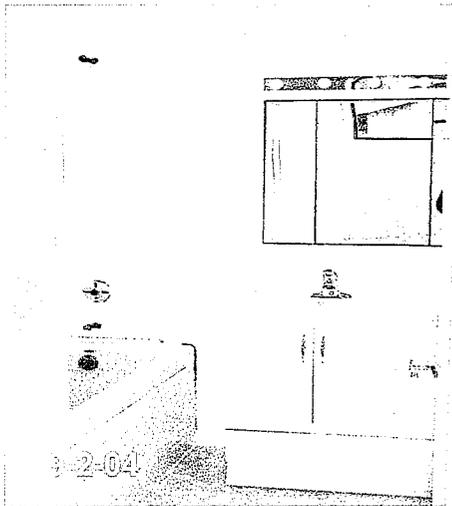
In her deposition, Appellant Lake testified she received and read both pre-construction notices but because she was pre-occupied the notices did not grab her attention. [Deposition of Appellant Lake / CP 823-858/ Appendix G pgs. G6 & G7] As set forth in the declaration of Damin Cady, [CP 124-125], Appellant Lake watched Glen Clausing's bonus room being built on a daily basis but waited until after the bonus room was built before she had her attorney write the Board to challenge the Board's authority to approve it. Her attorney's letter is dated August 26, 2004. [Declaration of Wayne Huseby/ CP-152-174 at-169/ Appendix A pg. A-18] On the following page are photographs of Glen Clausing's bonus room showing its state of completion two weeks before the date of her attorney's letter and two days after it was received by the Board.

Appellant Lake's Letter is dated August 26, 2004

Two weeks before: Siding is up, roof is complete, and wall board is finished. Exterior trim is painted on 8-29-06 [CP 440]
[Photos are CP 194 & 610]



Two days after receipt of letter, bathroom is finished, interior is painted, and light fixtures are installed.
[Photos are CP 194 & 610]



The Woodcreek Board, twice by letter and once in person, responded to Appellant Lake's attorney's letter by stating in all respects it had acted properly and it had authority to approve Glen Clausing's bonus room. [Declaration of Wayne Huseby / CP 152-174 / Appendix A] Sandra Lake then waits another 15+ months (9/04 to 12/05) before seeking injunctive relief. When asked by Mr. Watts in her deposition why she waited so long before filing her suit:

[Examination by Mr. Watts / CP 848 / Appendix G, pg. G8]

“Q: Okay. Now it too took you 16 more months before you filed the lawsuit. Can you explain why?”

A: Because it took that long to research before we would file anything.”

In *Kightlinger v. Pub. Util. Dist. No. 1*, 119 Wn. App. 501, P.3d 876 (2003) the court set forth the elements of the defense of

laches as follows:

“Laches may be established where the plaintiff (1) knows or reasonably should know of the cause of action, (2) unreasonably delays in commencing the action, and (3) causes damage to the defendant as a result.” [citing *Buell v. City of Bremerton*, 80 Wn.2d at 522, 495 P.2d 1358 (1972)]

All elements of laches (also estoppel and waiver) were established at the trial court on undisputed facts. Summary

judgment dismissing Appellant Lake's claims on this basis alone was proper. The appellate court may affirm the trial court's summary judgment on any correct ground, even one the trial court did not consider.¹⁹ Upholding the trial court's summary judgment on the basis of Respondent Clausing's affirmative defenses of laches, estoppel and waiver (alone) is proper.

VI. ATTORNEY FEES ON APPEAL

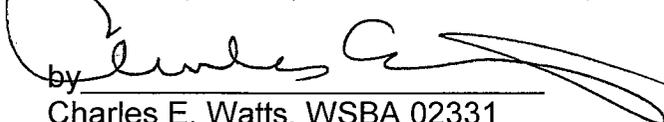
Respondent Clausing requests an award of his attorney fees and costs related to this appeal as provided in RCW 64.34.455, *Homeowners' Ass'n v. Hal*,²⁰ and RAP 18.1.

VII. CONCLUSION

Respondent Clausing requests that the trial court's summary judgment be upheld and the trial court's award of attorney fees be upheld.

Respectfully submitted May 31st 2007,

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

by 
Charles E. Watts, WSBA 02331
Attorney for Respondent Clausing

¹⁹ See *Wallace v. Lewis County*, 134 Wn. App 1, 37 P.3d 101 (2006) and *Nast v. Michels*, 107 Wn.2d 300, 730 P.2d 54 (1986)].

²⁰ *Supra*. "Both parties ask for attorney fees on appeal under the condominium act's fee provision. Where a statute authorizes fees to the prevailing party, they are available on appeal as well as in the trial court." [*Homeowners'* at page 354]

PROOF OF SERVICE

TO: Clerk, Division One, Court of Appeals

AND TO: Marianne Jones, attorney for Appellant Sandra Lake

AND TO: Scott Barbara, attorney for Respondent Woodcreek Homeowners Association.

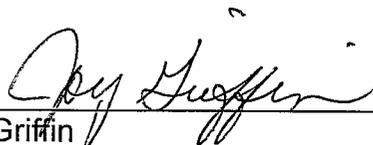
PLEASE TAKE NOTICE on the 31st day of May, 2007, Respondent Clausing's Brief (with its appendices) was served via ABC Legal Messengers, Inc. on the following:

Court of Appeals/Division 1
One Union Square
600 University Street
Seattle, WA 98101-4170
(2 copies)

Marianne Jones
Attorney for Appellant Lake
11819 NE 34th Street
Bellevue, WA 98005
(1 copy)

Scott Barbara
200 W. Thomas, Suite 500
Seattle, WA 98119
(1 copy)

Dated this 31st day of May, 2007.



Joy Griffin
Assistant to Charles E. Watts

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2007 JUN -1 PM 3:39

APPELLATE CASE NO 59211-4

COURT OF APPEALS
DIVISION ONE,
OF THE STATE OF WASHINGTON

SANDRA LAKE

Appellant

v.

WOODCREEK HOMEOWNERS ASSOCIATION,
A Washington homeowners association

And

GLEN R. CLAUSING,
a single man

Respondents

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2001 JUN -1 PM 3:39

APPENDICES TO BRIEF OF RESPONDENT GLEN R. CLAUSING

Attorneys for Respondent Clausing:

Oseran, Hahn, Spring & Watts., P.S.
Charles E. Watts
10900 NE Fourth Street #850
Bellevue WA 98004
425-455-3900

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Appendix A

Pages

Declaration of Wayne Huseby [CP 152-174] A1- 23

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

ORIGINAL

Honorable Douglass A. North
Trial: June 4, 2007

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDRA LAKE, individually,

Plaintiff,

No. 05-2-39460-9 SEA

vs.

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

DECLARATION OF
WAYNE HUSEBY

Defendants.

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

Washington, declares as follows:

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

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

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

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

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

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

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

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

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

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

Declaration of Wayne Huseby 3

Oseran, Hahn, Spring & Watts, P.S.
10900 NE Fourth Street #250

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

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

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

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

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

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

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

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

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10900 177

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

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

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

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

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

Declaration of Wayne Huseby 6

Oseran, Hahn, Spring & Watts, P.S.
10900 NE Fourth Street #250
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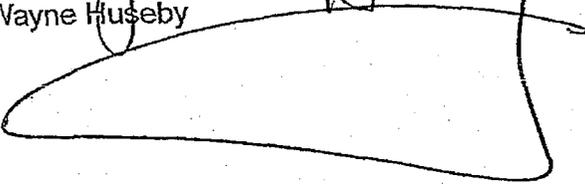
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- C July 15, 2004, Board of Directors Meeting Minutes.
- D Letter from Glen Clausing dated July 10, 2004.
- E August 19, 2004, Board of Directors Meeting Minutes.
- F Letter from Marianne Jones dated August 26, 2004.
- G Letter from Wayne Huseby dated September 22, 2004.
- H October 21, 2004 Board of Directors Meeting Minutes.
- I Letter from Wayne Huseby dated October 30, 2004.

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

Wayne M. Huseby
Wayne Huseby



Declaration of Wayne Huseby 7

Oseran, Hahn, Spring & Watts, P.S.
10900 NE Fourth Street #850

GLEN R. CLAUSING

glenclausing@comcast.net
155-141st PL NE
BELLEVUE, WASHINGTON 98007

TELEPHONE
(425) 746-2784

FAX
(425) 746-2866

May 19, 2004

Board of Directors
Woodcreek Homeowners
Association Hand Delivered

Handwritten signature/initials

Re: Owner Modification Unit 109 - Bonus Room Addition

Dear Members of the Board:

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

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

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EXHIBIT A 162

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

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

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

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

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

Sincerely,

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

Glen R. Clausing

EXHIBIT A-212

↓ Appendix A Page A-9

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

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

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

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

OWNERS' COMMENTS

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

MINUTES OF PREVIOUS MEETING

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

TREASURER'S REPORT

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

PREPARATION FOR ANNUAL MEETING

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

(over)

EXHIBIT B

Appendix

Woodcreek Homeowners Association
Minutes of Board Meeting
July 15, 2004

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

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

Called to Order: 7:00 P.M.

Remarks of Guests:

Lee Miller, one year ago she reported a problem with the fence. Manager repaired the fence using the old boards when possible. Wants proper replacement of the fence with new materials. Managers reuse of the good wood saved the association over \$1K. Discussed the pro/cons of reusing some wood slats in rebuilding fences.
Wayne Huseby asked Larry Wilson and Rose Marie to look at fence and give Board an independent opinion.

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

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

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

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

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1

EXHIBIT C-194

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

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

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

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

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

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

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

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

Q. How did the Board come up with the decision to give the building permit?
Wayne: "Glenn came to the Board and followed the guidelines and protocol. Board required licensed, bonded contractor and approved the project. Somebody on the Board

EXHIBIT C 2/4

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

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

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

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

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

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

Board went into Executive Session: 8:55 PM Bob and Mary Left the room.

General Session Re-convened: 9:20 PM Bob and Mary rejoined the meeting.

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

Minutes of Last Meeting:

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

Treasurer's Report:

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

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

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

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

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

EXHIBIT C 394

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

Correspondence:

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

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

Glen Clausing, apologized to neighbors for the inconvenience caused with the construction of a bonus room. - Copy of mgr letter to all owners on 1-11-84 pl that construction was starting next week.

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

Managers Report:

Bob has contacted painters to obtain bids on six year house painting schedule.

Discussion ensued as to time frame for the job and the competitiveness of the bids. Board gave the Manager the green light to go ahead with Townhouse Company with the conditions that a timeframe be established and the bid be brought into compliance with the budget.

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

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

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

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

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

Old Business:

None

New Business:

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

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

Adjourned: 11:38 P.M.

EXHIBIT C-484

GLEN R. CLAUSING

glen @ anomcast.net

155-141' PL NE

BELLEVUE, WASHINGTON 98007

TELEPHONE (425)746-

2784

FAX (425)746-2866

July 10, 2004

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

RE: Apology For Any Inconvenience

Dear Neighbors:

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

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

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

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

Your neighbor,

Glen R. Clausing

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EXHIBIT D

Woodcreek Homeowners Association
Board Meeting Minutes
August 19, 2004

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

Minutes of Last Meeting:
Motion to Accept Ralph Miller, Second, Rose Marie. Unanimous.

Treasurer's Report:

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

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

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

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

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

Correspondence:

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

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EXHIBIT E 182

- Sandra Lake, #198 request for detailed information on all bonus rooms and remodels approved by the board, from 1977. Ms. Lake also requested a permit to replace her back deck and slab. President will respond to the permit issues. Bob will respond to the deck replacement request.
- Virginia Lockwood, #74 common area between her unit and #75. Comcast did not repair after their work, requests drainage and landscaping improvements. Manager agrees with the condition of the area. Mail Press is aware and working on this problem.
- Kathleen Bruce, #112, requested that long term parking restrictions be enforced on the streets of the association. Asked that a reminder be given to the homeowners in Woodcrafter.
- Dorothy Calvo, #58, requested replacement of rain gutter over front door. Manager will correct the situation.

Managers Report:

- ✓ Painting is almost complete, generally very happy with quality of work. Will have them finish a couple of questioned areas.
- ✓ Fencing is done except for paint. 350 (cost / 9 gates for \$7,000).
- ✓ Pool has operated all year with no problems.
- ✓ Unit #44, Betty Arlin is working with the manager to stop some staining on the roof beams.
- ✓ Sewer repair, Frayda Costan, #25, have two bids, will take the lower one and correct the drain problem.
- ✓ Tom Anderson, #147 corrected interior doors sags. Lump in floor checked in crawl space, can be corrected with a shorter support beam.
- ✓ Toilet flange in a unit is too high and needs to be lowered and is in bad shape.

Old Business:

None.

New Business:

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

Adjourned: 10:15 P.M.

