

COUNTY CLERKS OFFICE
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OCT 19 2015
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; PETER
and KIMBERLY ALBERT; TIMOTHY
and SUSAN ALLEN; DAVID and
NANCY AUTH; ANITA BAILOR;
PATRICK and JOANN BALENGER;
MICAJAH BIENVENU and AMY
ANDERSON; CONSTANCE
BLACKMER; HENRY J. BORYS and
KESHA EWERS; JOHN and SHARON
BOYD; PATRICIA T. CASEY; KYLE
CHAPMAN and LADD JOHNSON;
WENDY CRAWFORD; PETER DAVIS
and SUSAN CRAMPTON DAVIS;
CYNTHIA and MARK DEARFIELD;
DAVID DUGGINGS and MEGAN
DETHIER; ROBERT T. EICHLER;
ROBERT J. ERSKINE, JR. and PEGGY
ERSKINE; JAMES L. and WENDY
FRANCIS; JAMES FRITZ; GREG and
JANE GERHARDSTEIN; GARY GERO;
JAMES GIMLETT and MAGGIE
GALLIVAN; CRAIG and JEAN
GRAHAM; JAMES and MARY GUARD;

NO. 15-2-05069-0

**DECLARATION OF SUSAN D.
ALLEN IN SUPPORT OF
MOUNT DALLAS
ASSOCIATION'S RESPONSE TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGEMENT**

1 NASH R. GUBELMAN and LINDA
2 SOFTING-GUBELMAN; STERLING
3 TRUST COMPANY FBO; THOMAS and
4 COLLEEN HAVERMAN; RONALD and
5 ASHLEY HURST HENNEMAN;
6 HENNEMAN IRREVOCABLE TRUST;
7 LISA LYNN HILL; PAUL A. and
8 JENNIFERHOHENLOHE; GLENN and
9 DIANE KAUFMAN; FRED KEELER;
10 JANE B. KROESCHE; GORDON
11 LAGERQUIST; MAURICE and MOLLY
12 LIEBMAN; MADRONA RIDGE, LLC;
13 FLORENCE MCALARY; ROBERT and
14 SARA MCCLELLAN; J. ROYCE
15 MEYEROTT and LEE M. BRYAN;
16 JEROME S. and ANN MOSS; MOSS
17 TRUST; DIANNA PADILLA; MARK
18 PRZYBYLSKI and MAUREEN KAY
19 KOSHI; ROGER and JILL RATH;
20 PATRICIA ROBERTS; BENJAMIN
21 TROUTMAN and KARLA SABIN;
22 THOMAS SCHILLING; FLORENT
23 SCHOEBEL and JESSICA FARRER;
24 ERIK and ELAINE SCHUMY; WILLIAM
25 and LAURA SEVERSON; MARK
26 SHEPPARD; FRED and ELEANOR
27 SILVERSTEIN; SAN JUAN
28 PRESERVATION TRUST; DONALD E.
STRAUTON and MARIA SIKORSKI;
GREGORY A. and JANE SWANSON;
RIKKI SWIN; ROBERT TAUSCHER and
SANDRA HAWLEY; JOHN TAYLOR;
BRUCE D. TWOOMEY; CARTER and
JENNIFER WHALEN; L. CURTIS
WIDDOES; SILVERSTEIN-GERSTON
MOUNT DALLAS LLC; SP
INVESTMENTS II LLC;
Defendants.

1 I, Susan D. Allen, declare as follows:

2 1. I am over the age of 18 and I am competent to be a witness in this lawsuit. I make
3 the following statements based upon my personal knowledge. I am the President of Mount
4 Dallas Association (the Association) and have served as such since August 2014. My husband,
5 James T. Allen and I own two parcels of land on Mount Dallas and are also Defendants in this
6 lawsuit.
7

8 2. Mount Dallas Association was formed and incorporated 1989. Throughout the
9 26 year history of the Association, annual meetings have been held to elect new officers, review
10 financials and conduct other business relative to the community. The Association has filed
11 annual tax returns and maintains a liability insurance policy. All records, including financials
12 and minutes are available for property owners to review. The community has received on-going
13 communications regarding the business of the Association.
14

15 3. The Plaintiff's Declaration, states she reviewed the Articles of Incorporation and
16 did not find a provision which addresses authorization for the Association to manage or seek
17 assessments for Side Roads. However, the first paragraph of Article III of Mount Dallas
18 Association's Articles of Incorporation state the "corporation is organized exclusively for civic
19 improvement, road maintenance, and neighborhood beautification purposes." Attached as
20 Exhibit A hereto is a true and correct copy of the Association's Articles. When the Association
21 was formed in 1989, all roads on Mount Dallas were named Mount Dallas Road. It was not until
22 1998 when the County initiated the 911 emergency response system that mandated all roads be
23 uniquely named. The Association has always considered any and all roads on Mount Dallas to be
24 included in the Association. When the bylaws were amended in 2014, the Association included
25 the specific language regarding side roads, but not as a change of substance or policy, but to
26
27
28

1 further clarify the Association's inclusion of side roads. The Bylaws were amended again today,
2 to remove the word "voluntary" from them. Attached as Exhibit B is a true and correct copy of
3 the Amended and Restated Bylaws dated October 19, 2015.
4

5 4. The plaintiff's Declaration states the Association began seeking and managing
6 assessments for maintenance expenses for the Side Roads, seemingly without the knowledge or
7 input of all Benefitted Owners. The plaintiffs, Abigail and Clare Welker, paid \$350.00 for
8 maintenance on the side road they live on, Nighthawk Lane in October 2009. See Exhibit C
9 attached. Since the Plaintiffs paid for maintenance that was strictly for the road they live on,
10 Nighthawk Lane, obviously they knew the Association was managing maintenance for Side
11 Roads. Both Plaintiffs have served on the Association's Board of Directors, Clare Welker as
12 Secretary for 1 month in 2011, Abby Welker for 4 months as Treasurer in 2014. They
13 specifically were involved with the Board and had easy access to the records.
14
15

