

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

**MEMORANDUM OF MOUNT
DALLAS ASSOCIATION IN
RESPONSE TO PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT**

This is an action to establish, pursuant to the ruling in Buck Mountain Owners Association v. Prestwich and Bentley, 174 Wn.App 702 (2013), an equitable process for road maintenance over the Mount Dallas Road system. See “Complaint for Declaratory Judgment,” Paragraph 8, filed herein. Such an action may be necessary, because there exists no written, recorded road maintenance agreement for this road system. *Id.*, at Paragraphs 3.4 and 3.5, and the Defendant Mount Dallas Association’s “Answers” thereto, also filed herein.

Secondarily, the “Complaint” at Paragraph 6 seeks the Court’s declaration that “the Association has no authority to establish and enforce a road maintenance agreement or any maintenance and assessment methodology which is not... agreed to by all Benefitted Property Owners; the Association has no authority to assess maintenance costs against the Benefitted

1 Properties; and the Association has no authority to ... pursue collection of maintenance costs
2 from Benefitted Property Owners.” The “Complaint” specifically requests the following relief:
3 “judgment that the Owners of Benefitted Properties allocated a majority of the expenses for
4 maintenance of Mt. Dallas Road... are authorized to maintain Mt. Dallas Road in accordance
5 with the Expense Allocation Method.” See “Complaint” at Paragraph 8 (emphasis added).
6

7 As set forth below, and as supported by the many “Declarations” submitted herewith and
8 individually by owners of the benefitted properties, the Mount Dallas Association is the entity
9 that has fairly and responsibly maintained the Mount Dallas Road system for over 26 years, and
10 it represents a majority of the owners of the benefitted properties.
11

12 At this juncture, Plaintiffs seek summary declaratory judgment as to their “Complaint’s”
13 second contention, albeit worded slightly differently: “the Association: (1) has no legal rights or
14 interests in the Road, whether established by the Road Easements or otherwise; (2) lacks any
15 legal authority to manage the Road on behalf of all the Benefitted Properties; (3) lacks any
16 authority to enter into contracts related to the... maintenance of the road; and (4) lacks any legal
17 authority to establish, assess, or collect Road maintenance expenses against all the Benefitted
18 Properties.”
19

20 In response, the Association asserts that: (a) as the entity that has in fact conducted all
21 road maintenance on the Mount Dallas Road system, it has certain rights with respect thereto,
22 pursuant to Buck Mountain, supra; (b) as a responsible, majority-supported organization with
23 special knowledge and abilities with respect to Mount Dallas Road, it should continue to conduct
24 the minimal necessary maintenance the need for which will arise during this lawsuit; and (c) at
25 the conclusion of this lawsuit, fort the same reasons it should be the entity authorized by the
26 Court’s ruling to manage road maintenance into the future. The Association therefore requests
27
28

1 that the Court deny the Plaintiffs' motion, and order that the Association may conduct the
2 minimum maintenance necessary during the pendency of the lawsuit, the costs of which shall be
3 subject to payment by all benefitted property owners in an equitable fashion as determined by the
4 Court in this lawsuit.
5

6 Mount Dallas Road is an arterial, which feeds various side roads and which in total
7 constitutes the Mount Dallas Road system. The road system benefits 84 legal tax parcels 60 of
8 which use one or more side roads. Declaration of James Guard. There are 2 miles of roads
9 paved with chip-seal, and 3 miles of gravel roads in the road system. Id.
10

11 There is no set of subdivision covenants that binds the properties of the users of the road,
12 nor is there any road maintenance agreement, recorded or otherwise, that governs those parties'
13 rights and obligations with respect to the road system. No rights of access are at issue here –
14 only road maintenance is before the Court.
15

16 The road system first required organized maintenance in 1989, which resulted in the
17 creation of the Mount Dallas Association, a Washington State non-profit association.
18 Declaration of James Guard. Its Articles state that it is “organized exclusively for civic
19 improvement, road maintenance, and neighborhood beautification purposes, in accordance with
20 the Washington Non-Profit Corporation Act... Without limitation of the foregoing, the
21 corporation has the following purposes: 1. To maintain and upgrade Mt. Dallas Road...”
22 (emphasis added). Declaration of Susan Allen.
23