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EXHIBIT E 282

JONES LAW GROUP, PLLC

11819 N.E. 34TH STREET
BELLEVUE, WASHINGTON 98005

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

MARIANNE K. JONES
LEA A. HOLLOMAN

August 26, 2004

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

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

Dear Mr. Huseby,:

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

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

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

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

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

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EXHIBIT E 192

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

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

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

Very truly yours,
JONES LAW GROUP, PLLC

Marianne K Jones

MARIANNE K. JONES
Attorney at Law

RECEIVED 8/26/04

September 22, 2004

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

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

Dear Ms. Jones,

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

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

Respectfully,

Wayne Huseby

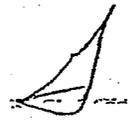
Wayne Huseby
President - Woodcreek Homeowners' Association

cc: Woodcreek Board of Directors
Sandra Lake

wmh

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EXHIBIT



Woodcreek Homeowners Association
Board Meeting Minutes
October 21, 2004

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

Remarks of Guests:

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

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

Minutes of Last Meeting:

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

Treasurer's Report:

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

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

Correspondence:

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

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

Managers Report:

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

Old Business:

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

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

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

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

New Business:

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

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

Adjourned: 9:53 P.M.

418 H 267

October 30, 2004

Sandra Lake
Unit #108

Dear Ms. Sandra Lake,

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

Sincerely,



Wayne Huseby
President - Woodcreek Homeowners' Association

cc: Woodcreek Board of Directors
Marianne K. Jones

Appendix B

	Pages
Excerpts from Woodcreek's Declaration	
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3. There are 12 residence buildings to be situated upon the site set forth as Division #3 in the Survey Map and Plans, Sheet two (2) of 5. The residence buildings contain the following apartments:

- Building V - Apartments 101 through 104
- Building W - Apartments 105 through 108
- Building X - Apartments 109 through 112
- Building Y - Apartments 113 through 116
- Building Z - Apartments 117 through 120
- Building A-A - Apartments 121 through 124
- Building B-B - Apartments 125 through 128
- Building C-C - Apartments 129 through 132
- Building D-D - Apartments 133 through 136
- Building E-E - Apartments 137 through 140
- Building F-F - Apartments 141 through 144
- Building G-G - Apartments 145 through 150

Each residence building is a combination one story and two story design with frame construction having no basements. Each residence building has a concrete foundation. The principal material of which the buildings are constructed is wood. Wood siding is used throughout the project on all of the buildings. The name of the buildings will be Woodcreek Division No. 111.

4. The residence apartments are generally divided into four types as follows:

- J - Single story, two bedrooms, two baths,
Square footage - 1886

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Woodcreek

DECLARATION Phase III

Unit K - Single story, three bedrooms, two baths,
Square footage - 2183

Unit L - Two story, three bedrooms, two baths,
Lower floor plan - 1803 square feet
Upper floor plan - 612 square feet

Unit M - Two story, two bedrooms, two baths,
Lower floor plan - 1510 square feet
Upper floor plan - 558 square feet

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In addition there is designed in the plans for Type L
M units a room designated as the "bonus room". At the option
of the purchaser the floor plans for Types L and M Units will
include an additional area to be situated directly above the car
garage area which is incorporated within the basic structure of
the apartment unit. The bonus room will consist of one of four
alternate floor plans and will increase the square footage of
said units by approximately 416 square feet. A more particular
description of each apartment by unit type is shown on Sheet
5 of 5 of the Survey Map and Plans. The boundaries of each
apartment are the interior surfaces of the perimeter walls
floors, ceilings, windows and doors thereof.

5. Description of Woodcreek Development and incorporation
of same by reference: Declarant has established the Woodcreek

Condominium Development in three Phases, of which Division III
is the last phase for a total of 150 resident apartment units.
The residence apartment units of Phase III are substantially the
same as the residence apartment units for I and II according to
type, style, design and number of buildings and units per phase
and materials used in construction. Attached hereto as Annex
A and by this reference incorporated herein as though fully
set forth is a listing of the undivided percentage interest
of each residence apartment unit by phase within the 150 apartment
unit development together with a statement of each unit's value.

CERTIFICATE OF AMENDMENT
Recorded Under Auditor's File #7603100585

Amended Plan Recorded
in Vol. 14 Page 43-44 Recording No. 711-20-802

CERTIFICATE OF AMENDMENT TO CONDOMINIUM
DECLARATION FOR WOODCREEK DIV. NO. 1,
AS AMENDED TO INCORPORATE PHASE III (DIV.
3B) INTO THE CONDOMINIUM PLAN

IS REVISED AS FOLLOWS:

Page 3 of 3 of the Survey Map and Plans -

Building	CC	Unit	129	constructed	as	M Model
			130			M Model
			131			M Model
			132			K Model
	DD		133			M Model
			134			J Model
			135			X Model
			136			E Model
	HH		137			N Model
			138			J Model
			139			L Model
			140			L Model
	FF		141			J Model
			142			M Model
			143			M Model
			144			K Model
	CC		145			L Model
			146			M Model
			147			J Model
			148			M Model
			149			K Model
			150			

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RECORDED & RECORDED

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In addition on Page 5 of 5 of the Survey Map and Plans there is designated in the plans for Type J, K, L and M units, a room designated as the Bonus Room. The following units have been constructed with Bonus Rooms, which consists of 416 additional square feet:

- 130H
- 131M
- 137K
- 139J
- 146L
- 149M

EFFECTIVE DATE: This Certificate of Amendment to Declaration shall take effect upon recording.
IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this 4th of November, 1977.

WOODCREEK ASSOCIATES,
A Joint Venture Partnership
Tri-De Investments, Inc.
Rosa E. Woodward, Jr.
Attorney in Fact

Rosa E. Woodward, Jr.

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CP 395

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lease, rent or convey said interest pursuant thereto to the prospective purchaser, tenant or grantee named therein within ninety (90) days after his notice was given, after which such right shall cease. No apartment owner shall have any right to sell, lease, rent or convey his apartment or any interest therein except as expressly provided herein. The subleasing or subletting of an apartment shall be subject to the same limitations as are herein made applicable to the leasing or rental thereof. The liability of an apartment owner under the terms of this item shall continue notwithstanding the fact that he may have one or more times leased his apartment in conformity with the provisions hereof.

➔ 19. AMENDMENT TO DECLARATION: This Declaration may be amended consistent with the laws of 1963, Chapter 156 (RCW 64.32) upon securing the written consent of sixty (60) percent of the apartment owners; provided, however, that an amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous written consent of all apartment owners, except as provided in paragraph 6 above.

The amendment shall be reduced to writing and shall contain the certificate of the Directors that the requisite number of apartment owners have consented thereto as set forth above, and shall be acknowledged by the Directors. Such an amendment shall become effective upon the recording of such Certificate of Amendment with the Auditor of King County, Washington.

Prior to the first conveyance of an apartment this Declaration may be amended by the unilateral act of the owners of the property.

Woodcreek

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UNIT TYPE D

First story

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

Second story

Two bedrooms, one bathroom, one study or den

(Ground floor and second floor joined by interior stairway)

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

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

4. DESCRIPTION OF WOODCREEK CONDOMINIUM DEVELOPMENT - PRESENT AND FUTURE:

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

Woodcreek

Appendix B Page B-5

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of Division No. 1. Phase Three will consist of 50 residence apartment units to be constructed west of Division No. 1. Construction on Phases 2 and 3 will commence within five years. The total area to be covered by the development will be 22½ acres, more or less. All the residence apartment units will be substantially the same according to type, style, design, number of buildings per phase and materials used in construction.

Attached hereto as Annex B and by this reference incorporated herein as though fully set forth, is a listing of the undivided percentage interest of each residence apartment unit by phase within the 150 apartment unit development together with a statement of its value. The values placed upon the residence apartment units by this declaration are for the purpose of determining each apartment unit owner's undivided percentage interest in said condominium development and said values shall not be construed to be a limitation or restriction on the sales price.

Owner hereby expressly reserves the right to amend this declaration without the approval and consent of apartment unit owners for the purpose of including Phases 2 and 3 within the provisions of this declaration.

Woodcreek

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

11. PERCENTAGE OF VOTES REQUIRED IN CERTAIN CASES:

Any decision on the question of whether to rebuild, repair, restore or sell the property in the event of damage or destruction of all or part of the property shall require the affirmative vote of 51% of the voting power of all owners of apartments.

12. PROCEDURES FOR SUBDIVIDING AND/OR COMBINING:

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

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

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

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

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

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

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of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners excluding such possessor, his successors and assigns.

17. STRUCTURAL MODIFICATIONS: An apartment owner shall not make structural modifications or alterations in his apartment unit or installations located therein without previously notifying the Association of Apartment Owners in writing through the management agent, if any, or through the President of the Board of Directors, if no management agent is employed, in securing the consent of the Association to such modification or alteration.

The Association shall have the obligation to answer within seven (7) days, and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration.

18. PREEMPTIVE RIGHT:

(a) Option to purchase. In the event of any sale, rental, lease or conveyance of an apartment, after the first conveyance thereof to an apartment owner, the Association of Apartment Owners shall have the first option to purchase, rent or lease the same on the same conditions as are offered to said apartment owner by any third person. Any attempt to resell, rent, lease or convey said apartment without prior offer to the Association of Apartment Owners shall be wholly null and void and shall confer not title, interest nor right whatsoever upon the intended purchaser, tenant, lessee or grantee.

(b) Notice to Board. Should an apartment owner desire to sell, rent, lease or convey an apartment or any portion

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

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

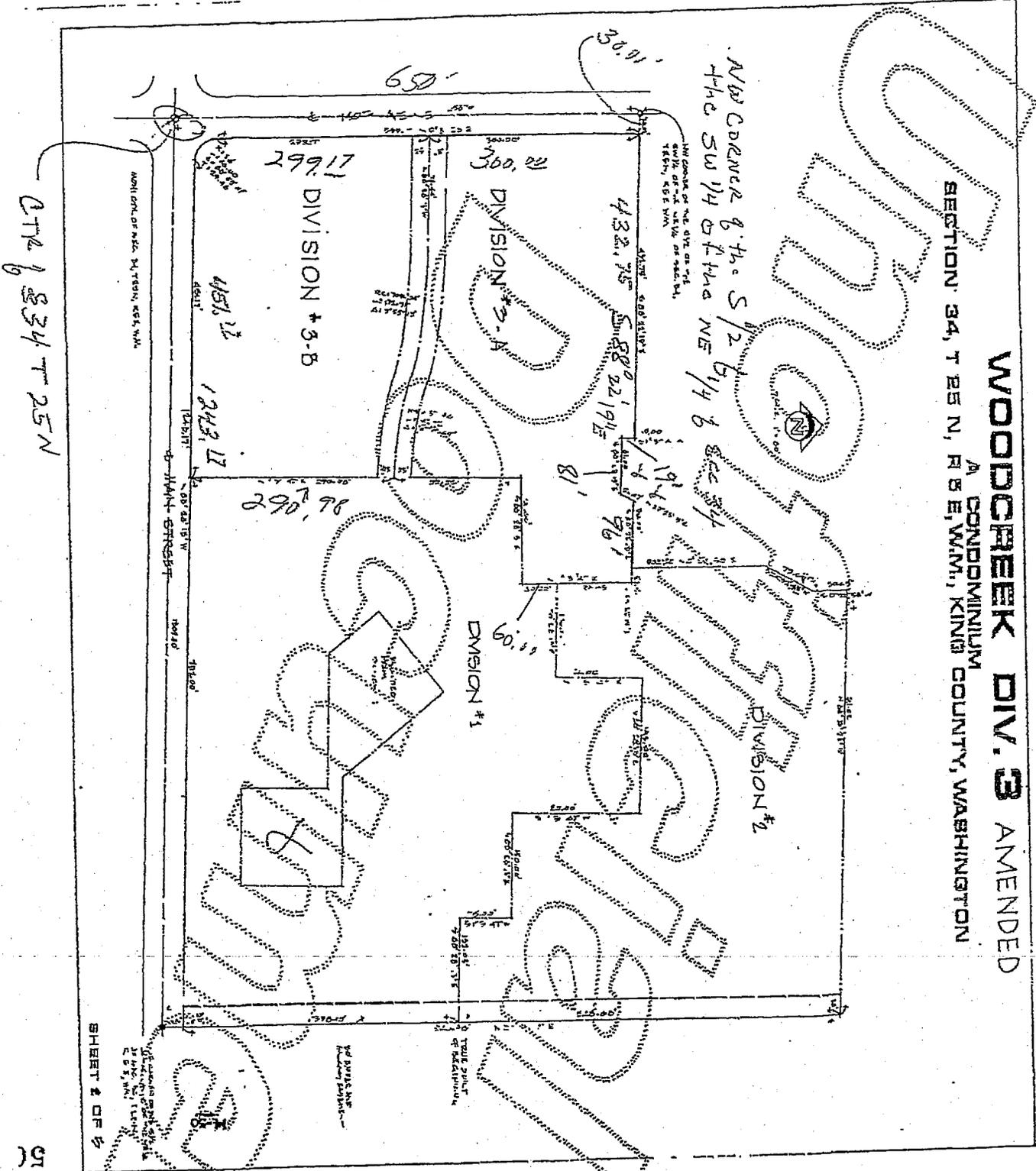
An apartment owner who retains title to the whole of a subdivided apartment shall retain his percentage of undivided interest in the common areas and facilities appertaining to said apartment immediately before subdivision.