16 Attached is an email from a former Mount Dallas property owner and Association Board
17 member, Todd Kromer, dated April 30, 2015, to Plaintiff, Abigail Welker. See Exhibit D . It
18 states in part, "I've had some time to review your findings and was a bit hurt by one of your
19 comments. The Board funded side roads, at least for the period 2006-2012, without the consent
20 or knowledge of all members. Of coarse "all " is a strong word because there's always some that
21 are tuned out completely. I suspect funding of side road work was going on years before I came
22 to the hill. My time was 2005 to 2010 and yes we funded side roads and I was just as proud of
23 that as any other work we did and I went out of my way to be sure members knew what we were
24 doing and how their money was being spent. 1... Each year I sent out (via U.S. Mail) a Dues
25 Packet and year in review type multi-page letter. The U.S. Mail assured me contact with 100%
26 of those on the hill. If one was returned I'd do what ever I had to to track down the right address.
27
28

1 You and Clare maybe still have yours? I would outline bullet by bullet all we did for the year
2 including accomplishments related to side road maintenance, I also outlined goals for the new
3 year which included side road goals.....I was proud of all that work ! In the earlier years I would
4 design the packet, write the letters, and Bob would sign them, as I was Vice-Pres. before being
5 elected Pres. 2.....I had managed to get the e-mail list from about 7 names up to well over 50.
6 Often I sent out here's whats going on e-mails and side roads were many times a topic. 3.....I
7 would very regularly talk with folks while walking the road , or working on the road, and again
8 side roads were discussed I'm sure. 4.....Back then we'd have work parties and many would
9 gather to do work, some times on side roads, and I'd be bragging about how this year we were
10 able to free up the money for a culvert over here or a ditch over there etc. 5.....I thought the
11 Annual meetings were important so I'd promote the heck out of them. My last one at Rikki's we
12 had a band, food, outdoor dancing and about 55 people showed up. During the talking time side
13 roads were often discussed and I always had financials on hand and encouraged any member to
14 take them home. I always encouraged this as I always said that M.D.A. was voluntary and no one
15 had to pay a dime if they didn't want to. I just can't tell you how important it was to me that
16 folks knew what we were doing and how their money was being spent....there were no secrets on
17 my watch ! In conclusion from 2005 to 2010 any one who didn't know that M.D.A. was spending
18 money on, and improving, side roads wasn't paying attention. We did tons on M.D. Road, hell
19 we paved it (after the membership voted), we put in mail boxes, we got faster Internet, Firewise,
20 sand boxes on the hills and on and on and on and yes spent money on side roads and as an old
21 promoter I wanted everyone to know about all of it.

22 Also attached is a copy of the minutes from the September 20, 2009 Board meeting,
23 stating that Nighthawk Lane should be included in any gravel plan. See Exhibit E. Clearly, the
24

1 Board was not trying to hide anything.

2
3 5. Plaintiff, Abigail Welker's Declaration, states "The Association continues
4 to seek such assessments from the Benefitted Owners and has threatened to sue those that do not
5 pay. A true and correct copy of the Association's April 8, 2015, letter, which I received from the
6 Association, is attached as Exhibit 4." The exact language in the letter regarding collecting from
7 non-payers is "There will be no retroactive enforcement of this law, but going forward, you will
8 be billed and expect to pay per the terms of this law. If no payment is received, then we will
9 have no recourse, but to follow the letter of the law and pursue legal action." See Exhibit F.
10

11 6. During the 26 years history of the Association, over \$450,000.00 has been
12 contributed to the Association from the property owners. On average, 85% of property owners
13 have paid monies to the Association each year for management of the roads. Mount Dallas has
14 gone from an extremely rough mound of dirt to a road system totaling over 5 miles long that
15 includes the 2 mile long paved Mount Dallas Road proper. The number of property owners
16 contributing to the Association, both financially and with the thousands of hours of volunteers
17 time, indicate approval by a large majority of benefitted property owners.
18

19 7. After this lawsuit was filed, the Association had many meetings and phone
20 conversations with property owners. We sent out two surveys to all the other Defendants in this
21 case. The surveys provided an opportunity for the property owners to voice their opinions about
22 the issues brought forth in this case by the Plaintiffs. Once the surveys were completed, the
23 Association compiled the data to determine what the majority of the property owners/Defendants
24 wanted regarding each of the issues brought forth in this case by the Plaintiffs. This information
25 was used to create "Petitions" that individual property owners could sign and use as evidence in
26 this case. The results are as follows:
27
28

1 75.29% of property owners “Authorize Mount Dallas Association, formed in 1989, to be
2 the managing entity of Mount Dallas Road and all current and future side roads accessed via
3 Mount Dallas Road. The Association will be managed by a Board of Directors elected each year
4 by a majority vote of property owners.”

5
6 75.29% of property owners “Authorize each tax parcel owner, whether developed or
7 undeveloped, a vote that is equal to every other tax parcels’ vote. When a decision pertains only
8 to one of the side roads, only those parcels that have access on that particular side road will have
9 their vote counted.”

10
11 75.29% of property owners request “To include all roads, current and future, that provide
12 access to property via Mount Dallas Road to be bound by the court’s adjudication ruling in this
13 case.”

14
15 74.12% of property owners “Authorize the assessment for annual expenses that benefit
16 all parcels equally such as liability insurance, mailers, postage, website hosting and possibly
17 accounting expenses to be the same flat rate for each tax parcel.”

