

DEC 29 2016

JOAN P. WHITE
SAN JUAN COUNTY, WASHINGTON

SUPERIOR COURT OF WASHINGTON, COUNTY OF SAN JUAN

CLARE LINN WELKER and ABIGAIL
METZGER WELKER, Trustees of the
Big Sky Trust UDT 11-14-2002,

Plaintiffs,

v.

MOUNT DALLAS ASSOCIATION, a
Washington non-profit corporation; et
al.,

Defendants.

NO. 15-2-05069-0

DECLARATION OF
STEPHANIE JOHNSON O'DAY

Stephanie Johnson O'Day, being first duly sworn on oath declares as follows:

1. I am the attorney for defendant L. Curtis Widdoes and Mount Dallas Association in the above matter.
2. On July 26, 2016, I took the depositions of Clare Linn Welker and Abigail Metzger Welker before a notary public in Friday Harbor, Washington. True and correct portions of their testimony are pasted in below.

ABIGAIL WELKER

Page 63

Q. Take a look at Exhibit 7, please, which is an example or excerpts from the survey, Monkey survey that was sent out June 8th, approximately June 8th, 2015, and again on July 7th, 2015. Have you ever seen this before?

A. Yes, I have seen this survey.

Q. Did you participate in the survey?

DECLARATION OF STEPHANIE JOHNSON O'DAY - 1

Law Offices of
Stephanie Johnson O'Day
Post Office Box 2112
Friday Harbor, WA 98250
Phone (360) 378-6278

1 A. No, I did not.

2 Q. Did you receive a copy of the survey with a question to you to answer it?

3 A. Yes.

4 Q. But you declined.

5 A. Correct.

6 **Page 65**

7 Q. At the bottom of Page 1 of Exhibit 8 it states 75.29 percent of the 84 tax parcel
8 owners signed this particular petition which was to authorize the Mount Dallas
9 Association, formed in 1989, to be the managing entity of Mount Dallas Road and all
10 current and future side roads accessed via Mount Dallas Road. The association
11 will be managed by a board of directors elected each year by a majority vote of property
12 owners. Did you know that 75 percent of the owners --

13 A. So it says.

14 Q. -- signed this?

15 A. So it says. I -- I don't have their signatures here. I -- I don't know.

16 Q. Well, I'm representing to you that this is what happened.

17 A. So you've seen each one and it's been signed?

18 Q. I'm not ask -- you're not asking me the questions. I'm asking you the questions.

19 A. Well --

20 MR. BRAIN: All she can do is read what's there. Do you have any personal
21 knowledge?

22 A. No, I do not have any personal knowledge.

23 Q. (BY MS. O'DAY) You were not aware of this.

24 25 A. No.

25 **Page 43**

26 Q. And your -- your camp also sent out a proposed allocation method with a --
27 something to send back to your attorneys also asking them to vote for that. Isn't that
28 true?

1 A. We sent it out to everybody. Everybody. There's a difference.

2 Q. How many did you get back?

3 MR. WELKER: None at all.

4 A. None.

5 MR. WELKER: Zero.

6 **Page 78**

7 Q. Okay. Do you feel you understand that RMA?

8 A. Yeah, I think I do.

9 Q. And you understand now that the MDA adopted your proposal of allocation of wear
10 and tear costs that was in the 2015 letter?

11 A. Yes, now that you've said that.

12 Q. But you didn't understand that before.

13 A. No. I haven't known that for 13 months.

14 **Page 44**

15 Q. (BY MS. O'DAY) Finally in this letter (*referring to the "Proposed Outline method of*
16 *Allocation terms attached to the 7/24/15 letter from Chris Brain – Ex 9*) you
17 recommended a third-party accounting firm or management company specializing in
18 Washington homeowners associations. Do you still believe that that's an important
19 thing to do in this neighborhood?

20 A. The very thing that I wanted was transparency. And I've seen Sandy come back
21 on as the treasurer, I've seen Bob Tauscher now back on as now the president, and
22 we've got a cycle repeating itself. I -- I just don't understand it.

23 **Page 45-46**

24 Q. So the question was do you still think an outside third-party accounting firm
25 specializing in homeowners associations --

26 A. Yes. Yes. I think that would be a great idea.

27 Q. But if it's not a homeowners association, how can we have somebody who
28 specializes in homeowners associations?

1 A. It was the closest thing to a road maintenance association. So that's why I was
2 saying Washington homeowners associations, because it came close to an
3 understanding of collecting money for a group of people and doing something for a
4 community.

5 Q. Because it really is the same thing as a homeowners association, isn't it.

6 A. No. It's a road maintenance --

7 Q. How is it different?

8 A. -- association.

9 Q. Because they don't have covenants on house colors?

10 A. Whatever.

11
12 **CLARE WELKER:**

13 **Page 77**

14 Q. Do you think it's possible in this case to get a hundred percent of the members --
15 of the owners of the 84 properties on Mount Dallas to agree on all points?

16 A. I don't think so.

17 **Page 93**

18 Q. So you were planning at this point on filing a lawsuit against the association?

19 A. No. I think what we were trying to do is -- and the May 21 letter sub -- confirms
20 this -- what we were trying to do is get together with the association and try to come up
21 with a plan to do this in a -- in a -- in a good way. We saw the need very quickly for
22 going to court because we knew that there would never be a hundred percent
23 agreement. And so we felt that the judge could help us resolve some of the issues that
24 maybe we couldn't resolve ourselves. So I saw the opportunity there to -- to get the
25 court's assistance.

