Supreme Court No. 1030444
Court of Appeals No. 858971 – Division I

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

WALTER GUETTER and MARIANN GUETTER,
husband and wife,

Petitioners,

v.
VIEW RIDGE ESTATES HOMEOWNERS ASSOCIATION,
a Washington nonprofit corporation, and

RONALD A. HAERTL and LESLIE KOLISCH,
husband and wife,

Respondents.

RESPONDENT VIEW RIDGE ESTATES HOMEOWNERS ASSOCIATION'S ANSWER TO PETITIONER'S PETITION FOR DISCRETIONARY REVIEW BY WASHINGTON SUPREME COURT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Cases

Table of Statutes and Rules

I. SUMMARY

Respondent View Ridge Estates Homeowners Association does not seek review of any issue in the decision of the Court of Appeals, Division I, in *View Ridge Estates Homeowners Association v. Guetter*, 546 P.3d 463 (2024).

Discretionary review by this Court is reserved for cases presenting issues of great concern, gravity, or importance to the public. It is not a right, and it is not a commonly-granted privilege. Discretionary review is not an opportunity for a litigant merely displeased with the legal conclusion of the Court of Appeals to seek an additional review from this Court in the hope of obtaining an outcome more to its liking.

The Petition for Review filed by Petitioners Walter Guetter and Mariann Guetter should be denied because the decision of the Court of Appeals is not in conflict with any decision of the Supreme Court, nor is it in conflict with any decision of the Court of Appeals.

II. STATEMENT OF THE CASE

The facts and procedural history of this case are well stated in the decision of the Court of Appeals and do not bear repeating here.

III. STANDARD FOR GRANTING REVIEW

RAP 13.4(b) sets forth the standard for this Court granting discretionary review of a decision of the Court of Appeals.

> A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b) (emphasis added)

As a general matter, petitions for discretionary review will not be granted in order to resolve disputes regarding factual disputes or the sufficiency of the evidence.

"There is little controversy over applicable law, and, as noted by the dissenting judge in Hojem, the only issue is whether there was sufficient evidence of defendants' negligence to support the verdict. In retrospect, this may well be a case of a petition for discretionary review improvidently granted."

Hojem v. Kelly, 93 Wash.2d 143, 606 P.2d 275 (1980)

(emphasis added).

IV. ARGUMENT

Petitioners seek review on two issues, in both cases arguing that the decision of the Court of Appeals conflicts with decisions of the Supreme Court and/or the Court of Appeals. The Petition should be denied because it fails to actually identify any such conflict. As in the *Hojem* case, the applicable law is not in dispute. Both parties, and Division I of the Court of Appeals agree that this Court's decision in *Wilkinson v. Chiwawa Cmtys. Ass'n*, 180 Wash.2d 241, 327 P.3d 614 (2014) is controlling. Petitioners' Petition is largely devoted to arguments about the weight of the evidence and the alleged inequities that they will suffer if the decision is allowed to

stand. A Petition for Discretionary Review cannot and should not be granted to review such issues.

A. Issue Number 1. – No Conflict with the *Wilkinson* decision.

Petitioners do not appear to take issue with the Court of Appeals' analysis of this Court's standard, as articulated in *Wilkinson*, for determining when the members of a homeowners association can adopt new covenants or change an existing covenant. In its decision, the Court of Appeals described its task as follows:

"Their challenge relies on our Supreme Court's decision in *Wilkinson v. Chiwawa Cmtys. Ass'n*, 180 Wash.2d 241, 327 P.3d 614 (2014), thereby requiring that we determine whether View Ridge Estates' governing covenants granted its members the authority to adopt new covenants or only to change its existing covenants, whether the view obstruction covenant adopted herein constituted an entirely new covenant or simply a change to View Ridge Estates' existing covenants, and whether View Ridge Estates obtained the requisite support from its members to adopt such a covenant."

546 P.3d 463 (2024) at 469, ¶1.

"a reviewing court must determine whether the adopted covenant in question is a new one or a changed one. An adopted covenant is "new," according to the court, when it is "inconsistent with the general plan of development or [has] no

relation to existing covenants." An adopted covenant is a "change," according to the court, when it is "consistent with the general plan of development and related to an existing covenant."
546 P.3d 463 (2024) at 473-474, ¶25 (internal citations omitted).