24 Since its inception, the Association has maintained the arterial and the side roads.
25 Declaration of James Guard. Originally, the side roads and the arterial were all referred to as
26 “Mt. Dallas Road,” but this was altered in 1998 by the requirements of the County-mandated 911
27 emergency response legislation. Declaration of James Guard. Declaration of Susan Allen. Its
28

1 Bylaws were amended in 2014 to clarify that the newly named side-roads were still included in
2 the mission of the Association. Declaration of Susan Allen. There is therefore no institutional or
3 internal impediment to the Association performing maintenance on side roads.
4

5 The Association was formed in 1989 with broad support of the user parcels. In the first
6 year of its operation, the owners of 21 of 29 user-parcels voluntarily contributed to its road
7 maintenance activities. Declaration of Sandra Hawley. Over time, an average of 85% of the
8 owners of benefitted parcels contribute to the Association for road maintenance each year.
9

10 Declaration of Sandra Hawley.

11 In its history, the Association has overseen the investment of \$450,000 in maintenance
12 and improvements. Declaration of James Guard. Declaration of Sandra Hawley. Declaration of
13 Susan Allen. It currently holds and administers approximately \$40,000 in funds. Declaration of
14 Florence McAlary.
15

16 The Association has operated every year since 1989. Id. The Association has operated
17 responsibly and effectively at all times. Declaration of Sandra Hawley. Declaration of Susan
18 Allen. Declaration of James Guard. Declaration of Mike Carlson. Declaration of Maurice and
19 Molly Liebman. Declaration of L. Curtis Widdoes, Jr.
20

21 The Association is duly organized; it holds annual meetings, elects officers, maintains
22 liability insurance, keeps financial records, keeps minutes of meetings and is open to all
23 benefitted property owners. Declaration of James Guard. Declaration of Susan Allen.
24 Declaration of Sandra Hawley. Declaration of Maurice and Molly Liebman. Declaration of
25 Florence McAlary. Declaration of L. Curtis Widdoes, Jr. Declaration of Sandra Hawley.
26

27 The existence of a road maintenance entity increases property values and marketability
28 for sale. Declaration of Maurice and Molly Liebman. Declaration of J. Royce Meyerott.

1 Conventional lenders require a borrower to show that the collateral residential property has not
2 only access but a road maintenance agreement. Id.

3 The road system requires regular maintenance in the form of graveling, ditching,
4 culverting, filling potholes, cutting trees, removing overhanging branches, weed-whacking,
5 maintenance of sight lines, and fire prevention. Declaration of James Guard. The Association
6 maintains 5 sand boxes for use in icy conditions. Declaration of Mike Carlson.
7

8 The Association operates frugally, including the extensive use of volunteer labor and
9 equipment, and protects the financial interests of its users. Declaration of Robert C. Tauscher.
10 Declaration of James Guard. Declaration of L. Curtis Widdoes, Jr. Declaration of Susan Allen.
11 Declaration of Sandra Hawley.
12

13 It is expected that the road system will require maintenance this winter in the form of
14 clearing blocked ditches and culverts and repairing road sections that may have suffered
15 washout. Declaration of Mike Carlson.
16

17 Approximately 75% of the owners of benefitted properties have given written approval of
18 the Association's handling of road maintenance, and desire that the Association be authorized to
19 conduct maintenance of the main road and the side roads pending this lawsuit and going forward
20 into the future at its conclusion. Declaration of Jim Guard. Declaration of Susan Allen.
21 Declaration of J. Royce Meyerott. Declaration of L. Curtis Widdoes, Jr. Declaration of Sandra
22 Hawley. Declaration of Maurice and Molly Liebman. Declaration of Robert C. Tauscher.
23 Declaration of Florence McAlary.
24

25 The Plaintiffs' "Complaint" formally requests the Court to vest road maintenance
26 authority in the entity endorsed by the majority of users. There is no such entity except the
27
28

1 Mount Dallas Association. The Plaintiffs have at times served on the Association's Board.
2 Declaration of Susan Allen.