26 **Page 109**

27 Q. Let's look at Exhibit 11, which is a May 21st, 2015 letter from your attorney, Mr.
28 Brain, to Susie Allen.

DECLARATION OF STEPHANIE JOHNSON O'DAY - 4

Law Offices of
Stephanie Johnson O'Day
Post Office Box 2112
Friday Harbor, WA 98250
Phone (360) 378-6278

1 A. Yes.

2 Q. You're familiar with this letter?

3 A. I am.

4 Q. What precipitated this letter?

5 A. This letter was trying to work out an arrangement, trying to figure out a way to
6 move forward on this problem that we had with the association letter from April 8.

7 **Page 116**

8 A. I filed the lawsuit because the board did not react to this May 21 letter and we were
9 not going to get any sort of agreement going without the court's assistance.

10 Q. (BY MS. O'DAY) How do you know that?

11 A. I know that because we couldn't get a hundred percent agreement. There's just no
12 way that we could. There was too many divergent opinions.

13 **Page 131**

14 Q. -- this and then I'll ask a question. In July 2015 you proposed a specific allocation
15 method. Now you're proposing a different allocation method. Isn't that true? That's the
16 question. Isn't that true?

17 A. It is an improvement, yes.

18 Q. But the allocation method that was proposed by you in 2015 was accepted in the
19 interim by the -- by the MDA.

20 A. No one ever told me anything was being accepted.

21 Q. You didn't know that.

22 Q. (BY MS. O'DAY) And you don't have any idea, as you're sitting here today, what
23 formula is being used in the road maintenance agreement for Mount Dallas that is the
24 revised road maintenance agreement, do you.

25 A. I was -- no, I don't, because I was given an invoice without backup.

26 **Page 168-169**

27 Q. By O'Day (hypothetical question) The judge says we're going to accept Mr.

28 Widdoes' proportional allocation formula method, whatever you want to call it; makes a

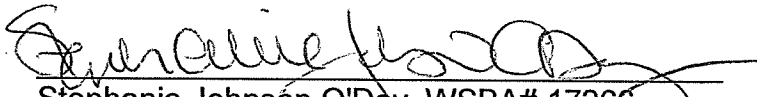
1 decision on reserves; makes a decision on undeveloped properties, et cetera. Boom,
2 that's going to affect all property owners, and by the way, it's going to be managed by
3 the MDA, and they're going to have a lien
4 provision. Are you going to consider that a cloud on your title?

5 A. Wow. I certainly wouldn't want to go against that judge. If he had made all of those
6 decisions and they were valid it would -- it would -- it would change the -- my title a lot.
7 Would it cloud it? Probably clouding wouldn't be the right word. It would be pretty
8 obvious that I had those obligations. It wouldn't be a question. Clouding is an issue of
9 question. So I guess the answer is if he made all those decisions, I would abide by
10 them. I wouldn't consider them a cloud.

11 Attached to this declaration are true and correct copies of Exhibits, 7, 8
12 and 9 to the Abigail Welker deposition transcript and Exhibit 11 to the Clare Welker
13 deposition transcript.
14

15 I declare under penalty of perjury under the laws of the state of
16 Washington that the foregoing is true and correct.
17

18 Dated at Friday Harbor this 20th day of December, 2016.
19

20 
21 Stephanie Johnson O'Day, WSBA# 17266
22 Attorney for Defendant Mount Dallas Association
23
24
25
26
27
28

#1



COMPLETE

Collector: Web Link 2 (Web Link)
Started: Monday, June 08, 2015 4:55:26 PM
Last Modified: Monday, June 08, 2015 4:59:10 PM
Time Spent: 00:03:43
IP Address: 207.32.170.140

Survey #1

PAGE 1

Q1: Please type your name and the name of the road your property is located on in the box below.

craig graham mt dallas rd

PAGE 2

Q2: Annual maintenance and operating assessments pay for expenses such as weed whacking, filling potholes, liability insurance, postage, etc. How should they be assessed?

Full time residents pay the highest rate, part time residents pay the second highest rate, undeveloped property owners pay the lowest rate.

PAGE 3

Q3: How, if any, should assessments be made for future repaving of Mount Dallas Road?

I prefer to pay a smaller amount each year in order to create a reserve fund until the repaving is due. The amount should be based upon the area of road I traverse to get to my property and whether I am a full time resident, part time resident or have undeveloped property. (Current method)

PAGE 4

Q4: What entity would you prefer to be the administrator of Mount Dallas Road?

A volunteer Board of property owners that is elected each year by the property owners. (Current method)

PAGE 5

Q5: If you have any suggestions or comments that you would like to share, please type it below.

Respondent skipped this question

EXHIBIT 7 TO AW dep

#2



COMPLETE

Collector: Web Link 2 (Web Link)
Started: Monday, June 08, 2015 7:11:05 PM
Last Modified: Monday, June 08, 2015 7:44:34 PM
Time Spent: 00:33:29
IP Address: 75.121.232.243

PAGE 1

Q1: Please type your name and the name of the road your property is located on in the box below.

gary gero
Mt dallas x 2

PAGE 2

Q2: Annual maintenance and operating assessments pay for expenses such as weed whacking, filling potholes, liability insurance, postage, etc. How should they be assessed?

Every property owner pays the same flatrate. (Current method)

YOUR SUGGESTIONS OR COMMENTS

The effect of the road "tax" will be felt in the ability to market each property. The greatest effect will be felt by the properties at the end of the road if the graduated percentage is adopted. This effect could be of greater significance than the cost of maintaining the road. In other words the folks on the endsuffer the cost of the road at a higher rate and their property value is burdened with a higher effect from the extra road assessment. There are some property owners that did not sign on to the road pavement. The granet road was more than adequate and cost a fraction to maintain then the blacktop, to say nothing of the huge cost to pave the road. Just sayin.

PAGE 3

Q3: How, if any, should assessments be made for future repaving of Mount Dallas Road?

I prefer to pay a smaller amount each year in order to create a reserve fund until the repaving is due. The amount should be the same for each property owner.

PAGE 4

Q4: What entity would you prefer to be the administrator of Mount Dallas Road?