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

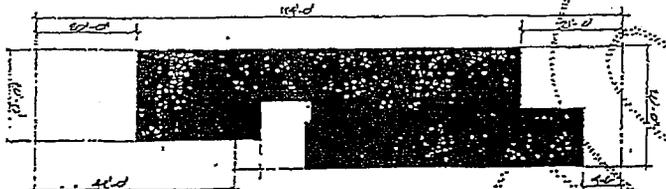
- A. Water, sewer, garbage collection, electrical, and any other utility service for the common area. If

Woodcreek

WOODCREEK DIV. 3 AMENDED
 A CONDOMINIUM
 SECTION 34, T 25 N, R 5 E, W 1 M, KING COUNTY, WASHINGTON

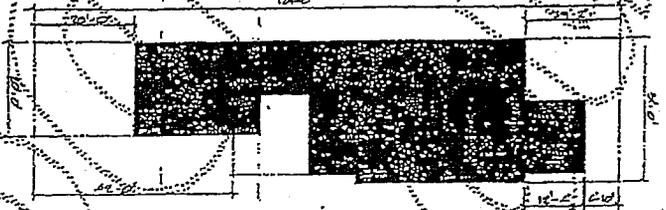


WOODCREEK DIV. 3 AMENDED
 A CONDOMINIUM
 SECTION 34, T 25 N, R 5 E, W.M., KING COUNTY, WASHINGTON



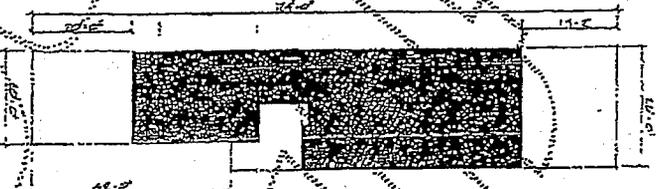
FLOOR PLAN
 1922 SQ.FT.
 AREA - 1922 SQ.FT.
 BEDROOMS - 2
 BATHS - 2
 TOTAL LOT AREA - 2972 SQ.FT.

UNIT J



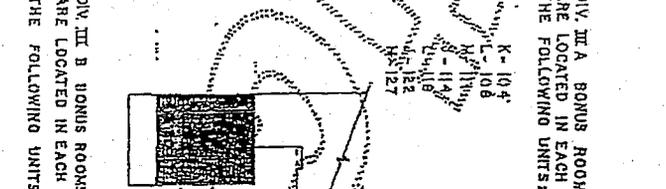
FLOOR PLAN
 2183 SQ.FT.
 AREA - 2183 SQ.FT.
 BEDROOMS - 2
 BATHS - 2
 TOTAL LOT AREA - 2310 SQ.FT.

UNIT K



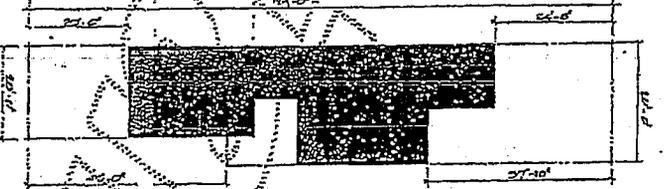
UPPER FLOOR PLAN
 616 SQ.FT.
 AREA - 2433 SQ.FT.
 BEDROOMS - 3
 BATHS - 2
 TOTAL LOT AREA - 2972 SQ.FT.

UNIT L



UPPER FLOOR PLAN
 656 SQ.FT.
 AREA - 2102 SQ.FT.
 BEDROOMS - 2
 BATHS - 2
 TOTAL LOT AREA - 2972 SQ.FT.

UNIT M



LOWER FLOOR PLAN
 1336 SQ.FT.

DIV. III B BONUS ROOMS
 ARE LOCATED IN EACH OF
 THE FOLLOWING UNITS:

- K-104
- L-108
- M-110
- N-114
- O-116
- P-122
- Q-127

Recording No 771080 802

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5. DESCRIPTION OF COMMON AREAS AND FACILITIES: The

common areas and facilities shall be those areas and facilities as defined in the Act (RCW, Chapter 64.32) and all areas not expressly described as part of the individual residence apartments or as limited common areas or the property of the Association of Apartment Owners, and include, but are not limited to the following:

- A. The land above described.
- B. The roofs, walls, foundations, studding, joists, beams, supports, main walls (excluding only non-bearing interior partitions of apartments, if any), pipes, conduits and wire wherever they may be located whether in partitions or otherwise, and all other structural parts of the buildings to the interior surfaces of the apartments' perimeter walls, floors, ceilings, windows and doors; that is, to the boundaries as defined in the Act, in RCW 64.32.010 (1).

Due to the design of this development, there are no common halls or stairways.

- C. The green belt areas, other yard areas, all garden areas, the outdoor walkways, driveways, vehicle parking areas (not including the residence apartment driveway) and the roadways and driving areas which provide access to the limited common areas for parking and to the apartment units.

- D. All utilities and water and sewer lines situated outside the limits of the residence apartments as described, except those main water and sewer lines with easements which are or may be transferred to the appropriate municipal governmental unit.

- E. All other parts of the property necessary or convenient to its existence, maintenance, safety and use not otherwise classified.

- F. The Recreation facility with swimming pool, playground area and tennis courts are specifically excluded as a common area. Said improvements shall be owned exclusively by the Woodcreek Apartments Owners Association for the exclusive use and

Woodcreek

benefit of the apartment owners of Woodcreek as presently existing or to be developed into a total of 150 apartment units (more or less).

6. MEMBERSHIP IN WOODCREEK APARTMENT OWNERS ASSOCIATION:

Each owner of an apartment unit in Woodcreek Division No. 1 (Phase 1) and Woodcreek Phases 2 and 3 shall be deemed a member of Woodcreek Apartment Owners Association, a non-profit Washington corporation, with the ownership of such apartment units being inseparably appurtenant to membership in Woodcreek Apartment Owners Association. Each such owner shall pay in addition to all assessments and other charges as herein provided, such dues and assessments as shall be from time to time fixed by the said Woodcreek Apartment Owners Association. Transfer of ownership of any apartment unit shall likewise be deemed to be transfer of membership in Woodcreek Apartment Owners Association, and the Secretary of the said Woodcreek Apartment Owners Association is hereby appointed as attorney-in-fact for each such owner for the purpose of effecting transfer of membership upon transfer of ownership of a unit.

Woodcreek

7. DESCRIPTION OF THE LIMITED COMMON AREAS AND FACILITIES:

The limited common areas and facilities shall consist of the following:

A. A patio/garden area

Each residence apartment has set aside for its exclusive use a patio/garden area located immediately behind the respective residence apartment. The patio and garden areas are shown on the plan at Sheet 3 of 5 and are designated by the resident apartment unit number to which they pertain with the addition of

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the suffix "P".

B. The original improvements on limited common areas such as the fences, gates and sidewalks of the patio areas and entrance areas and the foundations, columns, girders, beams, supports, walls and roofs shall be considered common areas for the purpose of repair or replacement.

C. Attic storage area. Each residence apartment has set aside for its exclusive use an attic storage space which is the space between the ceiling of the ground floor of Type A or B unit or the ceiling of the second story if a Type C or D unit and the roof of the residence apartment.

D. Crawl space. Each residence apartment has set aside for its exclusive use a crawl space which is the space between the ground and the ground floor of the residence apartment.

E. Entrance area. Each residence apartment has set aside for its exclusive use an entrance area located immediately to the front of each residence apartment adjacent to the entry way. The entrance areas are shown on the Condominium Plan at Sheet 3 of 5, and are designated by the applicable residence apartment number to which each pertains with the addition of the suffix "E".

F. Driveway parking area. Each residence apartment has set aside for its exclusive use a driveway parking area located immediately to the front of each residence apartment garage area. The driveway parking areas are shown on the Condominium Plan at Sheet 3 of 5, and are designated by the applicable residence apartment number to which each pertains with the addition of the suffix "D".

Woodcreek

Appendix C

Pages

Excerpts from Lake Villas' Declaration

Paragraph 7 Lake Villas' Declaration [CP 734]	.. C1
Paragraph 27 Lake Villas' Declaration [cp746]	.. C2

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f. Individual Items. Certain items which could ordinarily be considered common or limited common areas, such as but not limited to screen doors, window screens, other screens, awnings, storm windows, planter boxes, antennae, and the like, may pursuant to decisions of the Owners and specification in the Bylaws, or by administrative rule of the board, be designated limited common areas and as items to be furnished and/or maintained entirely at individual expense in good order and according to standards and requirements established by the Board by rule or regulation, or set in the Bylaws. Items specified for individual maintenance and care in this Declaration shall be individual items within the meaning of this clause without further specification in the Bylaws and may be regulated as herein provided.

7. VALUE AND PERCENTAGE OF UNDIVIDED INTEREST IN COMMON AREAS

The value assigned to the entire property and the value assigned to each apartment, including all the limited common areas appertaining thereto, other than open parking spaces and dock spaces, and the percentage of undivided interest in the common and limited common areas appertaining to each apartment based on such value, is stated in Schedule A to this Declaration. These values are assigned and scheduled to establish the percentages required by the Act, also shown in the Schedule, and do not reflect, necessarily, the amount for which an apartment will be sold, from time to time, by Declarant or others. The established percentages are not separable from the apartment and shall be deemed to be conveyed and encumbered with the apartment although not mentioned in the instrument evidencing the encumbrance or conveyance. The values and percentages allocated to open parking spaces and dock spaces are allocated solely for purposes of facilitating the assignment or transfer of the exclusive use thereof or among apartments as limited common areas. The open parking spaces and dock spaces are not apartments and they or the easement or right to the exclusive use and their related percentage of interest will be appurtenant to the apartment to which they are assigned as limited common area and/or for the exclusive use of such apartment. The total percentage of any apartment will be the combined percentages of the apartment and the open parking spaces and dock spaces assigned to it, if any.

8. USE: REGULATION OF USES: ARCHITECTURAL UNIFORMITY

a. The apartments shall be used as residences by single families only, whether on an ownership, rental or lease basis; and for the common social, recreational or other reasonable purposes normally incident to such uses, and also for such additional uses or purposes as are from time to time determined appropriate by the Board of the Association of Apartment Owners. Apartments of the building may be used for the purposes of operating the Association of Owners and for management of the condominium if required. No provisions of this Declaration shall, however, preclude use by Declarant of any apartments owned by Declarant or use of common or limited common areas to conduct sales activities for any or all the apartments owned by Declarant, whether such provisions relate to use, insurance or otherwise.

b. All parking spaces are restricted to use for parking of operative motor vehicles; other items and equipment may be parked or kept therein only subject to the rules or regulations of the Board. The Board may require removal of any inoperative vehicle, or any unsightly vehicle, and any other equipment or item. If the same is not removed, the Board may cause removal at the risk and expense of the owner thereof. Campers, boats, trailers and other recreational vehicles or equipment, shall not be stored in limited common areas in any manner visible to others except upon consent of the Board or in accordance with rules adopted by the Board if and when such rules are adopted. Similarly, dock spaces shall be used for boat moorage subject to similar limitations, and the rules of the Board.

c. Common drives and walks shall be used exclusively for normal transit and no obstructions shall be placed thereon or therein except by express written consent of the Board.

Lake Villas

e. It is intended that the covenants of the Declaration shall be operative as covenants running with the land, or equitable servitudes, supplementing and interpreting the Act, and operating independently of the Act should the Act be, in any respect, inapplicable, to establish the common plan for the condominium and its operation indicated herein and in the Survey Map and Plans.

f. It is intended that in addition to the rights under the statute, each apartment has an easement in and through the common area for all support elements and utilities, wiring, heat and/or service elements, and for reasonable access thereof, as required to effectuate and continue proper operation of this condominium plan.

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27. PROCEDURES FOR SUBDIVIDING OR COMBINING

Subdivision and/or combining of any apartment or apartments, common areas and facilities, or limited common areas and facilities are authorized only as follows: Any owner of any apartment or apartments may propose any subdividing and or combining of an apartment, apartments, or common areas or limited common areas in writing, together with complete plans and specifications for accomplishing the same and a proposed amendment to the Declaration, Survey Map and Plans covering such subdividing or combining, to all other apartment owners. Upon written approval of such proposal and signature of the amendment to the Declaration by all other owners, the owner making the proposal may proceed according to such plans and specifications; provided that the Board may in its discretion (but it is not mandatory that the Board exercise this authority) require that the Board administer the work, or that provisions for the protection of other apartments or common areas, or reasonable deadlines for completion of the work, be inserted in the contracts for the work. The changes in the Survey Map, if any, and the changes in the Plans and Declaration shall be placed of record as amendments to the Survey Map, Plans, and Declaration of Condominium. Bylaw requirements on this subject shall also be met.

28. AMENDMENT OF DECLARATION, SURVEY MAP, PLANS; TERMINATION OF COVENANTS

a. Amendments to the Declaration may be proposed by any apartment owner in an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment, and refers to the recording date identifying the Declaration, Survey Map and Plan. Except as otherwise specifically provided for in this Declaration for independent or individual action, notice of any proposed amendment must be given as called for in this Declaration to each owner and the amendment approved prior to its adoption by a majority of the Board of Directors of the Apartment Owner's Association. Except as otherwise provided herein, amendments may be adopted at a meeting if at least 60% of all of the owners vote for such amendment, or without any meeting if all owners have been duly notified and 60% of the owners consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the president of the Board of the Association of Apartment Owners and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the appropriate office of the County. Any decisions changing the values and percentage of interest expressed herein, shall require the consent of the apartment owners and their mortgagees as provided or required by the Act, as amended from time to time, or if the Act does not so provide or is inapplicable, shall require unanimous consent of owners and their mortgagees. It is specifically covenanted and understood that any amendment to this Declaration or Survey Map and Plans properly adopted will be completely effective to amend any or all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration or Survey Map and Plans unless otherwise specifically provided in the section being amended or the amendment itself.