18 74.12% of property owners “Authorize the assessment for annual expenses that are
19 performed to prevent a neighborhood fire, such as weed whacking, brush clearing and tree
20 branch removal to be the same flat rate for each tax parcel. When the work performed is for a
21 side road, only those parcels that have access on that particular side road will be assessed.”

22
23 71.76% of property owners “Authorize an annual assessment for a reserve fund to pay for
24 major road repairs, ditch work and/or repaving of Mount Dallas Road based upon the area of
25 Mount Dallas Road I traverse to get to my parcel and whether my parcel is developed or
26 undeveloped.”

27
28 My Declaration in Support of Mount Dallas Association’s Response to Plaintiffs’ Motion

1 for Summary Judgment filed on October 16, 2016, includes all of the 268 individually signed
2 petitions as Exhibits. Petition responses submitted to the Association demonstrate that a
3 supermajority of property owners is in agreement about each of the issues brought forth in this
4 case. At a meeting on August 8, 2015, at the home of Defendant, Rikki Swin, the Plaintiff's
5 attorney, Chris Brain, stated that if a large majority of property owners were in agreement with
6 the specific issues of this case, he believed the Court would rule in favor of what the majority of
7 property owners wanted. We kindly ask the Court to give the Association the authority as
8 requested by a supermajority of the property owners in each of the six petitions.
9
10

11 8. Since the Plaintiff's have started their legal action we have not sent out invoices
12 for 2015 assessment. However, the Association has incurred expenses for items such as liability
13 insurance, post office box rental, ditch maintenance, road maintenance and legal fees. The
14 Association needs to be able to collect monies from property owners to pay for the ongoing
15 expenses.
16

17 9. Currently, the Association projects the repaving of the main Mount Dallas Road
18 will need to be done in 2019. The estimated cost is \$140,000.00. Property owners have
19 vehemently expressed their disdain that monies that could have been saved for the repaving of
20 the main road are now being spent on this lawsuit. Additionally, the Association has always
21 been frugal with expenses. Property owners have volunteered literally thousands of hours
22 working on the roads with their own equipment, Firewise efforts, accounting, website
23 development, communications and other aspects of management in order to save money. Why
24 should the Plaintiffs, who only own 2 out of the 84 parcels on Mount Dallas be able to subject
25 the rest of the property owners to spend their time, energy and hard earned money defending a
26 process of managing and maintaining our privately owned roads that we were not unhappy with?
27
28

1 We kindly ask the Court to have the Plaintiffs, Abigail and Clare Welker, reimburse the
2 Association for all legal fees incurred in this matter.

3
4 I declare under the penalty of perjury of the laws of the State of Washington, that the
5 foregoing is true and correct.

6
7 DATED THIS 19 day of October, 2015

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10 Susan D. Allen
11 Susan D. Allen, President
12 Mount Dallas Association
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EXHIBIT A

ARTICLES OF INCORPORATION
OF
MT. DALLAS ASSOCIATION

FILED
FEB 21 1989
SECRETARY OF STATE
STATE OF WASHINGTON

The undersigned, for the purpose of forming a corporation under the non-profit laws of the State of Washington, RCW Chapter 24.03, hereby resolve and adopt the following Articles of Incorporation and designation of Registered Agent:

ARTICLE I

The name of the corporation shall be Mt. Dallas Association.

ARTICLE II

The term of existence of the corporation shall be perpetual.

ARTICLE III

The corporation is organized exclusively for civic improvement, road maintenance, and neighborhood beautification purposes, in accordance with the Washington Non-Profit Corporation Act, RCW 24.03 and Section 501(c)(4) of the Internal Revenue Code of 1954, as may be amended from time to time. Without limitation of the foregoing, the corporation has the following specific purposes:

1. To maintain and upgrade the Mt. Dallas Road.
2. To foster the improvement beautification, betterment, and preservation of the Mt. Dallas area.

3. To identify and describe problems and general areas of community concern relating to Mt. Dallas and its environs.
4. To provide a method for the establishment of communication and cooperation between the community and local government;
5. To provide a means for actions (including administrative appeals and litigation) for the protection of the interests of its members and the community regarding issues of concern, governmental or otherwise.

ARTICLE IV

The corporation shall have all powers enumerated by RCW Ch. 24.03 and all powers granted by law necessary and proper to carry out its above-stated purposes consistent with RCW Ch. 24.03; Section 501(c)(4) of the Internal Revenue Code; and any other state or federal law to which the corporation may be subject.

ARTICLE V

The regulation of the internal affairs of this corporation shall be set forth by the By-Laws.

ARTICLE VI

The name of the registered agent of the corporation is Kathy Krattli. The registered office address, which is also the address of the registered agent, is 20-C Mt. Dallas Road, Post Office Box 2374, Friday Harbor, Washington 98250.

ARTICLE VII

The initial directors of this corporation shall be nine (9) in number and their names and addresses are as follows:

James Guard, President
P.O. Box 1395
Friday Harbor, WA 98250

Pat Dallenger
P.O. Box 2992
Friday Harbor, WA 98250

David Duggins, Vice President
620 University Road
Friday Harbor, WA 98250

Nash Gubelman
P.O. Box 222
Friday Harbor, WA 98250

Megan Dethier, Treasurer
620 University Road
Friday Harbor, WA 98250

Hally Vernon
1735 Smuggler's Cove Road
Friday Harbor, WA 98250

Kathy Krattli, Secretary
P.O. Box 2374
Friday Harbor, WA 98250

Gene Krattli
P.O. Box 2374
Friday Harbor, WA 98250

Manfred Vernon
1735 Smuggler's Cove Road
Friday Harbor, WA 98250

ARTICLE VIII

Upon the dissolution of the Mt. Dallas Association and the winding up of its affairs, the assets of the Association shall be distributed exclusively to similar organizations which would then qualify under the provisions of Section 501(c)(4) or 501(c)(3) of the Internal Revenue Code and its regulations as they now exist or may hereafter be amended, or to the federal, state, or local government for exclusively public purposes.