A volunteer Board of property owners that is elected each year by the property owners and a professional bookkeeping service.

Clare Linn Welker and Abigail Metzger Welker,
Trustees of the Big Sky Trust UDT 11-14-2002 Plaintiffs,
v.
Mount Dallas Association, et. al
State of Washington, San Juan County No. 15-2-05069-0

_____ defendant(s) and property owner(s) on Mount Dallas, request the following in the above referenced lawsuit:

Authorize Mount Dallas Association, formed in 1989, to be the managing entity of Mount Dallas Road and all current and future side roads accessed via Mount Dallas Road. The Association will be managed by a Board of Directors elected each year by a majority vote of property owners.

Dated this _____ day of _____, 2015.

By: _____

Your Signatures(s)

Property Owner of Tax Parcel(s):

**75.29% of the 84 Tax Parcel Owners
Have Signed This Petition**

EXHIBIT _____

8 to
Abigail Metzger Welker
du

ROMNEY R. BRAIN
rbrain@tousley.com

OUR FILE #:
W-6027-001.81

May 21, 2015

Susan Allen, President
Mt. Dallas Association
2000 Mt. Dallas Road
Friday Harbor, WA 98250

Re: Mt. Dallas Road and Mt. Dallas Association

Dear Ms. Allen:

We represent Clare and Abigail Welker, who own two properties accessed by Mt. Dallas Road. The Welkers have asked us to review the documentation (including recorded documentation) related to the creation of Mt. Dallas Road and the Mt. Dallas Association. Outlined below are our initial comments and conclusions. We have broken our comments and this letter into three parts. The first part discusses the status and current issues related to Mt. Dallas Road and the Mt. Dallas Association, both factual and legal. The second part sets out our recommendations for resolving the outstanding issues related to Mt. Dallas Road, the Mt. Dallas Association and the maintenance of the Road. The third part discusses what we believe to be the only practical approach for moving forward with a resolution of the outstanding issues, including implementing some or all of the recommendations. Some of the information set forth in this letter was obtained from First American Title Company (San Juan Title). Our comments are intended to be an overview that addresses the main substantive issues related to the Road, the Association and the maintenance of the Road. We have not reviewed every easement or document related to the Road or the Association, and are not attempting to address every provision of the documents that we have reviewed.

The Road and the Association

1. Mt. Dallas Road (the "Road") was originally created as an easement in the Real Estate Contract recorded in 1964 under San Juan County Auditor's File No. 58558. This easement was amended by the Extinguishment and Grant of Substitute Easement recorded on March 26, 1987 under San Juan County Auditor's File No. 87144952. These easements are reflected in the legal description for the Welker properties. These documents control the easement rights to Mt. Dallas Road from West Side Road to the

Welker properties, as well as establish the easement for Nighthawk Lane. Per the title company, the access to the Road and easement rights of properties further up the Road past the Welker properties are governed by a series of separate easements that link to the lower Road easement, and in various cases, create easements for the additional side roads.

2. The recent survey the Welkers had completed by San Juan Surveying shows the total length of the Road as 10,857 feet (with the Welker properties being about half way at 5,455 feet). The width of the Road is not uniform throughout its whole length. The surveyed length should be compared against the combined length reflected in all of the recorded easements that established the complete Road end to end.
3. The Road easement(s) benefit each of the properties served by the Road (the "Benefitted Properties"). Another way to say this is that all properties benefitted by the Road own easement rights over the Road for ingress, egress and utilities to their respective properties.
4. There is no existing Road Maintenance Agreement (recorded or otherwise) for the Road that would specify the methodology and procedures for maintaining the Road and assessing the Benefitted Properties for their respective share of the cost of maintenance. As such (i.e. where no agreement exists), all Benefitted Properties remain subject to the general holding in the case Buck Mountain Owners' Association v. Prestwich, 174 Wash. App. 702 (2013) (the "Equitable Maintenance Obligation"). Note that the Buck Mountain case establishes the general principle that where no road maintenance agreement exists, the court has equitable powers to impose reasonable road maintenance obligations. However, the Buck Mountain case does not establish any set methodology for proportioning road maintenance obligations where no agreement exists. In fact, the court specifically stated that "we decline to adopt a fixed rule delimiting the court's inherent equity power to allocate maintenance costs based on the particular facts and equity of a case". Which is to say, there is no governing methodology (other than that the allocation be equitable and reasonable), and that each situation will be looked at on a case by case basis by the court if the property owners cannot come to their own agreement. We mention this in part because the April 8, 2015 letter from you and the other officers and directors of the Association that discusses the Buck Mountain case correctly states the general requirement that those using the Road pay an equitable and fair share for maintenance. However, that letter also states "Fair share is to be based on the length of the road that the owner uses". This statement of the legal obligation of the property owners using a road is not correct. The court did not hold this, and as noted, refused to adopt a specific methodology for allocating shared maintenance expenses. Basing proportional maintenance obligations in part on the length of road used may very well be a fair and equitable way of allocating maintenance expenses under the given circumstances, and may be an appropriate method to apply here in regard to the maintenance of the Road, but it is not an exclusive methodology mandated by the court.
5. The Mt. Dallas Association (the "Association") was formed upon the filing of its Articles of Incorporation (the "Articles") on February 21, 1989. The first stated purpose of the

Association is "To maintain and upgrade the Mt. Dallas Road". The Articles further provide that "The regulation of the internal affairs of this corporation shall be set forth in the By-Laws".

