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SAN JUAN COUNTY, WASHINGTON

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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.

Case Number 15-2-05069-0

**WIDDOES/MOUNT DALLAS
ASSOCIATION REPLY BRIEF**

I. INTRODUCTION

Lest anyone be confused: The MDA/Widdoes motion now before the Court is not asking the Court to pick among competing rules and procedures for managing maintenance of the Mount Dallas Road System. It is not asking the Court to pick a mathematical formula for allocation of road-maintenance expenses. It is not asking the Court to rule about how much or whether non-consenting property owners should pay for road maintenance. Not one of those issues is before the Court at this time. The only issues that are before this Court are the issues that are specifically delineated in the Widdoes/MDA motion.

Dr. Widdoes and the MDA have filed their Motion for Partial Summary Judgment

1 with the goal of resolving certain core matters which can and should be decided at this
2 juncture in order to allow owners of the 84 properties accessed via Mount Dallas Road
3 to move forward in this case without further chaos. It is right, equitable and fair that
4 these matters be decided through partial summary judgment.
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6 This motion is accompanied and supported by the pleadings and declarations
7 previously submitted, as well as the new Declaration of Sandra J. Hawley, dated
8 1/27/17.
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10 11 II. REQUESTED RELIEF

12 The moving parties are asking the Court to do the following, and nothing more:

13 A. Affirm that the Road Maintenance Agreements for Mount Dallas Road and
14 the subject side roads are legally binding on Consenting Property Owners.
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16 B. Declare that the Mount Dallas Association shall remain the managing
17 entity for Mount Dallas Road and the subject side roads.
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19 20 III. FACTS

21 The facts presented by the moving parties are not disputed by the Welkers. Said
22 facts are firmly established and are supported in the record. Because the facts
23 supporting the Widdoes/MDA motion are unassailable, the Plaintiffs seek to obfuscate
24 the record by introducing issues that have nothing to do with the motion at bar. As
25 such, this brief will not address the Plaintiffs' "RMP", which was inappropriately included
26 in the responsive pleading by the Welkers. The Welkers' RMP is not properly before
27 the Court.
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1 The Welkers acknowledge, on page 4 of their Responsive Brief, that the ultimate
2 authority over the management and maintenance of the road must always legally reside
3 in the Benefitted Owners. We agree. The Welkers also recognize that the MDA will
4 likely be the initial designated Road Management Entity, and affirmatively state in their
5 response that they do not object to that scenario. The Welkers assert that the MDA
6 cannot manage the road or side roads on behalf of Benefitted Owners who do not agree
7 to its management. But the Welkers acknowledge that the MDA does have the power
8 and authority to manage the road and side roads on behalf of Consenting Property
9 Owners, i.e. the individuals who do agree to its management. (As discussed in the
10 opening brief, "Consenting Property Owners" is a defined term in the preamble of the
11 MDA's RMA for Mount Dallas Road and means "...those owners of parcels of real
12 property accessed via Mount Dallas Road who have signed and delivered to the
13 Association joinders to this Agreement." Similarly, for the side-road RMAs.) Part A of
14 this motion simply asks the Court to affirm for the record that Consenting Property
15 Owners are bound by the terms of the MDA's RMAs.
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19 One notable exception to the numerous undisputed facts is woven into the
20 section of the Welkers' response which argues that the Court should accept their RMP
21 rather than the MDA's RMA. There, the Welkers allege that the MDA has made
22 misrepresentations and improper statements to lenders and Benefitted Owners. The
23 five enumerated statements on pages 5 and 6 of the Welkers' Responsive Brief are
24 completely unsupported and libelous allegations. Importantly, the Welkers say that the
25 primary reason for their lawsuit is that the MDA sent a letter on April 8, 2015, that
26 threatened to "lien" properties for nonpayment. In fact, the letter does not threaten to
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1 lien properties, and the word "lien" is nowhere to be found in the letter. (See the MDA
2 letter attached to Declaration of Hawley 1/27/2017). The other claims of misconduct are
3 all similarly false. Regardless, all of these claims are made without any support and
4 must therefore be disregarded.
5

6 Part B of the Widdoes/MDA requested relief asks the Court to order that the MDA
7 shall remain the managing entity of Mount Dallas Road. Since the filing of the
8 Widdoes/MDA motion, the following four owners have returned additional signed and
9 notarized Joinders to the MDA's RMA for Mount Dallas Road:
10

11	<u>TPN</u>	<u>Name</u>	<u>Date Signed</u>
12	452413005	Meyerott, Bryant, Widdoes	1/12/17
13	451414004	Gerhardstein	12/30/16
14	452442003	Schoebel/Farrer	1/4/17
15	452413004	Sibert	12/28/17

16
17 (Note that Sibert also signed an RMA for Stormridge Road.)