ARTICLE IX

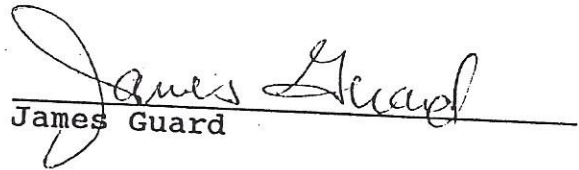
The name of the incorporator is as follows:

James Guard

Post Office Box 1395
Friday Harbor, WA 98250

James Guard declares under penalty of perjury of the laws of the State of Washington that:

He is the incorporator of Mt. Dallas Association, that he is authorized to sign the foregoing document and this verification, and that he has read the foregoing document and believes its contents to be true.


James Guard

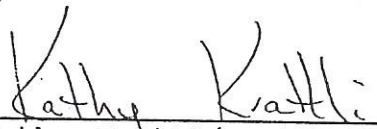
CERTIFICATION OF AND CONSENT
TO APPOINTMENT AS REGISTERED AGENT

Jim Guard, President of Mt. Dallas Association, and Kathy Krattli, hereby certify that Kathy Krattli has been appointed as the registered agent for Mt. Dallas Association and she hereby consents to serve as same, in the State of Washington. Kathy Krattli certifies that she understands that as agent for the corporation it will be her responsibility to receive Service of Process in the name of the corporation, to forward all mail to the corporation; and to immediately notify the office of the Secretary of State in the event of her resignation or of any change in the registered office address of the corporation for which she is agent.

Dated: Feb 6, 1989



Jim Guard
President



Kathy Krattli
Agent for Service of Process

EXHIBIT B

BY LAWS
OF
MT. DALLAS ASSOCIATION

ARTICLE I. MEMBERSHIP

Section 1. MEMBERS AND PROPERTIES

- 1.1 Definition of Member, Membership, Properties. Mt Dallas Association (hereinafter "MDA", "Association") and its' membership (hereinafter "Member", "Potential Member", "Members", "Membership" "Owner", "Owners") consist of title-holders to real property (hereinafter "Property", "Properties", "Qualifying Property", "Parcel", "Parcels") which are, or may be, accessed in whole or in part via use of a series of private Road Easements referred to as The Mt. Dallas Road (hereinafter "Road"), records of San Juan County, State of Washington,
- 1.2 Who is Eligible. Property Owners granted by deed the use of all or a portion of the Road are eligible for Membership in MDA without need of qualification other than payment of dues, levies and/or assessments.
- 1.3 Dues. Membership in MDA requires the payment of dues covering maintenance and reserve funds.
- 1.4 Membership Expiration and Renewal. Membership terms run on a calendar year basis and end each December 31st. Membership renews upon payment of dues, levies and/or assessments for the forthcoming year.
- 1.5 Qualifying Property. Properties subject to these By Laws are those listed by County Tax Account or Tax Parcel Number in attached Exhibit "A",
- 1.6 Map of the Road. The Road is depicted on the map attached as Exhibit "B".
- 1.7 Receipt and Acknowledgement of Payments. MDA shall, upon Member request, issue a written receipt acknowledging payment of dues and list thereon the Qualifying Parcel number(s). Otherwise, a Member's cancelled check serves as the receipt.
- 1.8 MDA Roster. The Association shall maintain a current roster of all Qualifying Properties by Tax Parcel Number, Owner(s) and Membership status. The Roster shall be made available for Membership review prior to any vote being taken.

- 1.9 Property Division. Division of a Property, upon recordation and issuance of a County Tax Account or Tax Parcel Number, produces One (1) Potential Member for each Parcel created. Parcel(s) so created are subject to these By Laws.
- 1.10 Consolidation of Property. Upon consolidation of Two (2) or more Parcels subject to these By Laws the number of Members, Potential Members and number of Parcels reduces by One (1) for each consolidated Property.

Section 2. CLASSES OF MEMBERSHIP

- 2.1 Number of Classes. The Membership of the Association shall consist of two (2) classes of Members, the first class is designated "Developed," the second class is designated "Undeveloped".
- 2.2 Developed. The Developed Membership consists of persons or entities owning Property whose legal access is via the Road's master easement and their property meets San Juan County's definition of Developed.
- 2.3 Undeveloped. The Undeveloped Membership consists of persons or entities owning Property whose legal access is via the Road's master easement and their property meets San Juan County's definition of Undeveloped.

Section 3. VOTING

- 3.1 Right to vote. Every Member is entitled to One (1) vote per Parcel owned irrespective of the number of owners.
- 3.2 Proxy Votes. Proxy votes are accepted on behalf of a Member and are to be counted provided a written proxy statement, signed by the Member, is presented prior to a vote being taken.

Section 4. GOOD STANDING

A Member is deemed to be In Good Standing when dues, levies and assessments are current.

Section 5. REFUND OF ASSESSMENTS

Reimbursement of Reserves. In the event the Road is conveyed to the public, all uncommitted Road Reserve, Large Project Reserve and Special Project Reserve monies held in Association accounts shall be reimbursed to, but only to, Members in the exact ratio or proportion as was originally paid by the Member. Annual Operating Dues are not refundable.

ARTICLE II MEETINGS OF MEMBERS

Section 1. ANNUAL MEETINGS.

The annual meeting of roster confirmed Members intended for: The election of Directors to succeed those whose terms expire; The approval of the forthcoming annual budget, and; The transaction of such other business as may properly come before the Association, shall be held each year at a time and place designated by the Board. In general, this meeting should be held between June and August.

Section 2. SPECIAL MEETINGS.

Special meetings of the Membership for any purpose or purposes may be called at any time by the President of the Association, or by the Board, for such time and place as the President or the Board may prescribe.