Lake Villas

Appendix D

Pages

Excerpts from Woodcreek's Bylaws

Article II, Section 7 [CP 410-11]

D1-2

Article V [CP 415-16]

D3-4

unit owners. If one or more additional candidate(s), who has (have) given prior consent, is (are) nominated from the floor, selection of individual positions for director in the number to become vacant will be made by ballot voting of the unit owners. Notwithstanding anything else contained in these Bylaws, in the election of directors each unit owner shall have the right to vote for as many directors as are to be elected, but cumulative voting shall not be allowed.

Section 3: Qualifications. Each director shall be a unit owner or the spouse of a unit owner (if a unit owner is a corporation, partnership or trust, a director may be an officer, employee, agent, attorney, partner or beneficiary of such unit owner), and each director shall also reside on the property. If a director should fail to meet such qualification during his term, he shall thereupon cease to be a director and his place on the Board shall be deemed vacant.

Section 4: Vacancies. In the event of a vacancy on the Board of Directors (whether occasioned by resignation, death, removal or otherwise), a majority of the remaining directors may elect a new director to serve for the unexpired term of the former director.

Section 5: Annual Meeting of the Board. An annual meeting of the Board shall be held immediately following the annual meeting of the unit owners and at the same place. Special meetings of the Board shall be held upon call by the President or by a majority of the Board on not less than forty-eight (48) hours notice in writing to each director, delivered personally, or by mail or telegram. Any director may waive notice of a meeting or consent to the meeting without notice or consent to any action of the Board without a meeting.

Section 6: Removal of Director. Any director may be removed from office by the vote of at least sixty (60) percent of the voting power of owners of apartments at any regular or special meeting.

Section 7: Powers and Duties of Board. The board shall have the following powers and duties:

- (a) To elect the officers of the Association as hereinafter provided.
- (b) To administer the affairs of the Association and the property.
- (c) To engage the services of manager(s) or managing agent who shall manage and operate the property, and the common and limited common areas thereof for all of the unit owners upon such terms and for such compensation and with such authority as the Board may approve.
- (d) To formulate policies for administration, management, operation of the property and the common and limited common areas thereof.
- (e) To adopt administrative rules and regulations governing the administration, the management, the operation and the use of the property, and to amend such rules and regulations from time to time as required.

Woodcreek

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- (f) To provide for the maintenance, repair and replacement of the property and the payments therefore, to approve payment vouchers or to delegate such approval to the officers or manager(s) or the managing agent.
- (g) To provide for the designation, hiring and removal of employees and other personnel, including accountants, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management, operation of the property, and to delegate any such power to the manager(s) or managing agent, (and any such employees or other personnel who may be employees of the managing agent).
- (h) To estimate the amount of the annual budget, and to provide the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses in accordance with the Condominium Declaration hereinabove referred to, and Article IV of these Bylaws.
- (i) Unless otherwise provided for herein, or in the Declaration, to comply with the instruction of a majority of the unit owners as expressed by a resolution duly adopted at any annual or special meeting of the unit owners.
- (j) To exercise all other powers and duties of the Association of Apartment owners or unit owners as a group referred to in the Horizontal Property Regimes Act of the State of Washington, Chapter 64.32 RCW, as now existing or hereinafter amended, and all powers and duties of the Association of Apartment owners or the Board of Directors referred to in the Condominium Declaration as amended.

ARTICLE III

OFFICERS

Section 1: Election and Duties of Officers. At each annual meeting of the Board, they shall elect the following officers of the Association:

- (a) **President:** A president, who shall be a director, and who shall be the chief executive officer of the Association.
- (b) **Vice President:** A vice president, who shall be a director, who shall, in the absence or disability of the President, perform the duties and exercise the powers of President.
- (c) **Secretary:** A secretary, who shall keep minutes of all meetings of the Board and of the unit owners, and who shall in general perform all the duties incident to the office of secretary, and who may be a representative of the managing agent.

Section 9: Records. The Board shall cause to be kept detailed and accurate records in chronological order of the receipts and expenditures affecting the common properties, specifying and itemizing the common expenses incurred, and such records and the vouchers authorizing the payment of such common expenses shall be available for examination by the unit owners at convenient hours of week days. Such payment of vouchers shall be approved in such manner as the Board may determine.

Section 10: Discharge Liens. The Board of Directors may cause the Association to discharge any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the property or the common areas thereof rather than against the particular unit ownership only. When less than all of the unit owners are responsible for the existence of any such lien, the unit owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses (including attorney fees) incurred by reason of such lien.

Woodcreek

ARTICLE V

USE OF PROPERTY AND APARTMENT ARCHITECTURAL UNIFORMITY

Section 1: Conformance. The Board shall regulate the use of the property and the unit apartments in accordance with Paragraph 9 of the Declaration.

Section 2: Rules of Conduct. All unit owners and their guests, lessees or others occupying an apartment unit shall comply with the following Rules of Conduct, together with such additional rules as may be promulgated from time to time by the Board of Directors:

- (a) All unit owners, families and their guests shall adhere to Woodcreek Recreational Rules, as adopted by the Board and as amended from time to time.
- (b) No unit owner shall post or place any advertisements or posters of any kind in or on the property except as authorized by the Board.
- (c) Unit owners shall exercise extreme care in making noises or using musical instruments, radio and television and amplifiers that may disturb other unit owners.
- (d) Hanging of garments, rugs and the like from the windows or from any area visible from the common areas is prohibited. Dusting and shaking out of rugs and the like from the window or by beating on the exterior part of the building is prohibited.
- (e) Throwing of garbage or trash in the common areas is prohibited.
- (f) No owner, resident or lessee shall make any structural modification or alteration to the apartment unit or common and limited common areas

Appendix D Page D-3

of the unit without the prior written approval of the Association through its Board of Directors. This includes but is not limited to window, skylight, fireplace, deck or patio installation, interior structural alteration which modifies the original as-built configuration; and installation of wiring for electrical or telephone, antennas, machines, air conditioning units or the like on the exterior of the structure or that protrude through the walls or the roof of the structure.

- (g) Common household pets shall be leashed in the common areas in accordance with Bellevue Animal Control Ordinance 1842.
- (h) The use of streets and driveways for the parking or storage of mobile homes, trucks, campers, or other related commercial or recreational vehicles is not permitted. Any vehicle may be stored within the garage if it allows the garage door to be fully closed.

Protracted daily and/or overnight street parking of conventional passenger automobiles is permitted only for the occasional guests of residents. Except for very short periods of temporary street parking, resident and long term guest parking is limited to garage and driveway spaces only.

- (i) Since the flat, tarred roof areas over family rooms and entire roof area are subject to damage by any excessive foot traffic, and are normally subject to maintenance responsibility of the Association, use of these areas for activity such as sunbathing or lounging is prohibited; where such prohibition is ignored, the Association reserves the right to disclaim repairs for damage resulting from such use.

- (j) Similarly, use of garage doors and roofs for such purposes as basketball backboard, or other youth games, is prohibited. Homeowners with children should exercise reasonable discipline with respect to use of streets for sports activities, games, or small toys, particularly such as tricycles, wagons, etc., where the potential exists for accidents with cars and trucks.

- (k) No commercial business shall be operated from a unit residence except as authorized by the Board.

Section 3: Personal property. Articles of personal property belonging to any unit owner, such as bicycles, wagons, toys, furniture, clothing and other articles shall not be stored, kept or left in the common areas.

Appendix E

Pages

Verbatim Report of Proceedings - Summary
Judgment Judge North November 22, 2006
[CP 792-803]

E1- E12

FILED

2006 DEC 12 PM 12:22

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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Honorable Douglass A. North
Trial: June 4, 2007

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDRA LAKE, individually,

Plaintiff,

No. 05-2-39460-9 SEA

vs.

**VERBATIM REPORT OF
PROCEEDINGS**

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

Defendants.

Attached for filing is a true and correct copy of the Verbatim Report of
Proceedings heard before the Honorable Douglass North November 22, 2006.

Dated: December 5, 2006.

OSERAN, HAHN, SPRING & WATTS, PS

By James Charles E. Watts
CLAWCH #10862
Charles E. Watts, WSBA 2331
Attorney for Defendant Clausing

Verbatim Report of Proceedings
Cover Sheet/Caption

Oseran, Hahn, Spring & Watts, P.S.
10900 NE
Bellevue
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Appendix E Page E-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

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SANDRA LAKE, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) CAUSE NO. 05-2-39460-9 SEA
)
 WOODCREEK/CLAUSING,)
)
 DEFENDANTS.)

VERBATIM REPORT OF PROCEEDINGS

HEARD BEFORE THE HONORABLE DOUGLASS NORTH
NOVEMBER 22, 2006

APPEARANCES:

MARIANNE JONES, ATTORNEY-AT-LAW, APPEARING ON BEHALF OF THE
PLAINTIFF LAKE AND SANDRA AND DENNIS WILKINS;
SCOTT K. BARBARA, ATTORNEY-AT-LAW, APPEARING ON BEHALF OF
THE HOMEOWNERS' ASSOCIATION;
TED WATTS, ATTORNEY-AT-LAW, APPEARING ON BEHALF OF
DEFENDANT CLAUSING;

WHEREUPON THE FOLLOWING PROCEEDINGS WERE HAD AND DONE,
TO-WIT:

ORDERED BY: TED WATTS (425) 455-3900
REPORTED BY LADD A. SUTHERLAND, RPR, CSR,
OFFICIAL COURT REPORTER

FRIDAY, NOVEMBER 22, 2006; 9:06 A.M.

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MR. WATTS: CHARLES WATTS FOR CODEFENDANT CLAUSING,
GLEN CLAUSING.

MR. BARBARA: SCOTT BARBARA FOR THE HOMEOWNERS'
ASSOCIATION.

MS. JONES: I'M MARIANNE JONES, REPRESENTING THE
PLAINTIFF, LAKE, AND MY CLIENT SANDRA AND DENNIS WILKINS.

THE COURT: WE'RE HERE ON LAKE AND CLAUSING.

MS. JONES, WOULD YOU LIKE TO GO AHEAD?

MS. JONES: YES, YOUR HONOR. I RECEIVED YOUR MESSAGE
YESTERDAY REGARDING AN ORDER REGARDING THE MOTION TO AMEND.
AND I'D LIKE TO KNOW WHETHER THE COURT IS BASICALLY
INSTRUCTING ME TO REFILE MY MOTION PENDING OR TO REVISE IT.
AND SO IS THAT THE COURT'S INSTRUCTION TO ME --

THE COURT: I WASN'T SURE ABOUT EXACTLY WHAT YOU
WANTED TO DO IN LIGHT OF THE AMENDMENT. YOU CAN GO AHEAD
AND ARGUE THE MOTION ANYWAY, IF YOU WANT, AT THIS POINT.
OBVIOUSLY YOU NO LONGER HAVE WHAT YOU VIEWED AS AN
ADMISSION BY WOODCREEK IN DEALING WITH IT. IF WE CAN GO
AHEAD AND ARGUE IT BASED ON THE RECORD YOU'VE GOT, OR
REFILE IT IF YOU WANT TO DO THAT.

MS. JONES: OKAY. I ASK LEAVE TO REFILE. HERE IS MY
TAKE ON THAT. IF THE DEFENDANTS' MOTION IS DENIED, THEN
THE COURT ON ITS OWN MOTION COULD ESSENTIALLY GRANT THE --

1 MY RELIEF, ANYWAY. IF THAT'S NOT GOING TO HAPPEN, THEN I
2 COULD REFILE MY MOTION TO INCLUDE, YOU KNOW, THE PROPER
3 ARGUMENT AND CHANGE THAT. SO WE MAY WANT TO PROCEED THAT
4 WAY, BECAUSE A DENIAL OF THEIR MOTION, YOU KNOW, BASICALLY
5 MAY DO THE SAME THING. BECAUSE -- WELL, IT DEPENDS.

6 THE COURT: RIGHT.

7 MS. JONES: THERE'S FACT ISSUES.

8 THE COURT: IT PROBABLY MAKES MORE SENSE FOR YOU TO
9 GO AHEAD AND GO FIRST, BECAUSE I HAVE A PRETTY GOOD IDEA OF
10 THE ARGUMENTS ON BOTH SIDES AT THIS POINT.

11 MR. WATTS: COULD I JUST ASK THE COURT HOW MUCH TIME
12 WE HAVE ON THIS MATTER?

13 THE COURT: WE'RE NOT GOING TO HAVE ANY TIME
14 PROBLEMS.

15 MR. WATTS: ARE THERE GOING TO BE ANY TIME LIMITS?

16 THE COURT: NOT THAT MATTER. SO GO AHEAD, MS. JONES.

17 MS. JONES: YOUR HONOR, SECTION 19 OF THE DECLARATION
18 STATES IN PERTINENT PART, "AN AMENDMENT ALTERING THE VALUE
19 OF THE PROPERTY AND OF EACH APARTMENT AND THE PERCENTAGE OF
20 UNDIVIDED OWNERSHIP IN COMMON AREAS AND FACILITIES REQUIRES
21 A UNANIMOUS WRITTEN CONSENT." WE HAVE TO REMEMBER THAT IS
22 ON THE TITLE. WHAT ALSO IS ON TITLE IS THAT UNIT-STYLE J
23 AND SPECIFICALLY DEFENDANT CLAUSING'S UNIT IS A ONE-STORY
24 UNIT WITH A CERTAIN SQUARE FOOTAGE, WITH CERTAIN CEILING
25 HEIGHTS. THAT IS WHAT IS ON TITLE ON ALL OF WOODCREEK

1 ASSOCIATION'S COMMON AREAS. AND EVERYBODY IN THE
 2 ASSOCIATION HAS THE SAME DECLARATION ON TITLE FOR THEIR
 3 UNIT. EVERYTHING OUTSIDE OF THAT IS COMMON AREA, INCLUDING
 4 THE AIR SPACE ABOVE. TYPICALLY THAT'S, UNDER LAW, TWO
 5 HUNDRED FEET. THE GROUNDS, EVERYTHING OUTSIDE IS COMMON
 6 AREA.

