

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

**SUPPORTING BRIEF TO
WIDDOES/MDA MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

I. INTRODUCTION

L. Curtis Widdoes, Jr., and the Mount Dallas Association (“MDA”) have joined together to bring this Motion for Partial Summary Judgment. The Court is being asked to rule as a matter of law on four narrow, related, core issues. A ruling on these issues will assist the Court and the parties in moving forward in this case. Basically, Dr. Widdoes and the Mount Dallas Association are asking the Court to rule, as a matter of law, that:

- A. The MDA is the proper managing entity for Mount Dallas Road.
- B. The MDA’s Road Maintenance Agreement for Mount Dallas Road is binding on Consenting Property Owners.
- C. The MDA is the proper managing entity for the subject side roads.
- D. The MDA’s Road Maintenance Agreements for the subject side roads are

SUPPORTING BRIEF TO WIDDOES/MDA
MOTION FOR PARTIAL SUMMARY
JUDGMENT-1

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1 binding on Consenting Property Owners.

2
3 **II. FACTS**

4 The facts in this case have been presented via numerous pleadings and
5 declarations. This motion is based on factual data already in the record, including, but
6 not limited to: 10/16/15 Declaration of Susan D. Allen; 10/19/15 Declaration of Susan D.
7 Allen; 10/16/15 Declaration of James Guard; 10/2/15 Declaration of Christopher I. Brain;
8 4/4/2016 Declaration of Sandra Hawley; 4/9/16 Reply Declaration of Sandra Hawley; and
9 new Declarations of Stephanie Johnson O'Day, Sandra J. Hawley, L. Curtis Widdoes, Jr.,
10 and Robert C. Tauscher. For the Court's convenience, we will reiterate certain facts that
11 are salient for this motion.
12

13
14 Mount Dallas Road ("MDR") was originally created as an easement in Real Estate
15 Contracts recorded in 1964 under AFN 58653, AFN 58654, and AFN 58585. The location
16 of a small upper portion of the MDR easement was subsequently amended by the
17 Easement Relocation Agreement recorded on December 26, 2001, under AFN 2001-
18 1226016. MDR currently serves a total of 84 tax parcels. Most of the parcels accessed
19 via MDR also benefit from separate easements over various side roads connecting to
20 MDR.
21

22 The developers of Mount Dallas did not include any road maintenance agreement
23 with the conveyances of the Mount Dallas properties. In 1989, a group of property owners
24 formed the Mount Dallas Association ("MDA"), a nonprofit corporation, whose overall
25 purpose is "*for civic improvement, road maintenance, and neighborhood beautification*
26 *purposes*". Towards that end, one of the specifically enumerated purposes of the
27

1 corporation is *"to maintain and upgrade the Mt. Dallas Road."* At the time of incorporation,
2 the term "Mount Dallas Road" included all the side roads. This changed in 1998, when
3 San Juan County implemented its 911 system and mandated that all roads be given
4 distinct names to facilitate emergency services.
5

6 The MDA is a voluntary neighborhood association. The network of roads that
7 includes MDR and its side roads is the primary tie that binds the 84 Mount Dallas
8 properties together as a community. Only 26% (i.e., 22) of the Mount Dallas tax parcels
9 are accessed immediately off the paved portion of MDR. The remaining 74% (i.e., 62) of
10 the parcels are accessed via paved or graveled side roads connecting to the paved
11 portion of MDR.
12

13 The MDA has grown from 20 dues-paying members in 1989 to 50 dues-paying
14 members (70 dues-paying parcels) in 2015. To date, it has raised a total of over \$500,000
15 in voluntary contributions by Mount Dallas property owners, all of which has been or will
16 be spent on maintaining and improving the road system for the benefit of Mount Dallas
17 properties. MDA Board members receive no salary, nor any other compensation, for their
18 services. The MDA has contracted for, paid for and managed the placement of thousands
19 of cubic yards of gravel and the use of hundreds of hours of heavy-equipment time for
20 maintenance of the main road and the side roads. The MDA has created hundreds of feet
21 of ditches and culverts for drainage to protect the roads from erosion. On an ongoing
22 basis, as needed, using both owner-volunteered and contractor labor, the MDA has filled
23 potholes, maintained drainage, removed overhanging branches, weed-whacked for fire
24 prevention, and improved sight lines.
25
26
27