This Court held in *Wilkinson* that the homeowners association's new covenant prohibiting short-term rentals, which was adopted by a majority vote of the owners, was an impermissible new covenant, rather than a permissible changed covenant, because it bore no relation to the original covenants. The association's original covenants, rather than restricting rentals or giving the Board the power to do so, did not prohibit or limit owners' right to rent at all, and, in fact, specifically anticipated and permitted rentals. *Wilkinson* at 251, ¶14, 252, ¶17.

As the Court of Appeals correctly held, the tree / view restrictions in the amended 2018 Declaration were a change to the existing covenants, and consistent with the general plan of development because the existing covenants already protected

the views of the lot owners with view restrictions limiting the height of structures, and imposed restrictions on the use of lots intended to protect other owner's enjoyment of their lots. (CP 179, 206), 546 P.3d 463 (2024) at 469-70, ¶5. The Court of Appeals also correctly noted that the word "view" appears as the seventh word in the original declaration of covenants, and is the first word of in the name of the Association. 546 P.3d 463 (2024) at 477, ¶43.

In addition, the original 1982 and 1986 Declaration, at Article VII gives Respondent's Board the very broad authority to regulate the maintenance of lots:

> In the event an owner of any lot in the properties, shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees, the Association, after approval of two-thirds (2/3rds) vote by the Board of Trustees, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the lot and the exterior of the buildings and any other improvements thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such lot is subject.

(CP 179, 206). It certainly stands to reason that the

maintenance of lots would include the maintenance of trees and other landscaping "in a manner satisfactory to the Board."

Petitioners suggest (but do not outright allege) that Division I's decision in the present case is in conflict with the decision of Division III in *Twin W Owners' Association v. Murphy*, 26 Wash.App.2d 494, 529 P.3d 410 (2023). Petitioners are incorrect. The *Twin W Owners'* decision concerned another homeowners association covenant amendment that restricted short term rentals, where there was no restriction on rentals at all in the existing covenants. While the Court of Appeals, Division III mused about various issues and lightly derided this Court's analysis in *Wilkinson*, including a footnote mentioning the prospect of a change to the covenants being the functional equivalent of a new covenant, the decision is entirely consistent with both *Wilkinson* and Division I's decision in the present case. There is simply no conflict between Division I and Division III that would justify review by this Court.

The Court of Appeals, Division I correctly articulated this Court's standard for determining the validity of "new" or "changed" covenants and correctly applied that standard to the amended covenants at issue in this case.

B. Division I Applied the Proper Standard of Review for Injunctive Relief.

Petitioners seem to have misread the Court of Appeal's decision with regard to the standard of review for a trial court's granting of equitable relief. Petitioners are correct in asserting that this Court's decision *Borton & Sons, Inc. V. Burbank Props.*, LLC, 196 Wn. 2d 199, 471 P. 3d 871 (2020) requires that a party's entitlement to injunctive relief be reviewed de novo, while the fashioning of the injunction be reviewed for abuse of discretion. However, Petitioners seem to have missed the fact that the Court of Appeals applied this exact standard to their review of the trial court's grant of summary judgment in favor of Respondent. 546 P.3d 463 (2024) at 479-482, ¶54-72.

The Court of Appeals first conducted a *de novo* review of the trial court's grant of injunctive relief by reviewing the applicable case law regarding the appropriateness of injunctive relief to enforce compliance with restrictive covenants, and applied that authority to the facts of this case. Id. at 479-480, ¶54-79. The Court of Appeals held that injunctive relief was appropriate under this analysis. Id. at 481, ¶60. The Court of Appeals next reviewed the applicable case law, and the injunction fashioned by the trial court for abuse of discretion, and found that the trial court did in fact appropriately weigh the equities in fashioning its remedy. Id. at 481, ¶61-67. Petitioners may not agree with the trial court's determination, but they cite no authority for the proposition that the Court of Appeals should, or even can, review the fashioning of an equitable remedy *de novo*.

V. CONCLUSION

The Petition for Review should be denied. Petitioners have failed to identify any conflict between the Court of

Appeals decision and any decision by this Court or any other division of the Court of Appeals. Petitioners have likewise failed to identify any other basis upon which discretionary review could be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RAP 18.17

I certify that (1) this brief complies with the word-count limitation in RAP 18.17(c)(2) the word-count of this motion is 2027 words and size of the type in this motion is not smaller than 14 point as required by RAP 18.17(2).

CERTIFICATE OF SERVICE

I certify that on June 6, 2024, I served a true copy of this Answer to Petitioner's Petition for Discretionary Review on:

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