7 WHEN YOU'RE GOING TO AMEND OR ALTER A BUILDING, IT IS
 8 BY -- IT'S NECESSARILY ALTERING THAT WHICH IS ON TITLE.
 9 THOSE DECLARATIONS STATE A CERTAIN CEILING HEIGHT. YOU'RE
 10 ALTERING WHAT'S ON TITLE. WHEN YOU PURCHASE A CONDOMINIUM
 11 THERE ARE TITLE DOCUMENTS GIVEN AND DECLARATIONS GIVEN
 12 AFFIRMING THAT THOSE -- THAT WHAT'S ON TITLE, WHAT'S
 13 RECORDED, IS WHAT ACTUALLY YOU'RE PURCHASING.

14 THE COMMON AREA NOW HAS CHANGED. IT IS NO LONGER THE
 15 WHOLE THAT SANDRA LAKE PURCHASED OH, SO MANY YEARS AGO. IT
 16 IS DIFFERENT IN THAT THE COMMON AREA HAS BEEN TAKEN AWAY BY
 17 THIS ADDITION THAT HAS BEEN DONE. SO WHEN YOU LOOK AT
 18 SECTION 19, YOU SAID YOU CANNOT ALTER THE VALUE OF THE
 19 PROPERTY, MEANING THE EXTENT OF THE COMMON AREA, WHETHER
 20 IT'S VALUE IS BEING UP OR DOWN, YOU CANNOT ALTER IT. YOU
 21 CANNOT CHANGE WHAT IS ON TITLE WITHOUT A UNANIMOUS VOTE.

22 THE COURT: SO YOUR ARGUMENT, MS. JONES, IS NOBODY
 23 CAN DO ANYTHING TO THE EXTERIOR OF THE BUILDING WITHOUT A
 24 UNANIMOUS VOTE, BECAUSE IT OBVIOUSLY AFFECTS THE COMMON
 25 AREA?

1 MS. JONES: THEY CAN'T EXTEND INTO THE COMMON AREA.
 2 THEY CAN'T CHANGE THE ROOF OR THE SIDING OR ANYTHING
 3 WITHOUT ALL OF IT BEING DONE UNIFORMLY TO THE CONDOMINIUM.
 4 THAT'S EXACTLY HOW IT'S GONE FOR YEARS AND YEARS AND YEARS.
 5 WHEN THEY REPLACED ALL THE ROOF, THEY CHANGED ALL OF THEM.
 6 THEY NEED TO BE UNIFORM. THAT IS THE PURPOSE --

7 THE COURT: WHEN THEY GRANTED SEVERAL PEOPLE THE
 8 RIGHT TO BUILD BONUS ROOMS --

9 MS. JONES: YOUR HONOR, IT WAS ALL IN ERROR. IF YOU
 10 LOOK AT THEM, ONLY ONE PERSON ACTUALLY -- AND THEY WERE ON
 11 THE BOARD -- ONLY ONE PERSON ACTUALLY HAD -- WE HAVE PROOF
 12 THAT THERE WAS A BONUS ROOM BUILT. THE FIRST ONE, YOUR
 13 HONOR, WAS NEVER BUILT. I'M SORRY, IT WAS BUILT DURING THE
 14 CONSTRUCTION WHILE OTHER CONSTRUCTION WAS STILL GOING ON BY
 15 THE DEVELOPER.

16 THE SECOND ONE THERE ARE NO MEETING MINUTES FOR
 17 BECAUSE THE MEETING MINUTES HAVE BEEN DESTROYED FOR
 18 APPROXIMATELY ONE YEAR OF TIME. THE THIRD ONE WAS DONE BY
 19 A BOARD MEMBER. IN FACT MANY OF THESE WERE BY BOARD
 20 MEMBERS. THERE'S NOTHING THAT EVEN QUESTIONS THAT BOARD
 21 APPROVAL IS NOT PROPER. EVEN UNDER THEIR OWN ARGUMENT YOU
 22 NEED 51 PERCENT OF THE ASSOCIATION'S VOTE. SO BOARD
 23 APPROVAL IS NECESSARY. IT WAS ALL WRONG. ONE WRONG DOES
 24 NOT NECESSARILY -- DOES NOT MEAN THAT EVERYBODY ELSE CAN DO
 25 IT. IT'S ALL BEEN WRONG ALL ALONG.

1 THE COURT: WELL, BUT DOESN'T THE SECTION 19 DEALING
2 WITH -- TALK ABOUT SOMETHING THAT RELATES TO THE PERCENTAGE
3 OWNERSHIP OF BOTH IN THE CASE? AND HERE IS THE PERCENTAGE
4 OWNERSHIP ASSIGNED AT THE VERY BEGINNING. IT HAS NOT BEEN
5 ALTERED WHEN ANYBODY CHANGED SQUARE FOOTAGE, WHEN THEY
6 ADDED A BONUS ROOM OR WHEN THEY DID ANYTHING, THE
7 PERCENTAGE OWNERSHIP REMAINED THE SAME.

8 MS. JONES: THAT IS TRUE. BUT THEY TOOK AWAY A
9 PORTION OF THAT COMMON AREA AND MADE IT INTO A PRIVATE
10 AREA. SO THEREFORE THERE IS LESS COMMON AREA AS THE WHOLE
11 THAT THEY ARE NOW SHARING. IT WOULD BE JUST LIKE THEM
12 TAKING GROUND. THEY TOOK AIR INSTEAD. BUT IT'S JUST LIKE
13 GROUND, YOUR HONOR. MAY I USE A DIAGRAM TO SHOW YOU?

14 THE COURT: IF YOU WANT. I UNDERSTAND THE CONCEPT OF
15 THE AIR BEING A COMMON AREA. BUT THE POINT IS THAT THE
16 PAPERWORK ALSO DESCRIBES PEOPLE HAVING THE RIGHT TO BUILD
17 THESE BONUS ROOMS AS AN OPTION UNDER TO-BE BUILT.

18 MS. JONES: IT IS ONLY AN OPTION FOR A PURCHASER,
19 YOUR HONOR. AND PURCHASERS ARE NOT OWNERS. IT IS AT THE
20 TIME THAT THE BUILDER WAS SELLING TO PURCHASERS. AT THAT
21 TIME THEY HAD THAT OPTION, BECAUSE, YOUR HONOR, ONCE THOSE
22 DECLARATIONS ARE FILED, YOU CANNOT CHANGE WHAT'S ON TITLE.
23 MY CLIENT HAS A TITLE INTEREST IN THAT SPACE THAT HAS NOW
24 BEEN CONVERTED TO MORE SQUARE FOOTAGE FOR MR. CLAUSING. HE
25 TOOK IT FROM MY CLIENT. AND HE TOOK IT FROM EVERYBODY. IT

1 WAS COMMON AREA. IT'S BEEN CONVERTED. AND, YOU KNOW, WHY
 2 CAN I KNOW THAT? BECAUSE THE DECLARATIONS THAT ARE ON
 3 TITLE, THAT ARE SECURED BY OR THAT ARE INSURED BY A TITLE
 4 COMPANY AND THE DECLARATIONS THAT PROVIDE WHAT THE VALUE OF
 5 THE WHOLE ASSOCIATION ARE STATE THAT DEFENDANT CLAUSING'S
 6 UNIT IS A SINGLE-STORY UNIT WITH CERTAIN CEILING HEIGHTS.
 7 IT'S ON TITLE, YOUR HONOR, AND A CERTAIN SQUARE FOOTAGE.
 8 IF THIS COURT WERE TO SAY THAT HE COULD BUILD ANOTHER -- OR
 9 ANYONE COULD BUILD MORE SQUARE FOOTAGE OR MORE CEILING
 10 HEIGHT, WHAT YOU'RE ESSENTIALLY DOING IS FINDING A WAY TO
 11 CHANGE WHAT IS ON TITLE. HOW COULD ANY COURT DO THAT? YOU
 12 COULD ONLY DO IT THROUGH ADVERSE POSSESSION OR SOMETHING.

13 THE COURT: MS. JONES, THIS IS MAKING LAW INTO ONE OF
 14 THE STUPIDER THINGS AROUND BY SAYING THE AIR SPACE
 15 TECHNICALLY IS THE COMMON AREA. AS A PRACTICAL MATTER NO
 16 PERSON CAN USE THE AIR SPACE OVER A PERSON'S UNIT EXCEPT
 17 THAT PERSON. THERE'S NO WAY THE ASSOCIATION CAN GIVE IT TO
 18 ANYBODY ELSE.

19 MS. JONES: SHE USED TO LOOK OUT AT I BELIEVE IT'S
 20 TIGER MOUNTAIN. NO, I BELIEVE THE CORRECT MOUNTAIN IS
 21 COUGAR MOUNTAIN. SHE USED TO LOOK OUT AND SEE TREES AND
 22 SEE THE MOUNTAINS. NOW THAT NO LONGER EXISTS. SHE USED TO
 23 NOT HAVE A SHADOW ON TO HER PROPERTY.

24 NOW THIS GOES INTO THE REMEDIES, WHICH WE'RE NOT
 25 ARGUING IN OUR MOTIONS. HOWEVER, IT AUTHORIZES COMMON AREA

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IN THEIR PROPERTY.

MS. JONES: UNDER THAT ARGUMENT THERE WOULD NEVER BE A NEED FOR SECTION 19, BECAUSE THERE WOULD NEVER BE A CHANGE IN THE PERCENTAGE INTEREST UNDER THAT ARGUMENT. YOU'RE SAYING THAT THERE IS NO REASON TO HAVE -- EVER TO NEED TO CHANGE THE PERCENTAGE INTEREST, BECAUSE IT'S NOT TIED TO OR LINKED TO ANYTHING. THEREFORE THE PERSON WITH A MILLION SQUARE FEET IN WOODCREEK HAS THE SAME PERCENTAGE INTEREST THAT WAS GIVEN TO THEM IN 1977. THAT'S WRONG. THAT'S NOT CORRECT UNDER THE READING OF THIS. IT'S NOT CORRECT UNDER THE STATUTE. AND IT'S NOT CORRECT UNDER ANY DECLARATION THAT'S IN HERE, UNDER ANY SECTION OF THE DECLARATION. IT'S SIMPLY WRONG.

THIS CASE IS EXACTLY LIKE BOGOMOLOV. THAT CHANGING COMMON AREA THAT IS ABOVE A UNIT INTO PRIVATE AREA IS NECESSARILY LINKED TO ALTERING; WHETHER IT'S INCREASING OR DIMINISHING, I DON'T CARE, IT'S ALTERING. YOU'VE ALTERED THE VALUE OF THAT PROPERTY AND OF EACH UNIT BECAUSE YOU'VE TAKEN AWAY COMMON AREA OF THE ENTIRE UNITS. IT'S JUST LIKE TAKING AWAY GRASS, JUST LIKE TAKING AWAY PARKING SPACE AND JUST LIKE GIVING DOCK SPACE TO UNITS. WE JUST GAVE AIR SPACE TO THAT ONE UNIT. THIS IS LIKE BOGOMOLOV. THESE DECLARATION SPECIFICATIONS ARE CONSISTENT WITH THE STATUTE. AND THAT WAS WHAT I THINK THEY WERE SAYING IS RELATIVELY CONSISTENT. THE REASON THAT THEY WENT TO THE DECLARATIONS

1 INTERESTS. IT DOESN'T MATTER WHETHER IT'S GREEN GRASS THAT
2 YOU LAY ON, WALK ON OR JUST VIEW. IT'S STILL COMMON AREA.
3 IT DOESN'T MATTER WHETHER THAT AIR SPACE SHOWS YOU A VIEW
4 OF A CITY, A CLOUD OR OF TREES. IT'S STILL COMMON AREA.
5 AND IT'S VALUABLE, AT LEAST TO THIS PLAINTIFF. AND IT'S
6 NOT JUST THIS PLAINTIFF, BECAUSE THE PEOPLE ACROSS THE
7 STREET HAVE A DIFFERENT VIEW, AS WELL. BUT MOSTLY IT IS
8 TAKING AWAY AND NECESSARILY GIVING DEFENDANT CLAUSING A
9 BIGGER UNIT. IT'S TAKING AWAY FROM THE WHOLE. AND NOW HE
10 DOESN'T HAVE TO PAY ANY MORE. HE HAS A BIGGER UNIT. HE
11 TOOK MORE OF THE COMMON SPACE. BUT THAT DOESN'T
12 NECESSARILY CHANGE THE UNDIVIDED PERCENTAGE INTEREST.

