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SUPREME COURT  
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NO. 90879-6

SUPREME COURT OF THE STATE OF WASHINGTON  
[Court of Appeals No. 70013-8-1]

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FILMORE LLLP,  
a Washington limited liability limited partnership,

Respondents,

vs.

UNIT OWNERS ASSOCIATION OF CENTRE POINTE  
CONDOMINIUM,

Petitioner.

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RESPONDENT FILMORE, LLLP'S ANSWER TO  
SUPPLEMENTAL AMICUS CURIAE MEMORANDUM OF  
BARCLAY COURT OWNERS ASSOCIATION

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## I. IDENTITY OF RESPONDING PARTY

The respondent is Filmore LLLP (Filmore). Filmore is the plaintiff in the Trial Court and was the Respondent before the Court of Appeals.

## II. STATEMENT OF CASE

Respondent Filmore, LLLP adopts and incorporates the Statement of Facts as set forth in Respondent Filmore, LLLP's Response to Petition for Review.

## III. ARGUMENT

1. Supplemental Amicus Briefing Raises No New Arguments.

Each and every one of the theories and arguments in Barclay Court Owners Association's Supplemental Amicus Brief has been repeatedly briefed, responded to and were all rejected by the Court of Appeals.<sup>1</sup> They present no basis to establish the decision of the Court of Appeals was an error of law.

2. Use Means More than Residential versus Non-residential.

As set forth in detail by Barclay, the legislature was well aware

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<sup>1</sup> See Petition by Appellant For Discretionary Review, Respondent Filmore, LLLP's Response to Petition, Supplemental Brief of Respondent Filmore LLLP and Appellant's Supplemental Brief.

of the distinction between residential and non-residential uses of condominiums based upon the numerous times the Act differentiated between rights and responsibilities relative to the two different types of condominiums. The legislature further showed that when it intended to limit "use" to just residential vs. non-residential, it specifically did so:<sup>2</sup>

*The Declaration may specify a smaller percentage only if all of the units are restricted exclusively to **nonresidential use.** (emphasis added)*

But the legislature did not so limit "use" in .264 when requiring a supermajority for amendment to changes of use. The legislature must have not limited the word "use" to only residential versus non-residential for it did not insert either word in RCW 64.34.264(4).

3. *Barclay and the Associations Interpretation Creates an Absurd Result.*

The true risk of a residential condominium being converted to a commercial use is non-existent. Residential condos are built in residential zones that are incompatible with commercial use. They have multiple bathrooms, a kitchen and a layout that make them wholly unsuitable for commercial use. The Declarations, Survey Map

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<sup>2</sup> RCW 64.34.264(1). The WCA modifies the word "use" with either "residential" or "non-residential" 13 times. But not in the phrase at issue here.

and Plans and the Owner's Association are drastically different between residential vs. non-residential projects. Finally, the building code requirements for residential versus commercial use vary significantly (i.e. ADA requirements not applicable to residential but is applicable to commercial), preventing the former to be used for many commercial uses. The reality is when a condominium project is built for residential uses, it is simply impossible, too expensive or not practical to convert to non-residential uses.

So the narrow definition of "use" that is the keystone to the Association's appeal means that the protection provided to owners by .264 is without real application—mere form over substance.

#### IV. CONCLUSION

This Court is respectfully requested to affirm the Decision and remand for entry of an award of attorney's fees on behalf of Filmore.

Respectfully submitted this 27 day of May 2015.

BELCHER SWANSON LAW FIRM, P.L.L.C.

By 

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of May, 2015, I caused to be served via Email and via U.S. Mail postage prepaid the foregoing Respondent Filmore, LLLP's Answer to *Amicus Curiae* Supplemental Memorandum of Barclay Court Owners Association on the following parties at the following addresses:

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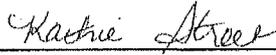
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Attached is respondent Filmore, LLLP's Answer to Supplemental Amicus Curiae Memorandum of Barclay Court Owners Association, being filed by Douglas K. Robertson and Joshua W. Fox. Thank you.

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