3 The Association began as one funded by voluntary contributions. After the Buck
4 Mountain decision, it decided to change to one funded by an equitable allocation of its costs
5 among all road users. It announced its decision in the April 8, 2015, letter to the owners of
6 benefitted properties, attached to the Declaration of Plaintiffs' counsel. Since then, it has
7 incurred some direct road maintenance costs, and much more in administrative costs, including
8 attorney's fees for this lawsuit. Declaration of Susan Allen.

9
10
11 The Plaintiffs object that the Association's Bylaws use the term "voluntary." However,
12 the Association's Bylaws have been amended to remove the term. Declaration of Susan Allen.
13 As a result, there is no internal or institutional impediment to the Association acting according to
14 its rights under the Buck Mountain decision.

15
16 Buck Mountain reaffirmed this State's adherence to the rule that, in the absence of a road
17 maintenance covenant, all users of a roadway are obligated to pay a reasonable share for
18 maintenance. This rule is not questioned here, but other novel questions are presented.

19 First, in the absence of a road maintenance covenant, who or what entity should maintain
20 the roads during a declaratory judgment action the purpose of which is to establish a binding
21 system of road maintenance? As argued above, the Association is the only reasonable choice.
22 Historically, 85% of users support it by annual financial contributions. Currently, 75% of them
23 endorse the Association's role during and after this lawsuit as the entity administering road
24 maintenance. There can be no argument that the roadway's maintenance could be placed in the
25 hands of a new, untried entity. Declaration of Maurice and Molly Liebman. Nor can the road be
26
27
28

1 left unattended. Id. The Plaintiffs' own "Complaint" asks for relief in the form of the Court's
2 authorization of the entity with majority approval.

3
4 Second, in the absence of a road maintenance covenant, who or what entity should
5 maintain the roads into the future? As explained above, for most of the same reasons, the
6 Association is likely to be the choice there as well. The same percentages of users, and the relief
7 requested in the Plaintiffs' "Complaint," compel this result.

8
9 Ultimately, the Court may be asked to decide details with respect to the manner in which
10 decisions are made on the type and timing of road maintenance, and / or how the costs should be
11 allocated. However, those issues are do not affect the Court's analysis for the current motion.

12 Conclusion

13
14 The Association is a party to this lawsuit precisely because it has maintained the road
15 system for 26 years. The Association has demonstrated that it has done so effectively and
16 efficiently without interruption.

17
18 In April 2015, the Association announced its intention to change from an association
19 funded by voluntary contributions to one funded by contributions as required by law under the
20 Buck Mountain decision. There is expected to be some road maintenance required this winter
21 and beyond to maintain the road system in safe condition.

22
23 The Association requests that the Court deny any portion of this motion for summary
24 judgment which states that the Association lacks any legal authority.

25
26 It requests instead an order:

27
28 (a) acknowledging the Association's existence and function, and declaring that it has certain
rights with respect its road maintenance activities subsequent to April 8, 2015, pursuant to Buck
Mountain, supra;

1 (b) authorizing the Association as a responsible, majority-supported organization with special
2 knowledge and abilities with respect to Mount Dallas Road, to continue to conduct the minimal
3 necessary maintenance the need for which will arise during this lawsuit; and
4

5 (c) at the conclusion of this lawsuit, allocating the costs for such work equitably among all
6 benefitted property owners, pursuant to the Court's determination.
7
8
9

10 DEREK MANN & ASSOCIATES PLLC

11 Attorney for Mount Dallas Association and for L. Curtis Widdoes, Jr.

12 _____
Derek Mann date

13 P.O. Box 399

14 Eastsound, WA 98245

15 (360) 376-3299

16 (888)875-3193 toll free

17 (888) 220-0983 fax

18 derek@orcslaw.com
19
20
21
22
23
24
25
26
27
28