6. The most recent version of the By-Laws appear to have been adopted by the Board in July of 2014.
7. All easement rights in the Road run directly to the individual Benefitted Properties. The Association has no rights or interests in the Road or any of the easements that created the Road. Stated another way, the Association is not a legal beneficiary of the Road easement(s), and therefore (absent the express consent of and grant of authority by all of the property owners), the Association has no enforceable legal authority to exercise its purpose of maintaining the Road. In order to address its lack of authority (and apparently to satisfy lenders) the Association (as executed by the then president of the Association) recorded a purported "Road Maintenance Agreement" on April 21, 2006 under San Juan Auditor's File No. 2006-0421042. At apparently the same time the Association attached a "Notice to Lenders" to the Articles that stated "To verify road maintenance agreement and payment of related fees on an individual tax parcel contact" These documents created the appearance of a road maintenance agreement and the related authority of the Association to make assessments and maintain the Road, when in fact there was no road maintenance agreement and the Association's authority was totally limited due to the fact that it (a) had no actual legal or beneficial interest in the Road easement(s), and (b) its authority was limited due to it being only a voluntary association (i.e. the Benefitted Properties are not bound by the Association's actions regarding the Road). These filings were therefore both incorrect and unauthorized. Note also that the court in the Buck Mountain case (where again there was no road maintenance agreement) specifically declined to require the property owners to sign a road maintenance agreement that would require them "to contribute a share of the sums for road maintenance regularly assessed by the . . . association on its members". The court in essence recognized that an association has no authority to make road maintenance assessments against property owners where the property owners are not subject to (i.e. burdened by) the association's authority and have not otherwise entered into an agreement authorizing the association to allocate and assess the maintenance costs.
8. As noted, the Association is strictly voluntary. Pursuant to the By-Laws, owners of the Benefitted Properties accessed by the Road and having the beneficial right to use the Road are entitled to be members of the Association. No owner of a Benefitted Property is required to join or otherwise become a member of the Association. Not all owners of Benefitted Properties are members of the Association. And not all owners (members or non-members) pay the assessments made by the Association. Here again the April 8, 2015 letter is incorrect when it states that the Association can pursue legal action to collect unpaid assessments. The Association simply has no such legal authority.
9. Given that the Association has no legal rights or interests in the Road, that membership in the Association by owners of the Benefitted Properties is strictly voluntary, and the above holding in the Buck Mountain case, the Association has no legal or independent right to

(a) maintain the Road, or (b) make assessments for the maintenance of the Road that would be binding upon the Benefitted Properties, except through the voluntary agreement of the owners of the Benefitted Properties. Stated another way, any owner of a Benefitted Property who elects not to join and become a member of the Association is not bound by the Road assessments or other Road related decisions made by the Association. And no owner of a Benefitted Property who is a member of the Association is bound by the Associations method or amount of Road expense assessment. All such Benefitted Properties do remain bound by the Equitable Maintenance Obligation, just not the Associations' interpretation of that obligation. Given that the Equitable Maintenance Obligation related to the Road has not been defined by agreement of all of the owners of the Benefitted Properties, without such an agreement it would ultimately have to be determined by the court.

10. Over the years, the Association has taken a number of approaches to making assessments for Road maintenance. Most recently, in 2014, it began to pro-rate the maintenance expenses somewhat in line with the Equitable Maintenance Obligation, but not entirely so. For example, some expenses are still assessed equally, and the proportional assessment was done by grouping properties within various stretches of the Road. This may or may not be "equitable and reasonable". Without agreement of all of the owners of the Benefitted Properties, the court would have to decide that.
11. Over the years, the Association also began making and managing assessments and maintenance expenses for the side roads (the "Side Roads"). This was apparently done by the Board without the knowledge or input of all of the members of the Association. This also exceeds the stated purpose of the Association as set forth in the Articles, which is "To maintain and upgrade Mt. Dallas Road". It appears that the Board amended the By-Laws in 2014 to authorize the Side Road Assessments, and to authorize the Association to manage those Side Road Assessments. However, if the maintenance of the Side Roads is not authorized by the Articles (which it is not), the Board cannot merely amend the By-Laws to create this authority. Stated another way, the authority and purpose of the Association is limited by the Articles and cannot be materially modified or increased by an amendment to the By-Laws. Any change in the purpose and authority of the Association would require an amendment to the Articles approved by 2/3 of the members of the Association. And again, remember that the Association has no legal authority over the Road or the maintenance of the Road aside from the fact that it has no authority over the Side Roads or the maintenance of the Side Roads.
12. So the bottom line here is that the Association has no authority over any Benefitted Property (or to establish Road maintenance assessments obligating a Benefitted Property) except where the owner of the Benefitted Property voluntarily agrees to submit to the Association's authority. Given that you have (a) Benefitted Properties that are not members of the Association, (b) Benefitted Properties that are members of the Association who disagree with the Boards methodologies and procedures for assessments, (c) Benefitted Properties that do not pay all or a portion of the assessments made by the Association, and (d) the Association separately making and managing

assessments for the Side Roads without any authority to do so, you have a rather messy situation that has been ad hoc at best, and that could easily get worse in the future. In order to provide certainty as to the assessments and the legal basis for the assessments, and to protect the value of all Benefitted Properties, a definitive solution is necessary.

Recommendations

In a perfect world where all owners agreed, implementing the following recommendations would address all of the current issues and resolve any of the current uncertainties related to Road maintenance and assessments:

1. Prepare a formal Road Maintenance Agreement ("RMA") to be signed by the owners of all of the Benefitted Properties. The RMA should reflect the Equitable Maintenance Obligation, as agreed to by all of the property owners. This could resemble the methodology that the Association started to use in 2014, a modification of that, or a new methodology that potentially better allocates the expenses in an equitable and fair manner.
2. The RMA could formally authorize the Association to manage the assessments and maintenance of the Road, giving it the actual authority that it currently lacks. Since the RMA will be recorded and be binding on all of the Benefitted Properties, all of the properties would be formally and legally granting the Association this authority. This would fully resolve the uncertainty that currently exists (and as noted, certainty on these sorts of things adds value to the properties and avoids the prospect of future litigation).
3. Each of the Side Roads should then separately adopt their own respective Side Road Maintenance Agreements ("SRMA"). The SRMA agreements could mirror the main MRA, and could (to the extent desired or appropriate) establish a separate association for each of the Side Roads to handle assessments and maintenance.
4. Other related clean-up items should include the following: (a) Amend the Articles as necessary to clarify the purpose of the Association, to cross-reference the recorded new RMA and to get rid of the earlier "Notice to Lenders", (b) have the new RMA cancel and supersede the unauthorized "Road Maintenance Agreement" recorded by the Association under San Juan Auditor's File No. 2006-0421042, and (c) amend and update the By-Laws consistent with the other changes related to the Articles, the Association's purpose and authority and the terms of the RMA.