1 Prior to 2005, the main road was surfaced with gravel. In 2005, the MDA raised
2 approximately \$127,000 in contributions to chip-seal the main road; that year, the MDA
3 successfully chip-sealed approximately two miles of the main road. From 2005 until 2011,
4 the MDA collected flat rate contributions for maintaining the main road. Unused funds
5 were carried forward. In 2011, the MDA collected another \$100,000 or so from the
6 community to resurface the road. Since 2011, the MDA has continued to grow and now
7 manages a reserve fund for future major maintenance projects, including resurfacing.
8

9
10 The MDA has held an annual meeting each year for 26 years. The Association
11 Bylaws were last updated in October of 2015. The owners of all 84 Mount Dallas parcels
12 are eligible for Membership in the MDA – with active membership dependent upon
13 payment of dues. The Bylaws contain the usual subsections: Article I: Membership;
14 Article II: Meeting of members; Article III. Board of Directors; Article IV: Meetings of the
15 Board of Directors; Article V: Actions of Written Consent; Article VI: Waiver of Notice;
16 Article VII: Indemnification of Directors and Officers; Article VIII: Officers; Article IX:
17 Administrative and Financial Provisions; Article X: Election Procedure; Article XI:
18 Contracts, Checks, Deposits and Funds; Article XII: Certification of Currency; Article XIII:
19 Severability.
20
21

22 On May 21, 2015, Romney R. Brain, one of the attorneys for Clare and Abigail
23 Welker, who currently own only a single parcel accessed via Mount Dallas Road, sent a
24 seven-page single-spaced letter to Susan Allen, at that time President of the MDA. The
25 letter pointed out that the MDA was voluntary and the Association does not own the roads.
26 Mr. Brain opined that *"...if the owners of a solid majority of the Benefitted Properties*
27

1 *agreed to a specific RMA methodology for assessing and apportioning the costs of*
2 *maintaining the Road (i.e. a reasonable and equitable assessment process) there is*
3 *strong likelihood that the Court would adopt that methodology even without 100%*
4 *agreement.”* (See Exhibit 11 of Clare Welker deposition attached to Declaration of
5 O'Day).
6

7 In this letter, Mr. Brain says absolutely nothing about replacing the MDA as the
8 managing entity for the road system. Mr. Brain correctly states that the owners of
9 benefitted properties who did not agree would not be legally bound by the agreement – a
10 fact which the Court has confirmed, and which the MDA does not contest. (Non-signers
11 will not be legally bound unless and until the Court issues an order binding them.)
12

13 During 26 years of operation, from the time of its incorporation in 1989 until June
14 of 2015, the MDA had never been sued. On June 3, 2015, less than two weeks after
15 sending out their initial letter, Clare and Abigail Welker filed this lawsuit against all of their
16 neighbors -- the owners of all the other 83 Mount Dallas properties -- alleging that,
17 because membership in the MDA is voluntary, the MDA has no authority. The complaint
18 requests that, because there is no agreement that is legally binding on all the benefitted
19 property owners, the Court should establish a reasonable, fair and equitable method of
20 allocating expenses covering the maintenance of MDR, which presumably would then
21 bind all owners. The MDA, in its pleadings, asks the Court to rule that the MDA be
22 affirmed as the managing entity, and that the method established by the MDA in its Road
23 Maintenance Agreements be affirmed as the reasonable, fair and equitable method of
24 allocating expenses covering the maintenance of MDR and the side roads.
25
26
27

28 SUPPORTING BRIEF TO WIDDOES/MDA
MOTION FOR PARTIAL SUMMARY
JUDGMENT-5

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1 After this lawsuit was filed, the MDA Board had numerous face-to-face and phone
2 meetings with Mount Dallas property owners. As early as June 8, 2015, the MDA sent out
3 electronic surveys to all property owners. The electronic surveys included a series of
4 questions that provided an opportunity for the property owners to voice their opinions
5 about the issues brought forth in this case by the Welkers. Once the surveys were
6 complete, the MDA compiled the data to determine the preference of property owners
7 regarding each of the issues. This information was used to create "petitions" that
8 individual property owners could sign, to be used as evidence in this case.
9
10