18 As of this writing, owners of 58 out of 84 (69%) of the properties accessed via
19 Mount Dallas Road have signed and returned notarized Joinders to the MDA's RMA for
20 Mount Dallas Road. All of these owners are in agreement that the MDA should continue
21 to be the managing entity for the road.
22

23 In addition to owners of those 58 parcels, owners of another 13 parcels (15.5%)
24 signed the MDA petition regarding MDA management authority, but did not sign the
25 MDA's RMA – these additional owners similarly affirm that the MDA should continue to
26 manage the roads. The MDA petition reads as follows:
27

28 "[Do you wish to] Authorize Mount Dallas Association, formed in 1989, to

1 be the managing entity of Mount Dallas Road and all current and future
2 side roads accessed via Mount Dallas Road. The Association will be
3 managed by a Board of Directors elected each year by a majority vote of
4 property owners.”

5 This petition was circulated by the MDA **after** the Welkers filed the lawsuit, and it
6 contains the lawsuit caption. (See Declaration of Hawley, 1/27/17). The owners of the
7 additional thirteen properties who signed the above petition are as follows:

8 TPN	Name	Date Signed
9 451323001	Anita Bailor	7/21/15
10 451331001, 452442002	Gary Gero	8/31/15
11 451313002	Kyle/Ladd Johnson	7/23/15
12 451324002	Ronald R. Henneman	8/4/15
13 451334010, 451334011	Fred Keeler	8/5/15
14 451334009, 451334008,		
15 451343001, 451331005		
16 451332003	Jennifer Whalen	9/4/15
17 452413006	Robert Eichler	1/26/17

18 The Court will recall that the Welkers sent out a road-management proposal of
19 their own in July 2015. Not a single property owner signed and returned that proposal.
20 And not a single property own has subsequently come forward with a declaration in
21 support of the Welkers' proposal.

22 On the other hand, the MDA has Joinders from owners of 58 properties,
23 signifying that those owners desire to be bound by the MDA's RMA for Mount Dallas
24 Road. Including the petition signers shown above, owners of 71 parcels (84.5%) have
25 ascribed their signatures in favor of the MDA remaining as the managing entity of the
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1 road.

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4 **IV. SUMMARY JUDGMENT**

5 Dr. Widdoes and the MDA have met their initial burden of proving no genuine
6 issue of material fact exists. *LaPlante v. State*, 85 Wash.2d 154, 158, 531 P.2d 299
7 (1975). The burden then shifted to the Welkers to respond with "...more than
8 conclusory allegations, speculative statements, or argumentative assertions of the
9 existence of unresolved factual issues." *Rucker v. Novastar Mortg.Inc.*, 177 Wash. App
10 1, 10, 311 P.3d 31 (2013). The Welkers did not meet this burden, nor do they argue
11 that any material issue of fact exists. The pivotal questions put before this Court are
12 ripe for summary judgment. There is no reason that the Court cannot or should not
13 decide the issues now before it. It was irresponsible for the Welkers to insert additional
14 issues into their Responsive Brief. Chaos and confusion may have reigned when they
15 used that tactic at the Presentation Hearing on June 24, 2016, but it won't work again.
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18 Dr. Widdoes and the MDA respectfully request that the Court rule as a matter of
19 law that: a) Consenting Property Owners are legally bound by the MDA's RMA(s) that
20 they have joined into, and b) The Mount Dallas Association shall remain as the
21 managing entity of the Mount Dallas Road and the subject side roads.
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24 **V. ARGUMENT**

25 **A. OWNERS WANT THE SAME THING**

26 Despite their actual actions in this lawsuit, the Welkers argue that they filed suit
27 merely to "achieve an equitable formula which can be agreed to and recommended by
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1 the majority of the Benefitted Property Owners...". The Welkers have admitted on
2 numerous occasions that it is probably an impossibility to achieve 100% approval from
3 the Benefitted Owners. In their Complaint, the Welkers requested that the Court enter a
4 declaratory judgment that the owners of Benefitted Properties allocated a majority of the
5 expense for the maintenance of Mount Dallas Road be authorized to maintain the road.
6 As of this date, owners of 84.5% of the Benefitted Properties have agreed in writing that
7 the MDA should remain as the managing entity, and owners of 69% of the Benefitted
8 Properties have agreed in writing to be bound by the MDA's RMA.
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11 Contrary to the Welkers' position, majority support for the MDA hardly constitutes
12 a "tyranny" – it constitutes a democratic process that has evolved throughout this
13 proceeding. A democratic process involves majority rules. The Welkers claim that the
14 MDA has a desire for "unfettered and legally unsupportable power." That statement
15 couldn't be further from the truth. As the Court is well aware, it is a thankless job being
16 on a board of an HOA or similar association. The 84.5% support of the MDA says
17 volumes. The people, the individuals, the homeowners who live and work on this island
18 strongly support the MDA.
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22 **B. EQUITABLE AND DECLARATORY POWERS**