As noted, one of the primary reasons to clarify and provide certainty with regard to the situation with the Road, maintenance and assessments is to protect the value of all of the Benefitted Properties. Without a clear and binding solution, the maintenance of the Road (and the related impact on the value of the properties) remains potentially subject to any Benefitted Property owner bringing a lawsuit to have the court determine the Equitable Maintenance Obligation on all of the properties (which would by-pass the Association) and which would create a cloud on all of the properties until resolved or the court determination is made. And any court

determination regarding the Equitable Maintenance Obligation of the Benefitted Properties would not necessarily solve all of the administrative problems (i.e. having a system and procedures in place to determine assessments and maintain the Road, given that the Association, as it currently stands, has no authority to do this).

Implementing the Recommendations – A Practical Course of Action

In order to implement the above recommendations, all Benefitted Properties would need to agree to and execute the RMA. There are presently 60 owners of Benefitted Properties. As a practical matter, negotiating and obtaining the agreement of 100% of the property owners to the terms of a RMA and a methodology for assessing Road maintenance expenses is highly unlikely. It would amount to an all or nothing, extremely time consuming approach with a very low chance of success. There needs to be a structured forum in which to address all of these issues and come to a timely resolution. As such, we intend to file (on behalf of the Welkers) an action in San Juan Superior Court to gain the court's assistance in resolving these issues (by agreement, or if not agreement, ultimately by court decision). We desire that this will be more of a managed process than an adversarial process, but in either case, placing this under the court's jurisdiction is the only practical way to proceed as it will require all owners of the Benefitted Properties to agree or be bound by a court decision within a limited time period.

In light of the Buck Mountain case, we believe that if the owners of a solid majority of the Benefitted Properties agreed to a specific RMA methodology for assessing and apportioning the costs of maintaining the Road (i.e. a reasonable and equitable assessment process), there is a strong likelihood that the court would adopt that methodology even without 100% agreement. The owners of the Benefitted Properties that approved the RMA methodology (as approved and/or determined by the court) could then grant the Association the authority to manage the assessments and maintenance of the Road. Although the Benefitted Properties that did not agree to the RMA methodology would still not be bound by the Association's authority and assessments, they would be bound by the methodology and the amount of the assessments as approved and determined by the court. The Benefitted Properties that approved the RMA methodology and the Association's authority to make assessments would have a claim against the other Benefitted Properties for their "fair share" of the cost of the Road maintenance. Those owners could assign that right to the Association, and the Association would then be in a position to collect the amount of the assessments against those other Benefitted Properties.

We also believe that once a court action is brought and "the writing is on the wall", so to speak, the ability to get all of the owners of the Benefitted Properties to agree on a court approved methodology would significantly improve, as the only option would be for these owners to engage in a court battle. As noted, with a solid majority in favor of the RMA methodology, the others would be fighting a significant uphill battle to convince the court that some other methodology should apply. And in the end, if no voluntary agreement can be reached, the court would be making the decision in a timely manner.

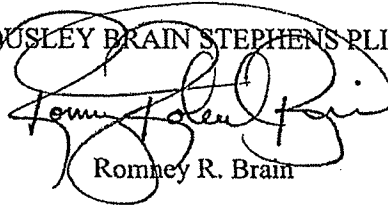
So as noted above, shortly we will be filing an action to get these matters resolved. Hopefully that action will lead to cooperation and agreement, but in any event, it will definitely lead to a

Susan Allen
May 21, 2015
Page 7

resolution. Upon filing the action, a copy will be provided to all of the owners of the Benefitted Properties (who are all necessary parties to the action), including the officers and directors of the Association. As initially filed the action will not ask for any specific methodology for making Road maintenance assessments other than it be "equitable and fair", so from that standpoint, there will initially be no proposal to dispute. As the proceeding progresses there will be several possible outcomes. An acceptable methodology will get developed and be proposed by a majority of owners, or if that does not occur, owners (or groups of owners) may propose their preferred methodology, with the court making the final decision. Those owners who do not wish to be directly involved in the action and who are willing to agree to the final decision of the court on the methodology for Road assessments will, upon such agreement, be able to substantially avoid ongoing involvement in the litigation.

Sincerely,

TOUSLEY BRAIN STEPHENS PLLC

A handwritten signature in black ink, appearing to read "Romney R. Brain", is written over the typed name. The signature is stylized and somewhat cursive.

Romney R. Brain

RRB/pc
0099/001/299215.1

cc: Clare Welker
Abigail Welker
Royce Meyerott
Sharon Boyd
Sandy Hawley
William Severson
James Fritz

CHRISTOPHER I. BRAIN
cbtain@tousley.com

July 24, 2015

Robert Tauscher and Sandra Hawley
305 Kiya Way
Friday Harbor WA 98250

Dear Mt. Dallas Property Owners,

We are writing to you in advance of the August 8, 2015 annual Association meeting in regard to several matters. As a result of the pending action in San Juan County Superior Court, the method for allocating and assessing road maintenance and other expenses for Mt. Dallas Road (the "Road") will be formally established and become binding on all Benefitted Properties. The method will be established pursuant to either (a) a formal Road Maintenance Agreement (the "Agreement") agreed to by all Benefitted Property owners, (b) a Court Order, if no Agreement can be reached with all Benefitted Property owners, or (c) possibly a combination of the two.