Section 3. NOTICES OF MEETINGS.

Written, e-mailed, published or posted notices stating the date, place, and hour of the meeting and in cases of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered to each Owner, Member and Potential Member alike, not less than fourteen nor more than fifty days prior to the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member or Potential Member at the address as it appears in the records of the Association, with postage thereon prepaid. Electronic delivery of Notices is authorized provided delivery of such notice occurs not later than as above stated.

Section 4. QUORUM.

Fifty One Percent (51%) or more of current Members available to cast votes shall constitute a quorum at any membership meeting and the vote of a majority of votes cast by the Members present or represented by proxy at such meeting shall be necessary for the adoption of any matter voted upon.

Section 5. BALLOTS.

The Board may direct a vote by written or email vote on any Mount Dallas Association matter.

Section 6. ELECTION OF DIRECTORS.

The election of Directors is provided for in Article X, Election Procedure.

ARTICLE III. BOARD OF DIRECTORS

Section 1. POWERS AND QUALIFICATIONS.

The affairs of the Association shall be managed by a Board of Directors (hereinafter "Board", "the Board") who shall be elected from Members of the Association.

Section 2. NUMBER.

2.1 Number of Directors. The number of Directors of the Association shall be not less than five nor more than 9.

2.2 Changes to the Number of Directors. The Board, by amendment of these By Laws, may increase or decrease the number of Directors set forth in Article 2.1 above provided no decrease in number shall have the effect of shortening the term of any incumbent or reducing the number of directors to less than the legally required number.

2.3 Director's failure to Maintain Membership. Any Director failing to maintain their Membership in the Association may no longer serve on the Board.

Section 3. EXECUTIVE COMMITTEE.

The Officers of the Association, as elected by the Board, shall constitute the Association's Executive Committee. The Executive Committee shall have and exercise, by resolution, such authority in the management of the Association as may be specified by the Board.

Section 4. COMPENSATION.

The Directors shall not receive compensation for their services but, by resolution of the Board, sums may be authorized by the Board to reimburse Directors for expenditures incurred in connection with their official duties. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving reimbursements or compensation therefore.

Section 5. VACANCIES.

The Board shall have the power to fill any vacancy occurring in the Board except at expiration of tenure. The Director appointed to fill a vacancy shall be appointed to serve until the next annual meeting. Any Director appointed by the Board shall stand for election, at the next annual meeting, for the remainder of the specified term for such position.

ARTICLE IV. MEETINGS OF THE BOARD OF DIRECTORS

Section 1. ANNUAL MEETING.

The annual meeting of the Board shall be held immediately or as soon thereafter as practicable following the annual Membership meeting. The primary purpose of this annual board meeting is to elect the officers for the coming year.

Section 2. SPECIAL MEETINGS.

Special meetings of the Board may be held at any place, at any time and in any manner as and when called by the President, Secretary or any Three (3) or more Directors. Special meetings may be held by teleconference, by e-mail, by facsimile transmission or in person provided a quorum is present and minutes of the meeting are recorded.

Section 3. NOTICE OF MEETINGS.

No notice of annual meeting of the Board shall be required. Notice of the time and place of any special meetings of the Board shall be given by the Secretary, or by the person or persons calling the meeting, by mail, email, publication or posting or by personal communication over the telephone or otherwise, at least Three (3) days prior to the date on which the meeting is to be held. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where the Director attends a meeting for the purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any meeting of the Board need be specified in the notice of any waiver of notice of such meeting.

Section 4. QUORUM.

Three (3) members of a Five (5) Member Board shall constitute a quorum for the conduct of business. Four (4) members of a Six (6) or Seven (7) Member Board shall constitute a Quorum for the conduct of business. Five (5) members of an Eight (8) or Nine (9) Member Board shall constitute a Quorum for the conduct of business. The act of the majority of Directors present at a meeting at which a quorum is present shall be the act of the Board. At any meeting of the Board at which a quorum is present, any business may be transacted, and the Board may exercise all of its' powers.

ARTICLE V. ACTIONS OF WRITTEN CONSENT

Section 1. ACTION WITHOUT MEETING.

Any Association action required or permitted by the Articles of Incorporation or these By Laws, or by the laws of the State of Washington, to be taken at a meeting of the membership or Directors of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members or Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be described as such.

ARTICLE VI. WAIVER OF NOTICE

Section 1. WRITTEN WAIVERS

Whenever any notice is required to be given to any Director of the Association by the Articles of Incorporation or By Laws, or by the laws of the State of Washington, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

ARTICLE VII. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. ASSOCIATION TO INDEMNIFY.

Each Director or Officer now or hereafter serving the Association and each person who at the request of or on behalf of the Association is now serving or hereafter serves as a trustee, director or officer of any other association or corporation, whether for profit or not for profit, and his respective heirs, executors and personal representatives shall be indemnified by the Association against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such trustee, director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duties; but such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled under any Bylaw, agreement, vote of the Board of Directors, or otherwise.

ARTICLE VIII. OFFICERS

Section 1. ADMINISTRATION.

The Officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, each of whom shall be annually elected by the Board, and shall serve until his successor is duly elected. Any two or more offices may be held by the same person, except the offices of President and Secretary. In addition to the powers and duties specified below, the Officers shall have such powers and perform such duties as the Board may prescribe. The President, Vice President, Secretary, and Treasurer must be Members of the Association, must be Directors of the Association and may not serve in their capacities more than Three (3) consecutive years without the unanimous approval of the directors unless a suitable replacement is not available to serve.

Section 2. THE PRESIDENT.

The President shall be the executive head of the Association and shall exercise the usual executive powers pertaining to the office of President, and shall preside at all meetings of the Board and of the Membership.

Section 3. THE VICE-PRESIDENT.