23 The Welkers acknowledge that the Court has equitable powers. Case law from
24 our own backyard confirms that courts possess "*equity power to impose reasonable*
25 *road maintenance obligations where no agreement exists.*" *Buck Mountain Owners*
26 *Ass'n v. Prestwich*, 174 Wash. App. 702 (2013). In our case, a legal document exists,
27 but it admittedly has not been signed by 100% of Benefitted Owners. The MDA and Dr.
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1 Widdoes acknowledge that non-consenting property owners are not legally bound at
2 this time. That is what this lawsuit is about. At its conclusion, both sides want the Court
3 to make equitable and declaratory decisions that will bind all Benefitted Owners.
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5 The Court has the right and power under the Declaratory Judgments Act to
6 declare that the MDA will remain as the managing entity for this group of owners.

7 *RCW 7.24.010. Courts of record within their respective jurisdictions shall*
8 *have power to declare rights, status and other legal relations whether or*
9 *not further relief is or could be claimed.*

10 The Welkers specifically request Declaratory Relief in their Complaint, claiming
11 that “a real and justifiable controversy exists as to the authority of the Association...”.
12 “Plaintiffs are entitled to a declaratory judgment which establishes a reasonable, fair and
13 equitable method of allocation of the expenses for the maintenance of Mt. Dallas Road.”
14 (paragraph 8 of Plaintiffs’ Complaint). The Benefitted Owners obviously cannot have a
15 reasonable, fair and equitable method of allocation for the road system without a
16 definition of what entity is actually going to manage the roads. Who would be better to
17 manage the roads than the MDA, a nonprofit incorporated under the laws of the State of
18 Washington, which has acted successfully in this capacity for 28 years? The MDA, in its
19 Answer, and in this Motion, asks the Court to authorize it to continue to administer the
20 management of Mount Dallas Road and the subject side roads. This is a cornerstone
21 issue which needs to be decided at this juncture.
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24 Curiously, despite their request to the Court, the Welkers cite three cases for the
25 proposition that the MDA does not have authority to collect monies for the road it does
26 not own. First of all, contrary to the instant case, the *Halme* case (192 Wash.App. 893
27 (2016)) was about an after-the-fact unincorporated road-maintenance association trying
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1 to amend covenants with a majority vote without the governing document authority to do
2 so. The MDA is incorporated, and does have appropriate Articles of Incorporation and
3 Bylaws in place. The question in *Casey v. Sudden Valley Cmty Assn*, 182 Wash.App.
4 315 (2014) was whether the HOA actions conflicted with RCW 64.38. That case held
5 that the incorporated non-profit association, with Articles of Incorporation and Bylaws,
6 did have authority over its members. In *Ebel v. Fairwood Park*, 136 WnApp. 787
7 (2007), disgruntled homeowners sued an HOA which was formed by 75% of the owners
8 twenty years after the subdivision. The court held that the non-signing homeowners
9 were bound because they had paid dues, attended meetings and accepted the benefits
10 of the HOA for many years. This holding is applicable to the Welkers, who have paid
11 dues, attended meetings and accepted the benefits of the MDA.

14 The *Buck Mountain* case is most analogous to the present set of facts. Both
15 cases present problematic situations where Benefitted Owners refused to abide by the
16 rules of an association to which they did not subscribe. Equity must continue to control
17 here. The MDA was formed many years ago by property owners on Mount Dallas in
18 order to maintain the Mount Dallas Road System. The MDA established fair,
19 reasonable and equitable rules to regulate its work. The Welkers have accepted the
20 benefits, yet now object to the MDA's management and to the terms of the MDA's RMA.
21 The Court has the equitable powers to name the MDA as the managing entity and to
22 determine the terms and conditions that will bind non-consenting owners.
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26 C. AVOIDING CONFUSION