If all Benefitted Properties agree to an allocation and assessment method and Agreement, then a Court Order will likely not be required.

If all of the Benefitted Properties do not agree to an allocation and assessment method and Agreement, then there will necessarily be a Court Order entered at some point establishing the formal and binding allocation method. Nevertheless, if a substantial majority of the Benefitted Properties agree to a reasonable allocation and assessment method, we believe that the court will likely adopt the method agreed to by such substantial majority of the Benefitted Properties.

Included with this letter for your review and consideration prior to the meeting is our Outline of Proposed Method of Allocation, Assessment and Management for Mt. Dallas Road. Within the next week, and as a supplement to the above Proposal, you will receive information regarding the recent Survey of the Road prepared by Robert J. Wilson.

Regarding the enclosed Proposal, you will note a couple of key items. First, the allocation of expenses will be based (pro-rata) on the square footage of the Road to each driveway and Side Road. Because the finished width of the Road varies over its length, using square footage (as opposed to just length) provides a more reasonable and fair allocation. Second, we have set two tiers of assessment,

EXHIBIT 9

TO Abigail Walker
dep.

July 24, 2015

Page 2

which are Developed (full share) and Undeveloped (1/2 share). We have done this for several reasons listed below:

i) Attempting to add other tier(s) based upon "use" is virtually impossible as it is very difficult to monitor or verify, and is essentially not relevant.

ii) Normal use of the Road by passenger vehicles and light trucks has little or no impact on the condition or wear of the Road.

iii) What harms chip sealed roads is (a) heavy loads and large trucks, particularly in very hot or wet conditions, and (b) large trucks or equipment starting, stopping and turning on certain sections of the Road, or driving or parking on the edge of the chip seal. As you will see, to address this, we have added to the Proposal a Repair provision. What this provision essentially provides is that if there is damage to the Road directly caused by large trucks or construction equipment servicing a given property (say during the construction of a home) that property will be responsible for the cost of repairing the damage.

iv) All properties benefit from a well maintained Road, as it enhances the value of all properties, Developed or Undeveloped. As a result, there is an argument that all properties should pay a full share. This is the most common method employed in typical residential developments. However, Mt Dallas is unique in that it is not a unified residential development. It has large lots, many of which are undeveloped and access the Road over a comparatively long distance, including by Side Roads. Historically there have been tiered allocation systems for expenses for the Road and we feel that it would be reasonable to continue that in this form (i.e. a form that is not too complicated or difficult to administer).

At the end of the day, whether by Agreement or by Court Order, there will absolutely need to be a specific and legally enforceable method in place for maintaining the Road, and allocating and assessing the expenses related to such maintenance (something that despite past best efforts simply does not exist). Having such an Agreement and/or Court Order will, among other things, (1) provide certainty as to the rights and obligations of all properties using the Road, (2) satisfy what we know lenders and FNMA require for financing, (3) as such, it will facilitate a seamless sale of any property without concern over the buyer's ability to get financing, and (4) it will clearly enhance the value of all properties using the Road.

As previously noted, we are interested in solving a real problem that clearly and adversely impacts all properties using the Road in a timely manner. We are not interested in creating any issue for owners who have previously represented to lenders that there is an agreement in place or with lenders who have relied on any such representations. Having an Agreement and/or Court Order in place will cure these problems once and for all going forward.

On July 16, in response to an agenda item that Mary Stone, the Board's attorney, was going to attend the annual meeting to discuss the Welker lawsuit, I contacted Mary and indicated that I

July 24, 2015

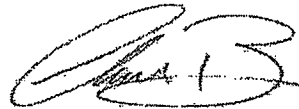
Page 3

intended to attend with Clare and Abby Welker. In response, Mary advised that the Board thought it would be inappropriate for her to attend and advised me that if I attended, I would not be allowed to address the meeting. This is unfortunate because it would have afforded a good opportunity to meet with both attorneys and discuss the proposals and issues. We now understand that Rikki Swinkas offered to hold a meeting at 11:00 for those interested in discussing our Proposal before the annual meeting. I will be at Rikki's to discuss the Proposal and answer questions. If you cannot attend and have any questions, please do not hesitate to call me or my brother, Romney.

Finally, we are including a document entitled "Contingent Approval Form". Whether you are attending the meeting or not, please review the Proposal (and the supplemental Survey information that you will receive), and if you are in general agreement with what we are proposing, please sign and return the attached Conditional Approval Form. Your conditional approval is not binding and will be subject to your approving and signing any final Road Maintenance Agreement that we prepare, but it will provide us with the initial feedback that we need to move forward.

Very truly yours,

TOUSLEY BRAIN STEPHENS PLLC

A handwritten signature in black ink, appearing to read "Chris I. Brain", written over a horizontal line.

Christopher I. Brain

CIBjam

OUTLINE OF PROPOSED METHOD OF ALLOCATION, ASSESSMENT AND MANAGEMENT

FOR

MT. DALLAS ROAD

The following sets forth the proposed method for allocating and assessing Road maintenance expenses, and managing the same (the "Proposed Allocation Method") that we have developed in conjunction with the Welkers. For purposes of this Proposed Allocation Method, and for clarity purposes, the general definitions that are attached shall apply. This Proposed Allocation Method relies in part upon a recent survey of the Road prepared by Robert J. Wilson. A copy of the survey information will be provided separately as a supplement to this Proposed Allocation Method.

Once a majority of the Benefitted Properties have confirmed their approval of this Proposed Allocation Method, then we will prepare and circulate for review, a proposed Road Maintenance Agreement, which will outline in more detail the procedures for implementing the Proposed Allocation Method.