13 WHY IS MY CLIENT PAYING MORE IN HER UNDIVIDED
14 INTEREST THAN DEFENDANT CLAUSING EVEN TO HAVE DEFENDANT
15 CLAUSING GET TO BUILD ANOTHER PART TO HIS UNIT? WHAT'S
16 GOING TO HAPPEN WHEN OTHER PEOPLE GET TO DO THAT? THE
17 PERCENTAGE INTERESTS ARE NECESSARILY GOING TO HAVE TO
18 CHANGE BECAUSE PEOPLE HAVE -- ARE BUILDING, BUILDING,
19 BUILDING.

20 THE COURT: BUT IT'S NOT LIKE BOGOMOLOV WHERE THE
21 PERCENTAGE INTEREST IS SPECIFICALLY TIED TO WHAT UNIT YOU
22 OWN, WHAT PARKING SPACE YOU USE, AND WHAT BOAT SLIP YOU
23 HAVE. HERE THE INTEREST IS DETERMINED BY THE OWNER AT
24 THE BEGINNING. SO THERE'S NO UNNECESSARY CHANGE IN
25 PERCENTAGE INTEREST SIMPLY IF SOMEBODY MAKES AN IMPROVEMENT

1 IN BOGOMOLOV IS BECAUSE DECLARATIONS WENT A LITTLE FURTHER
2 THAN THE STATUTE. THEY NOT ONLY ADD VALUE, BUT THEY SAID
3 VALUE IS BASED UPON SQUARE FOOTAGE. AND THEY ADDED PARK
4 SPACE AND DOCK SPACE. WELL, YOUR HONOR, IN THIS CASE
5 INSTEAD OF DOCK SPACE, JUST TAKE THE AIR SPACE. JUST TAKE
6 THAT APARTMENT. IT'S THE SAME THING.

7 THE COURT: OKAY, I'VE HEARD ENOUGH. I'LL GRANT
8 SUMMARY JUDGMENT TO WOODCREEK AND CLAUSING. THIS IS NOT
9 LIKE BOGOMOLOV, AND THERE'S NO POINT TO THIS LAWSUIT. THE
10 REMAINING QUESTION BETWEEN I GUESS IS IT MR. CLAUSING WHO
11 HAD ALSO MOVED FOR SUMMARY JUDGMENT ON WOODCREEK'S CLAIMS
12 ON BREACH OF ATTORNEY RELATIONSHIP. AND I DON'T KNOW
13 WHETHER YOU FOLKS FEEL LIKE YOU NEED TO ARGUE THAT IN LIGHT
14 OF MY GRANTING THE SUMMARY JUDGMENT TO YOU AGAINST MS.
15 LAKE.

16 MR. BARBARA: SCOTT BARBARA. IN LIGHT OF THE COURT'S
17 RULING WE'D BE WILLING TO DISMISS. AND I THINK THE SUMMARY
18 JUDGMENT MOTION BECOMES MOOT.

19 MR. WATTS: I'M VERY DISAPPOINTED ABOUT NOT GETTING A
20 CHANCE TO ARGUE TO THE COURT, BUT --

21 THE COURT: USUALLY WHEN YOU WIN YOU ARE GLAD AT THAT
22 POINT.

23 MR. WATTS: I RECOMMENDED TO EVERYBODY THEY SHUT OFF
24 THEIR CELL PHONES, AND THEY DID DO THAT FOR ME. I ACCEPT
25 MR. BARBARA'S STIPULATION.

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MS. JONES: THERE WERE SANCTIONS GRANTED FOR
WOODCREEK PAYABLE TO MS. LAKE. SO WE'D LIKE STILL TO
RECEIVE THAT CHECK.

MR. BARBARA: WE HAVE THAT CHECK AVAILABLE TODAY.

THE COURT: FINE. IF YOU WANT TO PREPARE AN ORDER.

MR. WATTS: IF THE COURT WOULD JUST GIVE US A FEW
MINUTES, WE'LL PREPARE ONE.

(WHEREUPON THE HEARING IN THE ABOVE-ENTITLED MATTER
CONCLUDED AT 9:15 A.M.)

Appendix F

Page

**Findings of Fact and Conclusions of Law
Regarding Attorney Fees Awarded to
Respondent Clausing**

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ATTORNEY'S COPY

The Honorable Douglass North

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SANDRA LAKE, individually,

Plaintiff,

v.

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

Defendants.

No. 05-2-39460-9 SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
REGARDING AWARD OF
ATTORNEYS' FEES

THIS MATTER coming on before the undersigned Judge upon the motion of
defendant Glen R. Clausing, a single man, for award of attorneys' fees; the Court
having read and considered the materials submitted by the parties in support and
opposition to the requested award of attorneys' fees by Clausing; the Court believing
that Clausing is the "prevailing party" and that the RCW 64.34.455 provides for award of
attorneys' fees in favor of a prevailing party in litigation such as this; now, therefore, the
Court does make and enter its

FINDINGS OF FACT AND CONCLUSIONS OF LAW -1
F:\CEW\Pld\Clausing, Glen\FOF & COL.doc 4/17/07 (jcg)
#25498.001

OSERAN HAHN SPRING & WATTS P.S.
4000 NE Fourth Street #850
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FINDINGS OF FACT

1
2 1. The Court has jurisdiction of the parties and subject matter of this
3 proceeding.

4 2. This lawsuit essentially involves a claim by the plaintiff for enforcement of
5 the Condominium Declarations for Woodcreek and all issues submitted by both parties
6 were intimately related to the interpretation and enforcement of the Declarations.

7 3. RCW 64.34.455 provides for an award of attorneys' fees in litigation
8 involving the enforcement of or interpretation of the Declarations.

9 4. Glen Clausing is the "prevailing party" in this litigation because of the fact
10 that the Court on Cross-Motions for Summary Judgment dismissed the claims of plaintiff
11 Sandra Lake against him and against the Woodcreek HOA (which did not seek an
12 award of attorneys' fees). As prevailing party Glen Clausing is entitled to recovery of
13 reasonable attorneys' fees and costs in this litigation.

14 5. Mr. Clausing is an attorney licensed to practice law in the State of
15 Washington. His retained counsel, Charles E. Watts, is an attorney licensed to practice
16 law in the State of Washington and has practiced law in the King County area since
17 1968. Watts was admitted to the Bar of the State of Washington in 1965. Watts'
18 practice emphasizes civil litigation in the business and real estate fields.

19 6. Mr. Clausing candidly acknowledges that he did much of the legal work in
20 a role of assisting Mr. Watts in presenting the Clausing side of this case. The Court
21 believes that a reasonable attorneys' fee should take into account the personal interest
22 of Mr. Clausing in this case, and the likelihood that Mr. Clausing because of his

1 | personal interest spent more time on the case than would be the normal practice for an
2 | independent and privately retained attorney in similar litigation.

3 | 7. Clausing claimed the amount of \$57,286.25 in attorneys' fees of which
4 | Watts' portion was \$8,288.75. The Court finds that Watts' portion of the attorneys' fees
5 | was reasonable and was necessarily incurred in the defense of the Lake Complaint on
6 | behalf of Mr. Clausing. The Court finds that the sum of \$30,000 represents a
7 | reasonable and appropriate and necessary compensation for Clausing's legal fees
8 | incurred by him in the defense of the Lake litigation as assistant to Mr. Watts. The
9 | hourly billing rates for Watts and Clausing are reasonable and customary for their
10 | experience in the practice of law in the Bellevue/King County area.

11 | 8. It is entirely appropriate for Mr. Clausing to charge for his services
12 | reasonably and necessarily incurred in assisting his retained counsel in defending
13 | himself in this litigation. However, the Court concludes and determines that there
14 | should be a reduction in the amount awarded for Clausing's services, not because they
15 | were not rendered, but because the Court concludes that Mr. Clausing's services may
16 | have been heightened in terms of number of hours given his personal involvement in
17 | the case as a party defendant. The Court believes that the award made for Clausing's
18 | services is a reasonable reflection of fees reasonably and necessarily incurred on his
19 | part in assisting Mr. Watts in this representation.

20 | 9. The costs claimed by Clausing in the amount of \$1,783.45 are reasonable
21 | and are necessarily incurred and are recoverable by Clausing pursuant to
22 | RCW 64.34.455.

1 WHEREFORE, based upon the foregoing Findings of Fact, the Court does make

2 and enter its

3 CONCLUSIONS OF LAW

4 1. The Court has jurisdiction of the parties and subject matter to this
5 proceeding.

6 2. RCW 64.34.455 provides that in the event of litigation involving the
7 Declaration the prevailing party is entitled to recover reasonable attorneys' fees and
8 costs in an appropriate case. This is an appropriate case for an award of
9 reasonable fees and costs.

10 3. This litigation involved the Declarations of Woodcreek and Clausing as
11 prevailing party is entitled to recover his attorneys' fees reasonably and necessarily
12 incurred in the litigation against plaintiff Sandra Lake. Co-Defendant Woodcreek
13 Homeowners Association did not seek an award of attorneys' fees.

14 4. Reasonably and necessarily incurred by Clausing in connection with the
15 defense of the Lake litigation through the entry of summary judgment and the attorneys'
16 fees motions in the Superior Court litigation is the sum of \$30,000, together with the
17 sum of \$1,783.45 for costs.

18 5. Judgment has heretofore been entered in the foregoing amount in favor of
19 Clausing against Lake. This judgment is confirmed and ratified and remains effective by
20 virtue of these Findings of Fact and Conclusions of Law.
21
22

DONE and DATED this 17 day of ^{May} April, 2007.

15 Douglas A. North
THE HONORABLE DOUGLASS NORTH

Presented by:

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

By: [Signature]
CHARLES E. WATTS, WSBA #2331
Attorney for Plaintiffs

Approved as to form, notice of presentation waived:

By: _____
MARIANNE JONES, WSBA #21034
Attorney for Defendant Sandra Lake

Appendix G

Page

**Excerpts Deposition Transcript
Sandra Lake**

G-1-G8

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

SANDRA LAKE, Individually,)

Plaintiff,)

v.)

NO. 05-2-39460-9SEA

WOODCREEK HOMEOWNERS)

ASSOCIATION, a Washington)

Homeowners Association;)

GLEN R. CLAUSING, a single)

man,)

Defendants.)

COPY

DEPOSITION UPON ORAL EXAMINATION OF:

SANDRA GLAZER LAKE

WEDNESDAY, SEPTEMBER 13, 2006

C O N D E N S E D

Taken at the law offices of Oseran, Hahn, Spring & Watts, Attorneys at Law, 10900 NE Fourth Street, Suite 850, Bellevue, WA. 98004, commencing at the hour of 9:30 o'clock a.m.

Appendix G Page G-1

DAVID PIERCE, C.C.R.
Certified Court Reporter
Wa. Lic. No. 2218
P.O. Box 14277
Mill Creek, WA 98082

1 your life on.
 2 A Well, to me, everything I see is a bonus. Every
 3 bit of light that comes into my life is special.
 4 Q Okay.
 5 A Everything I see, I try and reproduce in
 6 photography and in art. And that's who I am. And
 7 that's why it impacts on me considerably.
 8 Q Anything else?
 9 MS. JONES: With respect to what question?
 10 MR. WATTS: I don't know how many times I
 11 have to say it, Marianne.
 12 MS. JONES: well, you change the question.
 13 MR. WATTS: I don't change the question at
 14 all.
 15 MS. JONES: Impacts on her life.
 16 Q This is the last time I'll ask the question. I
 17 want to know everything you have to say about it. Tell
 18 me everything you know or believe about impacts caused
 19 by Glen's bonus room on your life.
 20 A It changed the way I see my home. When I bought
 21 my home, I looked out and saw a view. I did not see a
 22 two story building. I bought it to be an end unit.
 23 It's a condominium; it's not like a private house that's
 24 next door and I have no control over what goes into the
 25 construction of anything on a private property.

1 Q You had a lot of losses in 2004 and 5. I'm very
 2 sad to hear about them. You lost your parents; is that
 3 right?
 4 A That's correct.
 5 Q Are those losses what prompted you to sue Mr.
 6 Clausing?
 7 A No.
 8 Q Any other impacts that you can identify from Mr.
 9 Clausing's unit on either your life or your unit?
 10 A I really can't think of any others. I think I
 11 said it clearly.

12 Q Have you attempted to establish or identify
 13 monetary losses because of the existence of Mr.
 14 Clausing's unit?
 15 A No, I haven't.
 16 Q Have you hired anybody or consulted with anybody
 17 to do that?
 18 A No, I have not.
 19 Q Do you have any belief yourself as to whether or
 20 not you have suffered monetary losses as a result of Mr.
 21 Clausing's unit?
 22 A I determined that would be very hard to establish
 23 in view of the fact that the property values are going
 24 up so rapidly. Generally, the land values are
 25 increasing so rapidly at this time that I could never

1 Q Anything else? Is that the impact?
 2 A That I bought it in one configuration and it
 3 became something else.
 4 Q Anything else?
 5 A It's diminished in value to me.
 6 Q In what way?
 7 A By not being able to see what I see when I saw it
 8 and not having the available light to me that I had when
 9 I bought the place.
 10 Q And that's because of your art work?
 11 A That's because of me.
 12 Q You think it's because of you particularly, the
 13 way you are?
 14 A It's because of the way I understand the law,
 15 about my rights as a homeowner, my rights as a member of
 16 the condominium.
 17 Q Any other impacts?
 18 A It's diminished me.
 19 Q Diminished you?
 20 A Yeah.
 21 Q How has it diminished you?
 22 A Because it took away my feeling of well being, my
 23 feeling of authority over what I have and what I can
 24 keep, and what I lost. There's a lot of loss to me and
 25 that's why I'm here today.