In the absence or disability of the President, the Vice President shall act as President.

Section 4. THE SECRETARY.

It shall be the duty of the Secretary to keep records of the proceedings of the Board and of the Members, to administer the Member register and roster, to sign Certificates of Membership (if any), when not signed by the President, and, when requested by the President so to do, to sign and execute with the President all deeds, bonds, contracts, and other obligations or instruments in the name of the Association, to keep a corporate seal, and to affix the same to Membership Certificates and other proper documents.

Section 5. THE TREASURER.

The Treasurer shall have the care and custody of and be responsible for all funds and investments of the Association, and shall cause to be kept regular books of accounts including the Association Balance Sheet and schedule of Income and Expenses. The Treasurer shall cause to be deposited all funds and other valuable effects of the Association in such depositories as may be designated by the Board. The Treasurer shall submit an annual budget for the coming year to the Board for consideration who shall then submit the budget to the Members for approval at the annual meeting. The budget shall include projected requirements for maintenance, operation and for road re-paving reserves. In general, he Treasurer shall perform all of the duties incident to the office of the Treasurer. Section 6. VACANCIES.

Vacancies in any office arising from any cause shall be filled by the Board at any regular or special meeting.

ARTICLE IX. ADMINISTRATIVE AND FINANCIAL PROVISIONS

Section 1. ANNUAL DUES.

The annual Membership dues for all Properties of the MDA shall be assessed based upon an annual budget submitted by the Board for approval, in advance, to the Membership. The annual budget shall have been calculated to meet the following collective objectives:

- 1.1 Annual Maintenance Assessment – A variable annual assessment established to capitalize all operating and maintenance expenses for the coming year such as but not limited to insurance, office expense, annual maintenance and repair of the Road and ditches, weed control and other incidental costs of running the Association. Annual Maintenance

assessments are assessed equally to each Property without regard to size or distance from Westside Road.

- 1.2 Road Reserve Assessment – A Road Reserve assessment established for accruing funds to pay for the periodic repaving of the MDA Road. This assessment charges each Property a fixed annual amount to be set aside and held, in each of a number of calendar years, as a reserve fund for the future repaving of the Road as that need is projected to arise. This assessment is reviewed annually at budget preparation time and adjusted to meet updated projected Road repaving costs. This assessment serves only for repaving the Road. This assessment shall be calculated from the Member approved proportional assessment formulary devised for such purpose which formulary shall be based on the distance from the Westside Road terminus of the Mt. Dallas Road to a Property, or to the intersection of a branch road leading to a Property, as depicted on Exhibits “A” and “B”. Uncommitted Road Reserve Assessment funds are refundable to a Member upon conveyance of the Road to the Public. Reimbursement to Members shall be in the exact ratio or proportion as was originally paid by them into this account.
- 1.3. Side Road Reserve Assessment – A variable annual assessment established to capitalize road maintenance to Properties served by a neighborhood road branching from the Road. Neighborhoods so served may establish and collect a separate assessment for the maintenance and or improvement of the branching road which assessment shall be collected, held, disbursed and accounted for by the Board. Side road assessments shall be separately recorded and accounted for in Association books and records. Uncommitted Side Road Reserve Assessment funds are refundable to a Member upon conveyance of the side road to the Public. Reimbursement to side road Members shall be in the exact ratio or proportion as was originally paid by them into the side road reserve account.
- 1.4. Large Project Assessment – A one-time Large Project fee, the amount for which shall be annually determined by the Board, shall be assessed for the purpose of mitigating Road damage caused by an Owner’s construction project or logging operation. Owner notice of the project and subsequent payment of a Large Project assessment is separate and apart from the payment of dues and Road Reserves and must be reported to the Board, with payment received, prior to commencement of an Owner’s construction or logging project.
- 1.5. Special Project Assessment – Undetermined Assessments for additional set-aside capital reserves as may from time to time be approved by the Members. Special Project assessments shall be collected, held, disbursed and accounted for by the Board. Special Project capital shall be separately accounted for in Association books and records. Special assessments may be equally or proportionately assessed.

Section 2. FISCALYEAR/CALENDAR YEAR.

The calendar and fiscal year for the Association shall commence on the first day of January of each year.

Section 3. LOANS PROHIBITED.

No loans shall be made by the Association to any Officer or to any Director.

Section 4. BOOKS AND RECORDS.

The Association shall keep and maintain current and complete books and records of account and shall keep minutes of its proceedings.

Section 5. AMENDMENT OF BY LAWS.

These By Laws may be added to, amended or deleted by the Board. Any change in By Laws shall require a two-thirds vote of the Board.

Section 6. RULES OF PROCEDURE.

The rules of procedure at meetings of the Board of the Association shall be the rules contained in Roberts Rules of Order on Parliamentary Procedure, as amended, so far as applicable and when not inconsistent with these By Laws, the Articles of Incorporation, or with any resolution of the Board.

Section 7. POLICY AND PROCEDURES MANUAL.

The Association will maintain a policy and procedures manual.

ARTICLE X. ELECTION PROCEDURE

Section 1. SLATE OF NOMINEES.

The Board shall prepare a slate of nominees prior to each annual election. Nominations may also be made from the floor prior to the annual election.

Section 2. ADDITIONAL BOARD MEMBERS.

Additional Board members may be elected to fill vacancies by a majority vote of a Board of Directors quorum.

Section 3. ORGANIZATION OF THE NEW BOARD.

The newly elected Board shall take office and organize themselves and select from their number a President, Vice President, secretary, and Treasurer as promptly as

practicable following the annual Membership meeting. At this time, the old Board shall meet with the new Board to familiarize the latter with the unfinished business and current issues of the Association, and shall turn over all books and records to the incoming Board.

Section 4. RECALL.

Members of the Board are subject to recall or removal as provided by Section 24.03.103 of the Revised Code of Washington.