11 On July 23 and 24, 2015, Christopher I. Brain sent a letter out to each of the Mount
12 Dallas property owners on behalf of the Welkers. This letter included an "Outline of
13 Proposed Method of Allocation, Assessments and Management for Mt. Dallas Road."
14 (Letter attached to Declaration of O'Day). His outline proposed a formula for allocating
15 road maintenance expenses, and proposed that MDR be managed by a new, not-yet-
16 formed entity. The letter asked each of the property owners to sign and return a
17 "Contingent Approval Form". Except for the Welkers, not one property owner approved
18 the proposal.
19
20

21 Meanwhile, the MDA, having tallied the results of the electronic survey, sent out
22 six separate petitions and asked property owners to sign and return those with which they
23 concurred. One such Petition, if signed, would request that the Court:

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

1 (See Petition, which is Exhibit 8 to Abigail Welker deposition, attached to Declaration of
2 O'Day).

3
4 Owners of 75% of the 84 tax parcels accessed via Mount Dallas Road signed this
5 petition. To be clear: A 75% super majority of all properties accessed via MDR indicated
6 their agreement, by signing this petition, that the MDA should continue to manage the
7 entire network of Mount Dallas roads.

8
9 On October 30, 2015, the Court granted the Welkers' (first) Motion for Summary
10 Judgment, finding as a matter of law, in part, that:

11 *"3) the Mount Dallas Association lacks legal authority to manage*
12 *maintenance and any other aspects of Mt. Dallas Road **on behalf of ALL***
13 ***of the Benefitted Owners."***

14 (October 15, 2015 Order Granting Plaintiff's Motion for Summary Judgment, sub 176
15 court file).

16 Note that the boldfaced section above indicates a hand-written addition by Judge
17 Eaton into the order. In addition, Judge Eaton said during the hearing, shortly after the
18 2:16:40 time frame, that *"It's not disputed that the Association exists. That it's a legal*
19 *entity -- that's not disputed."* He also said, at approximately the 2:20:17 time frame, that
20 *"The Association may have legal authority to manage the roads on behalf of some of the*
21 *benefitted owners."* The court acknowledged at the end of the hearing that it is legally
22 possible for less than 100% of the owners to sign an agreement that would be legally
23 binding on those property owners who sign. (see quotes in Declarations of Hawley filed
24 April 4, 2016, sub 193 and April 11, 2016 sub 227).

25
26
27 Notably, the Court never ruled on the issue of whether the MDA has legal authority

1 to manage the roads.

2 From July 2015, until March 2016, the MDA Board solicited additional input from
3 property owners via telephone calls and meetings with small groups, held numerous
4 Board meetings, generally open to MDA members, consulted with attorneys, and drafted
5 a comprehensive Road Maintenance Agreement for Mount Dallas Road (the "Main-Road
6 RMA"). The resulting Main-Road RMA reflects the preferences indicated in the surveys
7 and petitions returned by owners. On March 2, 2016, the MDA Board recorded the MDA's
8 Main-Road RMA under AFN 2016-0302026. The MDA's Main-Road RMA contains
9 express and detailed provisions for the maintenance, improvements, administration and
10 governance of the paved road serving the 84 tax parcels on Mount Dallas Road, and for
11 the allocation of associated expenses. (Notably, the MDA's Main-Road RMA adopted
12 exactly the same formula for prorating road maintenance expenses as that which the
13 Welkers proposed by and through their attorneys in their July 23-24, 2015, letter to
14 property owners, with the exception that undeveloped parcels would be assessed per the
15 MDA method at a 25% rate, vs. a 50% rate per the Welkers' method.) For the purposes
16 of this motion, it is important to note that the MDA's Main-Road RMA clearly states that
17 the managing entity for MDR will continue to be the Mount Dallas Association.
18
19
20
21

22 After creating and recording its Main-Road RMA, the MDA made available to each
23 Mount Dallas property owner a joinder agreement ("Joinder"). The Joinder, if signed
24 before a Notary by the owners of a parcel, would legally bind the owners to the MDA's
25 Main-Road RMA. The MDA asked each property owner who agreed that the Main-Road
26 RMA should govern maintenance for Mount Dallas Road to sign and notarize the Joinder
27