PROPOSED ALLOCATION METHOD

1. General Assumptions:

- All Benefitted Properties shall have an obligation to maintain the Road.
- The Side Roads are to be exclusively maintained by the owners of the Benefitted Properties that are serviced by the Side Roads.
- The Association will not have any authority or responsibility to maintain the Side Roads, or to provide bookkeeping or similar services for the Side Roads.

2. General Terms With Regard To Road Maintenance:

- The condition of the Road as of the Effective Date shall be established as its Baseline Road Condition. The Baseline Road Condition will be established by the Agreement and/or the Court Order.
- The Association will manage the Road and all maintenance related to the Road.
- Maintenance (defined below). The Association will have the authority to determine what maintenance is required, to contract for the work, and to assess the Benefitted Properties in accordance with the allocation method.
- Capital Work (defined below). The Association will determine and recommend Capital Work related to the Road. The Association will be required to obtain approval of any recommended Capital Work from Benefitted Owners who own 60% of the Benefitted Properties.
- Repair (defined below). The Association will have the authority to determine liability for any Repair and to assess the Benefitted Property that created the need for the Repair.

- Upgrade (defined below). The Association will have no authority to determine or require that an Upgrade to a portion of the Road beyond the Baseline Road Condition be made. Any Upgrade decision will be up to the Benefitted Properties affected by the Upgrade. Such Benefitted Properties shall assume the full responsibility for the cost of the Upgrade. However, the Association shall have approval over the integration of the Upgrade into the Road and to approve any designs and contracts for the Upgrade work. This approval by the Association is to insure that the Upgrade integrates with the rest of the Road and to protect the other Benefitted Properties from any liability or lien claims related to the Upgrade.

3. Cost Allocation (Note that these methods are incorporated into the attached Survey):

- The center line of the Road will be used for distance calculation.
- Benefitted Properties will be assessed based on the distance from West Side Road to their driveway, with the entire portion of the intersection included in the measurement. For measurement purposes, the Side Roads will be deemed driveways as to the Benefitted Properties on the Side Roads.
- The square footage of Mt. Dallas Road (length and width) shall be determined (a) from West Side Road to the end of the Road and (b) from West Side Road to each driveway.
- The cost sharing shall be based on the ratio of the distance and square footage to the subject driveway as compared to the total distance and square footage ratios for the Road (See attached Example of Cost Sharing Computation and Allocation).
- Developed Property (defined below). A Developed Property shall pay a full share of Road Expenses.
- Undeveloped Property (defined below). An Undeveloped Properties shall pay a Road Expense allocation based upon 1/2 of a full share.
- Each Benefitted Property (Developed or Undeveloped) shall have one vote with regard to the Association.

4. Disputes:

- Any disputes regarding the Association or the Agreement will be resolved through an expedited alternative dispute resolution procedure involving mediation and/or arbitration ("ADR").

DEFINITIONS

MT. DALLAS ROAD PROPOSED ALLOCATION METHOD

(a) "Road" shall mean the Mt. Dallas Road as established by a series of recorded easements granting use of the Road to the Benefitted Properties (the "Road Documents"). [Note: We have obtained from the title company a set of all of the recorded Road Documents establishing Mt. Dallas Road and the easements to use Mt. Dallas Road. Our intent is that, along with the Survey, a copy of these Road Documents will become a part of the Association's permanent records].

(b) "Benefitted Property or Properties" shall mean each legal parcel of real property entitled to the use of the Road by virtue of one or more of the Road Documents.

(c) "Association" shall mean _____ Association, a Washington non-profit corporation created under RCW 24.03 through the filing of its Articles of Incorporation on _____, 2015. The Association shall exercise its authority through its Board and Officers. [Note: For purposes of making a fresh start, we are proposing that a new association be formed to administer the Agreement and/or Court Order. Each Benefitted Property that is a member of the Association would be entitled to one vote. If all Benefitted Properties approve the Agreement, then all Benefitted Properties would become members of the Association. If less than all of the Benefitted Properties approve the Agreement, then those Benefitted Properties that approve the Agreement would become members of the Association and would assign to the Association their rights of contribution and collection of assessments (as established by the Court Order) against the non-member Benefitted Properties. The Association will be responsible for managing the Road and Road Expenses.].

(d) "Baseline Road Condition" shall mean the condition of the Road as of the Effective Date. The Association shall (i) take and maintain a digital file of photos of the road showing its general Baseline Road Condition, and (ii) as it determines necessary, engage an engineer to determine and confirm the Baseline Road Condition.

(e) "Maintenance" shall mean the work necessary from time to time to maintain the Road substantially in its Baseline Road Condition as a result of (i) the normal wear and tear resulting from the use of the Road by the Benefitted Owners, their families and guests for residential access purposes, including commercial uses ancillary thereto and (ii) weather related damage. Maintenance shall also include work required to maintain the Road in a safe passable and driveable condition, and to maintain ditches, culverts and drainage, as well as general clearing of weeds, plants and debris within the Road easement.

(f) "Capital Work" shall mean work requiring capital expenditures over and above normal Maintenance expenses such as to repave and/or resurface part or all of the Road, if required because regular Maintenance is no longer adequate to substantially maintain the Road in its Baseline Road Condition.

(g) "Repair" shall mean work necessary to remediate damage to the Road caused by activities which are not normal wear and tear, such as damage caused by construction work or equipment attributable to a single Benefitted Property. The Benefitted Property causing the damage requiring a Repair shall be assessed and responsible for 100% of the expenses related to the Repair.