Section 5. TIE VOTE

In the event of tie votes, the winner shall be determined by lot by the Board.

ARTICLE XI. CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. CONTRACTS.

The Board may authorize any Officer or agent of the Association to enter into any contract or execute and deliver any instrument in the name of the Association, and such authority may be general or confined to specific instances.

Section 2. CHECKS.

All checks issued in the name of the Association shall be signed by the Treasurer and/or countersigned by the President or other Officer designated by the Board.

Section 3. FUNDS.

All Association funds shall be deposited without delay to the credit of the Association in such institutions and in such accounts as the Board shall designate.

Section 4. GIFTS.

The Board may accept, on behalf of the Association, any contributions, gifts, bequests, or devises for the general or specific purposes of the Association.

ARTICLE XII. CERTIFICATE OF CURRENCY

Section 1. 3RD PARTY NOTICES.

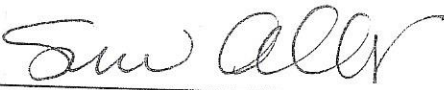
The Association shall, upon written request duly made by a Member issue and deliver a Certificate of Good Standing to the Member for further delivery to a Lender, Mortgagee or prospective Owner confirming the Member's currency in the payment of dues, levies and/or assessments.

ARTICLE XIII. SEVERABILITY

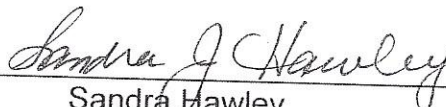
Section 1, PARTIAL INVALIDITY.

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of the Articles of Incorporation or these By Laws, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of the Articles of Incorporation or these By Laws, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of these Articles and By Laws so adjudged to be invalid or unconstitutional.

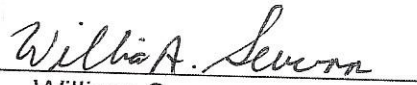
Approved by the Board of Directors of The Mt. Dallas Association this 19th day of October, 2015.



Susie Allen




Sandra Hawley



William Severson

James Guard



Robert Tauscher

Flo McAlary



Glenn Kaufman

Certification of Vote by Mt. Dallas Association Board of Directors

As Secretary of the Mt. Dallas Association, I certify that the above **Amended and Restated Bylaws of the Mt. Dallas Association** was duly adopted by the affirmative vote of more than two-thirds of members of the Board of Directors, per Article IX, Section 5 of the **Bylaws**. See the Association's official records for a certification of the requisite vote.

Mt. Dallas Association

By: RC Farnoch

Secretary

October 19th, 2015

(date)

EXHIBIT C

Copies of Deposit slips from 10/21/2009 and 11/05/2009

These show contributions made by two property owners on Nighthawk, a sideroad, including the Plaintiffs (Welkers) and Duggins, David for gravel.

Nighthawk Gravel:

Abby & Clare Welker	\$350
David Duggins & Megan Dethier	<u>224</u>
Total	<u>\$574</u>



Deposited With:

HARLAND CLARKE M13478 08299553

Islanders Bank Your Local Bank!

THIS IS YOUR RECEIPT

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT.

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

11/05/2009 4:31 PM
Br# 1 Tr# 103 Seq# 119
Account 212
RD# Deposit 724.00

Did you know we offer visa gift cards?
They make the perfect holiday gift.

Gravel - Duggins - 224 Levesa 500



Deposited With:

HARLAND CLARKE M13479 08485369

Islanders Bank Your Local Bank!

THIS IS YOUR RECEIPT

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT.

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

10/21/2009 3:56 PM
Br# 1 Tr# 105 Seq# 40
Account 212
RD# Deposit 850.00

It's all about SECURITY...
Update your account information today.

*Welker - 350 gravel - Nighthawk Ln
Blackman - 500 gravel Kiya clay*

EXHIBIT D

From: "cathy/todd kromer" <kromer@centurytel.net>
To: "Clare Welker" <wa98250@outlook.com>, abigailwelker@gmail.com
Sent: Thursday, April 30, 2015 9:37:50 AM
Subject: Side Roads

Abby,

My heart is still partly up on Mt. Dallas after those years of pretty much dedicated myself to M.D.A. It is sad to me how things have gone in recent years all because of poor communication and weak leadership. I'm assume you saw my comments to Clare and Rikki in the last few days so I'll try not to repeat myself. I've had some time to review your findings and was a bit hurt by one of your comments.

" The Board funded side roads, at least for the period 2006-2012, without the consent or knowledge of all members. "

Of coarse "all " is a strong word because there's always some that are tuned out completely. I suspect funding of side road work was going on years before I came to the hill. My time was 2005 to 2010 and yes we funded side roads and I was just as proud of that as any other work we did and I went out of my way to be sure members knew what we were doing and how their money was being spent.

1... Each year I sent out (via U.S. Mail) a Dues Packet and " year in review" type multi-page letter. The U.S. Mail assured me contact with 100% of those on the hill. If one was returned I'd do what ever I had to to track down the right address. You and Clare maybe still have yours ? I would outline bullet by bullet all we did for the year including accomplishments related to side road maintenance, I also outlined goals for the new year which included side road goals.....I was proud of all that work ! In the earlier years I would design the packet, write the letters, and Bob would sign them, as I was Vice-Pres. before being elected Pres.

2.....I had managed to get the e-mail list from about 7 names up to well over 50. Often I sent out " here's whats going on" e-mails and side roads were many times a topic .

3.....I would very regularly talk with folks while walking the road , or working on the road, and again side roads were discussed I'm sure.

4.....Back then we'd have work parties and many would gather to do work, some times on side roads, and I'd be bragging about how this year we were able to free up the money for a culvert over here or a ditch over there etc.