1 begin to establish the percentage of loss.
 2 Q So the answer is no, you haven't done that?
 3 A I haven't consulted any appraiser.
 4 Q Are you seeking any reimbursement for medical
 5 expenses from Mr. Clausing in this lawsuit?
 6 A I am not.
 7 Q Are you making any claim for infliction of
 8 emotional distress or aggravation of mental disorders
 9 against Mr. Clausing?
 10 A I am not.
 11 Q Are you claiming any medical expenses from Mr.
 12 Clausing?
 13 MS. JONES: Objection; asked and answered.
 14 Q Can you think of any monetary damages you're
 15 claiming from Mr. Clausing in this lawsuit?
 16 A I am not. Excuse me, I am claiming attorney's
 17 fees.
 18 Q I understand that.

19 (Whereupon Defendant Clausing's Exhibit
 20 Number One was marked for identification).
 21 Q Let me show you what I have marked for
 22 identification as Exhibit One, and I have copies for
 23 counsel. It's identified as WOODCREEK HOMEOWNERS
 24 ASSOCIATION Minutes of Meeting of Board of Directors,
 25 May 20, 2004. Do you recognize that document?

1 that "protrudes through the walls or roof of the
 2 structure?"
 3 A No, I didn't say that.
 4 Q What are you saying?
 5 A I'm saying, my understanding of the declarations
 6 of the condominium association is that an addition to
 7 the building takes a hundred percent vote of the
 8 association.
 9 (Whereupon Defendant Clausing's Exhibit
 10 Number 16 was marked for identification).
 11 Q Let me show you Exhibit 16. Exhibit 16 are the
 12 Minutes of the WOODCREEK HOMEOWNERS ASSOCIATION, June 5,
 13 2006, meeting. Did you go to that meeting?
 14 A No, I didn't.
 15 Q You didn't attend the June 5, 2006 meeting?
 16 A Oh, the annual meeting, the annual meeting?
 17 Q Yes.
 18 A That's the Minutes of the annual meeting. Okay,
 19 you weren't clear on that. Yes.
 20 Q Did you go to that meeting?
 21 A Yes, I did.
 22 Q All right. And on the second page of Exhibit 16,
 23 it says Mr. Ray Saarela, S-a-a-r-e-l-a, Unit 53,
 24 introduced a motion. Do you see that motion there?
 25 A Yes, I it.

1 think that it seemed to me that my point of view
 2 remained firm on what I believed was right about the
 3 declarations and my percentage of ownership in Woodcreek
 4 Condominium, having lived there for over 20 years,
 5 almost 20 years. I just felt strongly about what my
 6 decision had been in pursuing this issue.

7 Q So is it your position, Mrs. Lake, that the
 8 owners of all the units in Woodcreek Association can do
 9 nothing to satisfy you about Mr. Clausing's bonus room
 10 except to try and have it torn down? Is that the only
 11 thing that will satisfy you?

12 A I think that in my belief, it is a matter of law,
 13 because this was common area; that it was put up there
 14 without my knowledge or approval; that I want it gone.

15 Q Is the answer to the question then that the only
 16 thing that will satisfy you is Glen Clausing's bonus
 17 room torn down? Is that the only thing that will
 18 satisfy you?

19 A And my legal fees paid.

20 Q Is your answer yes, that that is the only thing
 21 that will satisfy you?

22 A Yes. I want it gone.

23 Q So, no matter what the majority or what everybody
 24 else in the association wants to do, you want it gone?
 25 That's the only thing that will make you happy; is that

1 Q Did you discuss that motion in the annual meeting
 2 on June 5?
 3 A No, I didn't.
 4 Q Did you vote on it, one way or the other?
 5 A No, I walked out and then I sent my vote back.
 6 Q Was that voted or not voted?
 7 A I voted, but I didn't turn it in.
 8 Q Okay. So you didn't vote?
 9 A At the moment, at the moment. I sent it back
 10 with someone else.
 11 Q Sent it back into the meeting?
 12 A Yeah, but I think it was after the votes were
 13 counted. They were all named and numbered, and in my
 14 frustration, I left and then someone said, did you vote,
 15 and I said, oh, I forgot.
 16 Q What were you frustrated about?
 17 A What was I frustrated about?
 18 Q Yes. Why did you leave the meeting on June 5?
 19 A Why did I leave the meeting? I felt at that time
 20 that there was so much hostility for my argument and my
 21 feelings that there was no reason to stay there.
 22 Q Were you unhappy because the association members
 23 seemed to be not supporting your antipathy toward Mr.
 24 Clausing's bonus room?
 25 A I think that I was neither happy or unhappy. I

1 true?
 2 A I don't think it will make me happy, sir. It's
 3 not going do make me happy. I'm not here to make money
 4 on this situation.
 5 Q But if all of your fellow owners of units in the
 6 Woodcreek Association Condominium want to do something
 7 to maintain Mr. Clausing's bonus room, in spite of their
 8 wishes, you would be insisting that it be removed.

9 MS. JONES: Objection; improper
 10 hypothetical. You're asking her, hypothetically, if
 11 everyone agreed, because I don't have any evidence that
 12 everyone agreed.

13 MR. WATTS: Marianne, unless you're going to
 14 instruct the witness not to answer, the only thing you
 15 can do is object to the question; there's no speaking
 16 objection.

17 MS. JONES: And that's what I just did.

18 MR. WATTS: Preserve; okay.

19 A My answer is that this is not a popularity
 20 contest. If more people favor what I say or more people
 21 favor what Mr. Clausing says, it's not what it's all
 22 about.

23 Q What is it about for you?

24 A I'm interested in the law.

25 Q So if this were somebody's condominium who was

1 two streets removed from your unit, you would feel the
 2 same way about it as you do about Glen Clausing?
 3 A I don't think so. I wouldn't be aware of it.

4 (Whereupon Defendant Clausing's Exhibit
 5 Number 17 was marked for identification).

6 Q Show you Exhibit 17. Did you write this
 7 document?

8 A Yes.

9 MR. WATTS: And I will be the first to add
 10 that I've done some highlighting on it, and I've
 11 numbered the paragraphs down the margin in the interest
 12 of time.

13 A Yes.

14 Q When did you write this document? It's dated
 15 August 10, 2006?

16 A It was the night before the special meeting or
 17 the same day of the special meeting, which was called by
 18 the Woodcreek Homeowners Association to discuss my
 19 lawsuit.

20 Q And what was the purpose in writing this
 21 document?

22 A To try and clarify some of my points.

23 Q What did you do with this document after you
 24 wrote it?

25 A Took it to the meeting and distributed it. It

1 A There his letters, he has said that he followed
 2 all the guidelines for the application being approved.

3 Q I don't think you're listening to the question.

4 Do you have any knowledge of your own that Mr. Clausing
 5 advised the Board on his bonus room application?

6 A I was not present for this specific issue.

7 Q Is the answer then, you have no such knowledge?

8 A I have no knowledge that it was questioned.

9 Q All right. Let's go to paragraph three. In the
 10 third sentence there, you say: "It was only when they

11 were under Attorney Clausing's thumb that they", I

12 assume you mean the Board, "wouldn't listen." Do you

13 have any knowledge that Mr. Clausing had the Board of

14 Woodcreek Association under his thumb in regard to his

15 bonus room or, indeed, on anything else?

16 A I think they listened to him on every occasion.

17 Q Well, what do you mean by under his thumb?

18 A I didn't mean anything negative.

19 Q What does it mean to you.

20 MS. JONES: Let her finish her answer.

21 Q What does it mean to you?

22 A It means to me that they go to him for all

23 advice, legally.

24 Q Is that the way you think somebody reading that

25 would interpret that statement of yours about the Board

1 was there for distribution for anyone who wanted to read
 2 it, could read it.

3 Q Did you hand it out to people?

4 A No, it was just put on the table, I think, where
 5 people came in.

6 Q Okay. So anybody who came into the meeting would
 7 have had this available to them. Was that your
 8 intention?

9 A Yes.

10 Q Okay. On my paragraph number two, it's actually
 11 your number two, also, you say in the last two
 12 sentences: "Who advised and assured President Huesby
 13 that the Board had such authority? Could it have been
 14 Attorney Clausing?" Question mark. Do you have any
 15 knowledge as to whether Mr. Clausing gave any advice to
 16 the Board on the bonus room application he had
 17 submitted?

18 A Mr. Clausing has been the condominium association
 19 attorney, parliamentarian, Notary and agent. For all
 20 the time that I have lived there, every decision that
 21 was made, if there was any question about it, it's been
 22 referred to Mr. Clausing.

23 Q Do you have any knowledge, Mrs. Lake, that Mr.
 24 Clausing gave any advice to the Board regarding his own
 25 condominium bonus room application in 2004?

1 being under Mr. Clausing's thumb?

2 A I don't know how they would interpret it.

3 Q Well, how did you intend that they interpret it?

4 A That they're under his control.

5 Q Do you have any evidence that the Board is under
 6 Mr. Clausing's control?

7 A Only years of opinions that I have read about Mr.
 8 Clausing directing the Board and telling them what was,
 9 what was legal and what isn't, or --

10 Q Let's go to the fourth paragraph on Exhibit 17,
 11 last sentence. It reads: "The short layman's answer is
 12 that Attorney Clausing talked the Board into an action
 13 that was prohibited by the Woodcreek Association
 14 Declaration and he knew it"

15 A Well, that's what I believed.

16 Q Do you have any proof of any of those statements
 17 about Mr. Clausing talking the Board into the action,
 18 and that he knew it was prohibited when he did it?

19 A If anyone had questioned Mr. Clausing, if it was
 20 a legal action to build the second story on this house,
 21 he would say, because he is an attorney, that he could
 22 do it.

23 Q Now, Ms. Lake, I'm asking if you have any facts
 24 to support the contention that Mr. Clausing, and I
 25 quote: "Talked the Board into an action that was

1 unit model from an M to an L, or a B to a, you know, I'm
 2 just making a hypothetical. In changing a unit which is
 3 defined, like mine is an L; it has a bonus room; it has
 4 a past assessed valuation. If you were to change a two
 5 bedroom to a three bedroom, change two bedrooms to four
 6 bedrooms, yes, that would take approval because that has
 7 to change the whole tax structure, as they're listed in
 8 the tax assessor's list.

9 Q So, I just want to make sure I'm understanding
 10 you correctly, if my unit is depicted by this 8-1/2 by
 11 11 piece of paper, and I make an interior change that
 12 increases the number of bedrooms that I have --

13 A No.

14 Q -- would that require unanimous approval?

15 A No.

16 Q Even though --

17 A It's within -- that's a private area, not a
 18 common area.

19 Q Okay. So it's a private area, and even if it
 20 increases the value of my unit because I've added a
 21 bedroom, not two or three bedrooms, but that would not
 22 require unanimous consent because I'm not touching
 23 common area.

24 A No, that's not changing percentage of ownership
 25 in any way.

1 convoluted. What I'm trying to get to is, earlier, I
 2 believe you said that the only thing that would satisfy
 3 you in the outcome of this lawsuit is for Mr. Clausing's
 4 bonus room to be removed --

5 A Right.

6 Q -- and to have the property restored?

7 A Right.

8 Q My question to you is, if an amendment was
 9 prepared that defined Mr. Clausing's bonus room as part
 10 of his unit, defined other bonus rooms appropriately,
 11 changed people's percentage ownership interest in the
 12 common areas to reflect the change in the common area,
 13 whether you would vote for that amendment; whether that
 14 would be an acceptable outcome to you in lieu of having
 15 Mr. Clausing's bonus room torn down?

16 A I'm not ready to answer that question at this
 17 point.

18 MS. MORGENSTERN: Okay. Thank you. That's
 19 all I have.

20 MR. WATTS: I don't have any more.

21 MS. JONES: I have nothing.

22 MR. WATTS: Ms. Lake, if this deposition is
 23 ordered transcribed, as I suspect it will be, you as the
 24 witness are entitled to review the transcript of the
 25 deposition and sign it after making any corrections you

1 Q Okay. So, as I understood earlier, and this is
 2 one of the things I really would like to get clarified
 3 because it's important for the Board to know, if the
 4 Association were to present an amendment to the
 5 condominium declarations and all the homeowners for
 6 their approval that officially changed the boundaries,
 7 after all those units have added bonus rooms and changed
 8 all the unit percentage allocated interest in the common
 9 area to reflect the bonus room issue, would you support
 10 a vote for that amendment?

11 A As built, are you saying?

12 Q As built?

13 A As built? Yeah, I would support that, as far as,
 14 I think, after this lawsuit is settled.

15 Q Well, that was kind of the point I was trying to
 16 get to?

17 A After the lawsuit is settled, yes, I would
 18 support it.

19 Q Does that answer mean that the bonus room
 20 constructed by Mr. Clausing has to come down before you
 21 would support an amendment that would essentially
 22 authorize bonus rooms for units and change the
 23 percentage ownership interest?

24 A Wait a minute. Run through that again.

25 Q Let me try that again; that was a little

1 choose to make in your testimony. If you make changes
 2 or corrections, then both the original transcript as
 3 done by Mr. Pierce here and the transcript as modified
 4 by you will become in effect your testimony. It's up to
 5 the judge and jury to decide which is correct.