27 The MDA and Dr. Widdoes are not asking the Court to rule on whether the
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1 specific terms in the RMA are reasonable, fair, and equitable for non-consenting
2 property owners. That issue can be argued at trial. The only requests in this motion are
3 for the Court to rule that a) Consenting Property Owners are legally bound, and b) the
4 MDA will remain the managing entity for the main road and the subject side roads.
5

6 It is well established that all Benefitted Owners on Mount Dallas are going to
7 have to pay their fair share of expenses for road maintenance: “[C]oncurrent users of a
8 shared easement (with no road maintenance provisions) must share road
9 maintenance....” *Buck Mountain Owner's Ass'n v. Prestwich*, 174 Wash. App. 702, 716,
10 (2013). What has not been established is who will manage the road and exactly what
11 constitutes a fair share of expenses.
12

13 The Welkers, by and through their lawyers’ misguided attempt to confuse the
14 issues and push off the requested relief until trial, argue that this Court has no power to
15 impose the MDA’s RMA terms on non-consenting owners. That simply isn’t true. That
16 said, the MDA and Dr. Widdoes do not dispute that *at this time*, the terms of the MDA’s
17 RMA’s are not binding on the Welkers or any other non-consenting property owners.
18 Numerous Washington cases support the Court’s exercise of its equity power to impose
19 reasonable road maintenance obligations where no agreement exists. *Buck Mountain*
20 *Owner's Ass'n v. Prestwich*, 174 Wash. App. 702, 716, 308 P.3d 644, 652 (2013). The
21 Court must use its equitable and declaratory powers to establish final fair, reasonable
22 and equitable terms of management and cost sharing.
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26 VI. CONCLUSION

27 The Welkers filed this lawsuit asking the Court to use its equitable and
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1 declaratory powers to clarify maintenance of the road. The road system must be
2 managed by some entity. That entity, according to common sense, and according to
3 owners of an 84.5% super majority of Benefitted Properties, should be the MDA.
4 Owners of a 69% majority of the Benefitted Properties have entered into binding
5 contracts delegating their road-maintenance authority to the MDA. A ruling that the
6 MDA will remain the managing entity and that Consenting Property Owners are legally
7 bound to the terms of the MDA's RMAs will allow the parties to move forward towards
8 resolution of this matter. Dr. Widdoes and the MDA respectfully ask the Court to affirm
9 that signed and notarized Joinders to the MDA's RMAs for the Mount Dallas Road and
10 the subject side roads are legally binding upon the signators and that the MDA will
11 remain the managing entity of Mount Dallas Road and the subject side roads. A ruling
12 on these matters will bring the MDA out of "purgatory" and help the parties and the case
13 move forward.
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17 Amid the flowery prose and the discussion of other issues not now before this
18 Court, where is the Welkers' argument in opposition to the specific requests contained
19 in the Widdoes/MDA motion? The Welkers have made no coherent argument and have
20 thereby acquiesced with respect to these requests. The time is right for the Court to
21 resolve the specific issues in this motion.
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23 Defendants Mount Dallas Association and L. Curtis Widdoes, Jr. respectfully
24 request that the Court should rule as a matter of law that:

25 A. The Mount Dallas Association shall remain the managing entity for Mount
26 Dallas Road.

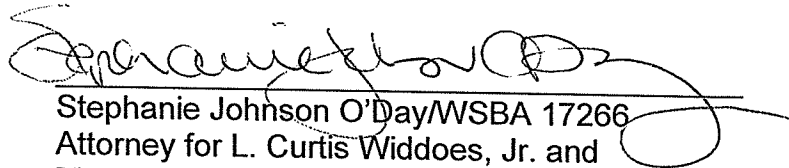
27 B. The Mount Dallas Association's Road Maintenance Agreement for Mount
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1 Dallas Road is legally binding on Consenting Property Owners.

2 C. The Mount Dallas Association shall remain the managing entity for the
3 following seven side roads connecting to Mount Dallas Road: Lower No-
4 Name Road, Kiya Way, Tumac Road, Rascal Road, Stormridge Road,
5 Rockledge Road and Skylark Lane.
6

7 D. The Mount Dallas Association's Road Maintenance Agreements for Lower
8 No-Name Road, Kiya Way, Tumac Road, Rascal Road, Stormridge Road,
9 Rockledge Road and Skylark Lane are legally binding on Consenting
10 Property Owners.
11

12
13 Dated this 30 day of January, 2017.

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16 Stephanie Johnson O'Day/WSBA 17266
17 Attorney for L. Curtis Widdoes, Jr. and
18 The Mount Dallas Association
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