5.....I thought the Annual meetings were important so I'd promote the heck out of them. My last one at Rikki's we had a band, food, outdoor dancing and about 55 people showed up. During the " talking time " side roads were often discussed and I always had financials on hand and encouraged any member to take them home. I always encouraged this as I always said that M.D.A. was voluntary and no one had to pay a dime if they didn't want to .

I just can't tell you how important it was to me that folks knew what we were doing and how their money was being spent....there were no secrets on my watch ! In conclusion from 2005 to 2010 any one who didn't know that M.D.A. was spending money on, and improving, side roads wasn't paying attention. We did tons on M.D. Road, hell we paved it (after the membership voted), we put in mail boxes, we got faster Internet, Firewise, sand boxes on the hills and on and on and on and yes spent money on side roads and as an old promoter I wanted everyone to know about all of it.

Abby, I think it is M.D.A's loss that you are not involved but I can understand your reasons for stepping down and it appears things are in bad shape. I just wanted to make this comment about " my time " and thanks for listening.

Todd

P.S. On the Board back then we had directors who lived on Mt. Dallas Rd., Kiya, Larkspur, Nighthawk and Rockledge...that was nice.

EXHIBIT E

MINUTES

BOARD OF DIRECTORS MEETING SEPTEMBER 21st 2009

Call to Order

The Mount Dallas Association Board of Director's meeting was called to order.

Board Members Present

Todd Kromer, President
Rikki Swin, Secretary
Mary Guard, Treasurer
Glenn Kaufman, Director
Dave Duggins, Director
Jim Guard, Director
Jim Blackmer, Director

Approval of Minutes

The April 7, 2009 minutes were submitted by Rikki Swin, Secretary and approved by all present.

Presidents Report:

Todd Kromer stated that Nighthawk should be included in any gravel plan.

Todd Kromer stated that our cash reservers were placed in a Vanguard account a few years ago when they were moved from Islander's Bank. The decision to do this was based on paying a higher interest rate which was 3% and non taxable as compared what Todd believed to be something close to 1.1% and taxable at Islander's Bank. The yield was some \$800 - \$900 per year however it is not FDIC insured.

Now that times have changed, the Vanguard fund is paying a much lower interest rate, Mary Guard confirmed the present rate at 1.1% and the interest yield for last month was \$7.00 based on \$33,409 in the account. Todd stated that Vanguard is not FDIC and is paying a lower rate than a typical CD at 1.6%. Todd recommended we now revert back to a savings account.

Todd Kromer motioned to move this account to a savings account.

Jim Blackmer seconded the motion

All Directors present unanimously approved.

Treasurers Report

Mary Guard submitted a Summary of Financial Activity, January 1, 2009 through December 31, 2009 (copy attached)

EXHIBIT F

Mount Dallas Road Association
P.O. Box 2481
Friday Harbor, WA 98250

April 8, 2015

Dear Mount Dallas Road Association Property Owner,

The Board of Directors of Mount Dallas Road Association has numerous responsibilities including road maintenance, invoicing and collecting funds, and keeping abreast of current relevant law. We recently learned about a Washington ruling relating to voluntary road associations like ours and the obligation of all home and landowners to share in the cost of private road maintenance.

In 2013, the Court of Appeals in Washington heard an appeal from the San Juan County trial court brought by the Buck Mountain Owners' Association. Once the Court of Appeals issued its ruling, the losing party had 30 days to try to appeal that to the Washington State Supreme Court. The Supreme Court does not have to accept an appeal from a ruling of the appellate court, but if they do, then their ruling is the law of the State. The 30 days passed with no appeal, so the Buck Mountain Owners' Association ruling from the Court of Appeals stands and it is now common law. See Buck Mountain Owners' Association v. Prestwich, 174 Wash. App. 702 (2013). The Court of Appeals upheld the trial court's determination that the neighbors must ALL share the cost of the private road maintenance, but overturned the trial court's order that required everyone to sign a road maintenance agreement.

This Washington State law says that all owners of property on a private road for which they have easement access must pay an equitable/fair share of the road maintenance whether or not a road maintenance agreement exists. Fair share is to be based on the length of the road that the owner uses. This is how Mount Dallas Road Association has calculated its assessments using this proportional use method since 2014 based on a majority vote by members at the annual meeting in September 2013.

Buck Mountain Association (located on Orcas Island) was in the same situation as Mount Dallas Road Association in that the road was constructed, easements granted, but no road maintenance obligations were imposed upon the parties who benefited from the use of the road. So just like us, Buck Mountain had owners who refused to pay their fair share. The law also states that it is not mandatory that property owner's put a road maintenance agreement in their deed.

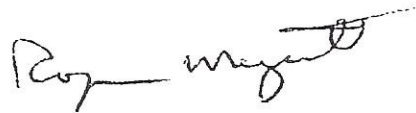
There will be no retroactive enforcement of this law, but going forward, you will be billed and expected to pay per the terms of this law. If no payment is received, then we will have no recourse, but to follow the letter of the law and pursue legal action. 2015 invoices are expected to be mailed later this month.

If you have any questions about this new law, please feel free to contact any Board Member. We appreciate your contribution to maintaining the road, which is a very valuable asset to all of us.

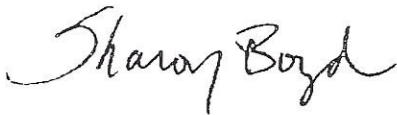
Sincerely,



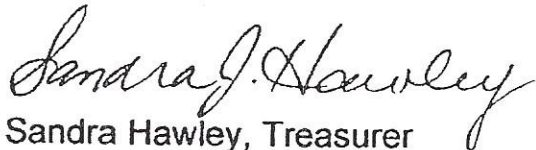
Susie Allen, President



Royce Meyerott, Vice President



Sharon Boyd, Secretary



Sandra Hawley, Treasurer



William Severson, Director



James Fritz, Director