6 A Okay.

7 Q If you choose not to read your testimony, you'll
 8 waive the right then to make corrections, and the
 9 deposition will become part of the record in this case
 10 without your review. You can consult with Marianne.

11 MS. JONES: we'll reserve.

12 MR. WATTS: Okay, signature reserved.

13 (Whereupon signature being reserved, the
 14 deposition was concluded).

15 --o0o--

1 A I do.
 2 Q When did you first see it?
 3 A It would have been the end of June.
 4 Q Of '04?
 5 A Of '04.
 6 Q And you didn't see it until then for the reasons
 7 you earlier testified to?
 8 A Right.
 9 Q Down there under the third bullet point under
 10 "Owners' Comments," you see the reference to Glen
 11 Clausing?
 12 A Yeah.
 13 Q Did you read that when you saw this Exhibit One
 14 in June of '04?
 15 A Yes, I did.
 16 Q What did you do after you saw that?
 17 A Probably nothing.
 18 Q Why?
 19 A My dad was in the hospital and he died.
 20 Q Okay.
 21 A The end of June, the end of May? I mean, the end
 22 of June -- wait a minute, wait a minute, let me back
 23 up.
 24 Q Go ahead.
 25 A The minutes came out the end of June. My dad had

1 different in some regard? She didn't have a chance to
 2 review the whole document. So you're asking a question
 3 about it?
 4 MR. WATTS: I asked her a single question;
 5 it was pretty simple.
 6 A Would I know the difference between one and the
 7 other?
 8 Q I didn't ask you that. I asked you whether or
 9 not you were aware that the board often put out two sets
 10 of Minutes, one for the unit owners and one that is put
 11 in the Minute Book. You said no.
 12 A I wasn't aware of that.
 13 Q Okay. Thank you.

14 (Whereupon Defendant Clausing's Exhibit
 15 Number Three was marked for identification).
 16 Q Let me show you what I have marked for
 17 identification as Exhibit Three. This is a letter of
 18 July 10, 2004 from Glen Clausing to "Dear Neighbors."
 19 Have you seen that letter before, Exhibit Three?
 20 A Yes, I have seen this.
 21 Q When did you first see it?
 22 A I think I saw it on probably the 12th or 13th.
 23 Q And have we already gotten your testimony on what
 24 you did after you saw this letter? You've already told
 25 us; right? You went to the city to speak to --

1 died. I was cleaning out their house and selling it.
 2 And that's when I looked at it and I just had no idea
 3 what it was all about and I forgot it.
 4 (Whereupon Defendant Clausing's Exhibit
 5 Number Two was marked for identification).
 6 Q Let me show you what I have marked for
 7 identification as Exhibit Two. These are WOODCREEK
 8 HOMEOWNERS' Minutes of May 20, 2004. Are you aware,
 9 Mrs. Lake, that there is often two sets of minutes put
 10 out by Woodcreek, one the Minutes for distribution to
 11 the unit owners and another set for incorporation in the
 12 Minute Book?
 13 A No.
 14 Q Okay. So your answer to my questions about
 15 Exhibit One would be the same if I asked them again
 16 about Exhibit Two as to when you first saw it?
 17 A Yeah.
 18 Q Okay.
 19 MS. JONES: You mean Exhibit Two is a
 20 different distribution than Exhibit One because of these
 21 little things in the corner?
 22 MR. WATTS: That's what I'm told. Okay,
 23 let's move on here. I'm anxious to not be all day on
 24 this deposition.
 25 MS. JONES: Well, hold on. Exhibit Two is

1 A Not after this letter. Not after this letter. I
 2 didn't do anything because this came a day or two before
 3 the construction and it just didn't register with me. It
 4 wasn't until the dumpster and the Sanican arrived in
 5 front of my house that I spoke to anybody and realized
 6 the reality of what this was all about.
 7 Q You mean the first sentence of Exhibit Three
 8 didn't register with you on July 11th?
 9 A No, it didn't.
 10 Q But you read it when you got it; didn't you?
 11 A I read it. I read the whole thing in a hurry. I
 12 had so many other matters of greater importance.

13 (Whereupon Defendant Clausing's Exhibit
 14 Number Four was marked for identification).
 15 Q Let me show you what I have marked as Exhibit
 16 Four. These are the Minutes of the Woodcreek Homeowners
 17 Association, dated July 15, 2004, and ask if you've seen
 18 that before. These Minutes (handed).
 19 A Yes, I read this, and I know I said I have a loss
 20 of view, a loss of light, loss of value. This was my
 21 immediate reaction. I never used the term "bum steer,"
 22 but -- I've never used that term.
 23 Q So you went to the meeting of July 15, 2004;
 24 correct?
 25 A I did.

1 A Yes, I did.
 2 Q And what conclusions did you reach after reading
 3 Exhibit 19?
 4 A Well, for one thing, I don't know who John and
 5 Belinda Sherwood are.
 6 Q Did you read the contents of the document?
 7 A Yes, I did.
 8 Q What conclusions did you reach after you read it?
 9 A I read that it was, it was part of the argument
 10 whether Mr. Clausing had Mr. Sherwood put together for
 11 his benefit of the argument of whether my interpretation
 12 of the declarations were correct or not.
 13 Q What do you mean when you say Mr. Clausing had
 14 Mr. Sherwood do it?
 15 A Well, I don't know where Mr. Sherwood came from.
 16 I don't know anything about him.
 17 Q Do you have any facts, Mrs. Lake, that suggest to
 18 you that Mr. Clausing was using Mr. Sherwood as an alter
 19 ego or somebody to --
 20 A No, I don't know anything about Mr. Sherwood.
 21 Q Well then, why do you say that Mr. Clausing had
 22 Mr. Sherwood do this if you don't have any facts?
 23 A Excuse me. I said I do not know John and Belinda
 24 Sherwood. They don't live in Woodcreek, I don't know
 25 what their association is except that he is a lawyer. I

1 know that.
 2 Q And you also know him to be a unit owner in
 3 Woodcreek; do you not? ?
 4 A I understand.
 5 Q All right. Attached to Exhibit 19 is Mr. Wayne
 6 Huesby's declaration. Did you read that when you got
 7 Exhibit 19?
 8 A Yes; I did.
 9 Q And that was attached to it; right?
 10 A Yes, it was.
 11 Q Okay. And what did you think of Mr. Huesby's
 12 deposition (sic); was he telling the truth under oath
 13 when he made it?
 14 MS. JONES: Declaration, you mean?
 15 MR. WATTS: Declaration. What did I say?
 16 MS. JONES: Deposition. You want her to
 17 review the whole thing for the truth?
 18 A Well, I read it sometime ago, a few weeks ago.
 19 Q Did you feel at the time you read it, after you
 20 read it that --
 21 A I don't think so. I didn't think it was
 22 representative.
 23 Q You didn't think Mr. Huesby was telling the
 24 truth?
 25 A Well, I think that there was a characterization.

1 I would have to read it before I can give an answer
 2 about Mr. Huesby's statements. I really don't remember.
 3 Q Do you know Wayne Huesby?
 4 A I knew him.
 5 Q How long did you know him?
 6 A He lived across the street from me for, maybe,
 7 three, four years.
 8 Q And did you interact with him?
 9 A Not at all.
 10 Q Did he ever say or do anything that caused you to
 11 believe he was not a truthful person?
 12 A I really didn't know the man.
 13 Q Do you have any reason to believe Mr. Wayne
 14 Huesby is not a truthful person?
 15 A I have no reason to believe that.
 16 Q Okay. Let's go to paragraph nine of Mr. Huesby's
 17 declaration which is part of Exhibit 19. Read that
 18 paragraph to yourself.
 19 A Okay.
 20 Q Was Mr. Huesby being truthful or untruthful when
 21 he said what he said in paragraph nine?
 22 A He stated the facts.
 23 Q All right. Let's go to paragraph 12 of Mr.
 24 Huesby's declaration. Read that to yourself.
 25 A Where it says, "there's nothing in it but junk

1 anyway," it doesn't sound like my words.
 2 Q You didn't say that?
 3 A That's not how I speak.
 4 Q So, Mr. Huesby's not telling the truth when he
 5 said that?
 6 A I would say that Mr. Huesby's recollection of
 7 what I said two years ago was not accurate.
 8 Q Well, were you telling the Board the truth when
 9 you said to them that the reason you didn't read the May
 10 20 Meeting Minutes was because you were in Europe?
 11 A I didn't, I don't think I said that because I had
 12 not seen the May 20 Meeting Minutes until they were
 13 approved and distributed. That would have been the end
 14 of June.
 15 Q Your testimony earlier, Ms. Lake, was you didn't
 16 read the Minutes because you were too busy with your
 17 parents' affairs?
 18 A No, I didn't say I didn't read it. I read it,
 19 but none of the issue about Mr. Clausing's bonus room
 20 impacted on me. I was doing a lot of things at the time.
 21 I might have not given Mr. Huesby all the information,
 22 or at that meeting, I attempt to listen to -- and I
 23 understand that there are tapes made of the meeting.
 24 And just to clear up the confusion, I would
 25 suggest we listen to the tapes to hear exactly what I

1 their attorney or someone.
 2 (Whereupon Defendant Clausing's Exhibit
 3 Number Eight was marked for identification).
 4 Q Let me show you Exhibit Eight which is the
 5 Woodcreek Homeowners Association Board Meeting Minutes
 6 of August 19, 2004.
 7 A These were -- excuse me, would you repeat that?
 8 Q Well, this is Exhibit Eight?
 9 A Okay. But my question is, is this -- these are
 10 the minutes that were sent out or the minutes that are
 11 approved, or not approved? I don't know.
 12 Q Do you know about a difference? You told me
 13 earlier that you didn't know that.
 14 A No, I don't, but you mentioned it. Because you
 15 mentioned it, I'm thinking there are two sets of
 16 Minutes, and I'm wonder which one I'm looking at.
 17 Q I don't pretend to know. Have you seen Exhibit
 18 Eight before?
 19 A Yeah, I've seen this.
 20 Q When did you first see this Exhibit Eight?
 21 A That would have been in September when it was
 22 distributed, the end of September.
 23 Q In the tube?
 24 A Probably.
 25 Q Okay. When you saw it, the first bullet point on

1 right?
 2 A I think they were fastening -- there was a -- one
 3 of the requirements of the construction was to fasten
 4 the building to the foundation with ties or something,
 5 and it was a tremendous amount of noise, jackhammers.
 6 Q What was the stage of progress of the framing of
 7 the unit itself in late August, bearing in mind it had
 8 been going on for six weeks?
 9 A It was probably framed up.
 10 Q Do you remember?
 11 A No, I really don't remember.
 12 (Whereupon Defendant Clausing's Exhibit
 13 Number 10 was marked for identification).
 14 Q Let me show you Exhibit 10, which is a letter
 15 dated December 22, 2004, to your attorney from Mr. Wayne
 16 Huesby, who was President of the Woodcreek Association.
 17 Did you get a copy of that letter?
 18 A Yes, I did.
 19 Q It actually shows that you got a copy directly
 20 from Mr. Huesby; doesn't it?
 21 A Yes, it does.
 22 Q All right. What did you do after you got this
 23 letter, Exhibit 10?
 24 A Well, I disagreed with the contents of the
 25 letter.

1 page two of Exhibit Eight talks about your request for
 2 detailed information on all bonus rooms?
 3 A Where?
 4 Q First bullet point at the top of page two.
 5 A Oh, yes. From 1977, yes, and I requested a
 6 permit.
 7 Q And that's your July 29 letter which is part of
 8 Exhibit Six; right?
 9 A That's correct.
 10 Q Okay. Did you go to that meeting on August
 11 19th?
 12 A I don't think so.
 13 Q That refreshes your recollection that there was a
 14 meeting in August?
 15 A Yeah.
 16 (Whereupon Defendant Clausing's Exhibit
 17 Number Nine was marked for identification).
 18 Q Let me show you Exhibit Nine, a letter of August
 19 26, 2004, from Marianne Jones to Mr. Wayne Huesby. Did
 20 your attorney write that letter on your behalf?
 21 A Yes, she did.
 22 Q What was the stage of progress on Mr. Clausing's
 23 bonus room as of late August of 2004? I think you
 24 testified it might have been framed and enclosed on the
 25 outside and they were finishing the inside; is that

1 Q What did you do about that?
 2 A At that point, I felt it was a legal argument and
 3 just started to research remember search what I felt was
 4 how I interpreted the condominium bylaws and dues, and
 5 dues structure, and percentage of ownership and
 6 everything else involved, and turned it over to my
 7 attorney.
 8 Q It would be fair to say in this letter, Exhibit
 9 10, September 22, 2004, that the Board is telling you
 10 they believe they've followed the law; right?
 11 A That's correct.
 12 Q And that they're not going to do anything more to
 13 assist you in your plight; is that correct?
 14 A Well, it wasn't exactly my place. I'm a
 15 homeowner in the condominium.
 16 Q They weren't going to do anything more to further
 17 your complaint; is that right?
 18 A That's correct.
 19 Q You certainly learned that from Exhibit 10;
 20 didn't you?
 21 A They were firm in that.
 22 Q Okay. Now it took you 16 more months before you
 23 filed the lawsuit. Can you explain why?
 24 A Because it took that long to research before we
 25 would file anything.