(h) "Upgrade" shall mean work related to the upgrading of the Road, or a portion of the Road, from its Baseline Road Condition, such as paving unpaved portions of the Road or widening a portion of the Road. Upgrade expenses shall only be allocated to and assessed against those Benefitted Properties that are using the Upgraded portion of the Road, such expenses to be pro-rated and assessed against such Benefitted Properties based upon the allocation of Maintenance to such Benefitted Properties. Upon completion of any Upgrade, (a) the maintenance of the Upgraded portion of the Road shall thereafter be deemed regular

Maintenance and (b) the Baseline Road Condition for the Upgraded portion of the Road shall be deemed its new Upgraded condition.

(i) "Road Expenses" shall collectively mean all expenses related to Maintenance and Capital Work.

(j) "Developed Property" shall mean any Benefitted Property that has a habitable residence that uses a septic system. This would include mobile homes that are connected to septic systems. An Undeveloped Property shall become a Developed Property as of the date that such property (a) has obtained a building permit and (b) construction upon such property has commenced in accordance with such building permit.

(k) "Undeveloped Property" shall mean any Benefitted Property that does not qualify as a Developed Property.

(l) "Side Road" shall mean each separate road (such as Kiya Way) that provides access to the Road for Benefitted Properties that do not directly abut the Road. For purposes of measuring the square footage of the Road, that portion of the Road beyond the end of the chip seal which is governed by separate maintenance agreements of the Benefitted Properties using that portion of the Road shall be deemed a Side Road commencing at the end of the chip seal. The Survey shall identify the point of commencement.

(m) "Board" shall mean the board of directors of the Association.

(n) "Officers" shall mean the president, vice president, secretary, treasurer and/or other designated officers of the Association.

(o) "Survey" shall mean the completed survey of the Road that becomes a part of the Agreement and/or which is approved and adopted pursuant to a Court Order establishing the legal assessment and allocation method for the Road.

(p) "Effective Date" shall mean the effective date of the Agreement and/or Court Order establishing the method for allocation and assessment of Road Expenses.

EXAMPLE OF COST SHARING COMPUTATION AND ALLOCATION UNDER PROPOSED ALLOCATION METHOD

The following sets forth an example of the Proposed Allocation Method for Developed Properties. This example assumes for hypothetical purposes (a) that the Road is 1,000 feet long, (b) that the first 600 feet is 20 feet wide, (c) that the last 400 feet is 10 feet wide, and (d) that there are five Developed Properties accessing the Road. As such, the Road would have a total square footage of 16,000 square feet. The first 600 feet would be 12,000 square feet and the last 400 feet would be 4,000 square feet.

1. Benefitted Property A accesses the Road exactly 300 feet from Westside Road. Benefitted Property A's Road access consists of 6,000 square feet (300 feet X 20 feet). Benefitted Property A would have a Road allocation ratio of .375 (6,000 divided by 16,000).

2. Benefitted Property B and Benefitted Property C access the Road via a Side Road exactly 600 feet from Westside Road. Regardless of where Benefitted Property B and Benefitted Property C are located on the Side Road, the Road access of both properties consists of 12,000 square feet (600 feet X 20 feet). Both properties would have a road allocation ratio of .750 (12,000 divided by 16,000).

3. Benefitted Property D accesses the Road exactly 800 feet from Westside Road. Benefitted Property D's Road access consists of 14,000 square feet (600 feet X 20 feet, plus 200 feet X 10 feet). Benefitted Property D would have a Road allocation ratio of .875 (14,000 divided by 16,000).

4. Benefitted Property E accesses the Road exactly 1,000 feet from Westside Road. Benefitted Property E's Road access consists of 16,000 square feet (600 feet X 20 feet, plus 400 feet X 10 feet). Benefitted Property E would have a Road allocation ratio of 1.00 (16,000 divided by 16,000).

The total of the ratios is 3.750 (.375 + .750 + .750 + .875 + 1.00 = 3.750). Dividing each individual ratio by the total provides the allocated percentage of Road Expenses.

Assuming \$100 of Road Expenses, those expenses would be allocated as follows:

Benefitted Property A - \$10.00 (.100 allocated percentage) (.375 divided by 3.75 = .100). (10 X \$100 = \$10.00)

Benefitted Property B - \$20.00 (.200 allocated percentage) (.750 divided by 3.75 = .200). (20 X \$100 = \$20.00)

Benefitted Property C - \$20.00 (.200 allocated percentage) (.750 divided by 3.75 = .200). (20 X \$100 = \$20.00)

Benefitted Property D - \$23.33 (.2333 allocated percentage) (.875 divided by 3.75 = .2333). (.2333 X \$100 = \$23.33)

Benefitted Property E - \$26.67 (.2666 allocated percentage) (1.0 divided by 3.75 = .2667). (.2667 X \$100 = \$26.67)

CONTINGENT APPROVAL FORM

PROPOSED ALLOCATION METHOD FOR MT. DALLAS ROAD

This form is being provided with respect to the Outline of Proposed Method of Allocation, Assessment and Management for Mt. Dallas Road (the "Proposed Allocation Method") that each of you received with the letter from Tousley Brain Stephens PLLC.

The purpose of this form is as its title suggests. We are asking that those Mt. Dallas propertyowners who generally approve of the Proposed Allocation Method acknowledge such approval in writing. This will (a) provide us necessary feedback in regard to the support for the Proposal and resolving the road maintenance issues, and (b) assist us in moving towards preparation of a formal road maintenance agreement that will set forth in detail the matters outlined in the Proposed Allocation Method. If you do generally approve of the Proposed Allocation Method, please return this signed form as soon as you can to:

Tousley Brain Stephens PLLC
Attn: Romney R. Brain
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101

and/or

E-mail a signed pdf copy of the form to rbrain@tousley.com

To confirm, your approval and execution of this form is strictly non-binding. You will have no obligation under the Proposed Allocation Method unless and until it is incorporated into a formal road maintenance agreement that you approve and sign.

I/we generally approve of the Proposed Allocation Method as set forth in the Outline provided.

_____, 2015

[Print Name]

_____, 2015

[Print Name]

[Insert Property Address]