1 and deliver it to the MDA (thus becoming a "Consenting Property Owner"). The MDA now
2 has in its possession signed and notarized Joinders from owners of 54 (64%) of the 84
3 tax parcels. The MDA believes that several additional signed Joinders are forthcoming,
4 and will present them to the Court when they are received.
5

6 In April 2016, the MDA also prepared and made available to property owners
7 separate Road Maintenance Agreements for the various side roads ("Side-Road RMAs").
8 The substance of these Side-Road RMAs mirrors that of the Main-Road RMA. The MDA
9 also made available a separate Joinder for each Side-Road RMA, and asked owners of
10 the properties accessed via the side roads to sign, notarize, and deliver to the MDA those
11 Joinders (i.e., to become "Consenting Property Owners) if they concurred with the
12 substance of the Side-Road RMAs and would agree to be legally bound by those
13 agreements. As of this writing, owners of a majority of parcels accessed via each of seven
14 of the side roads have signed, notarized, and delivered to the MDA legally binding
15 Joinders assigning the Mount Dallas Association as the managing entity for those side
16 roads. The seven majority-signed side roads are as follows:
17
18

<u>Side-Road Name</u>	<u>#Parcels Signing</u>	<u>Percentage</u>
Lower No-Name Road:	2 (of 3)	66.67%
Kiya Way:	14 (of 16)	87.5%
Tumac Road:	2 (of 2)	100%
Rascal Road:	2 (of 2)	100%
Stormridge Road:	3 (of 5)	60%
Rockledge Road:	6 (of 10)	60%
Skylark Lane:	3 (of 4)	75%

25 (See Declaration of Hawley, Exhibits A and B.)
26

27 On April 15, 2016, the Court heard argument on a second round of summary
28

1 judgment motions. The Welkers argued that the MDA's Main-Road RMA, as recorded on
2 March 2, 2016, legally "clouded title" to all properties accessed via Mount Dallas Road.
3 Importantly, the Court remarked orally during this hearing that the owners of "*less than all*
4 *of the benefitted owners have the right to enter into an agreement about how they are*
5 *willing, among themselves, to share expenses for the road*". (See remarks in Judge
6 Eaton letter of July 14, 2016 sub 296). The Court pointed out that whether a specific
7 recorded agreement would in fact cloud every property owner's title is a question of fact,
8 but declined to rule on whether the MDA's Main-Road RMA, as recorded, would, in fact,
9 cloud title to all properties accessed via MDR. The Association agreed to "unrecord" the
10 Main-Road RMA, and the Welkers agreed not to ask for attorneys' fees. In the resulting
11 written order, the Court stated as follows:
12
13

14 *"2. The Association RMA is null and void and of no force and effect with*
15 *respect to all parties who do not execute a Joinder in Road*
16 *Maintenance Agreement for Mount Dallas Road for the Association*
17 *RMA"* [emphasis added]

18 (7/6/16 Order Granting Plaintiffs Motion..... sub 290)

19 Importantly, the order did not invalidate the Main-Road RMA itself, which the MDA
20 argues is legally binding on those property owners who have provided signed and
21 notarized Joinders to it. The expressed caveat in the order is that the MDA's Main-Road
22 RMA is not binding on the non-signers. Whether the Court should order that the specific
23 terms and provisions in the Main-Road RMA (such as allocation of expenses, voting
24 rights, reserves, lien authority, etc.) are fair and equitable and should be imposed on
25 benefitted property owners who are non-signers is a matter left for trial. Regardless,
26 owners of a substantial majority of parcels accessed via MDR, as well as owners of a
27

1 substantial majority of parcels accessed via each of the seven subject side roads, have
2 already consented to the specific terms and provisions of the corresponding MDA RMAs,
3 and those owners are legally bound by those terms and provisions.
4

5 In the June presentation hearing that resulted from the April summary judgment
6 hearing, the Welkers presented to the Court a motion to establish an entirely new method
7 of allocating maintenance expenses – a method substantially different from the allocation
8 method that they had proposed to Mount Dallas property owners in their letter of July
9 2015. (Since the Welkers' July 2015 allocation method is essentially identical to the
10 method adopted in the MDA's RMAs, it follows that their new method is substantially
11 different from the MDA's method.) The Court denied the Welkers' motion to establish the
12 new allocation method, and, instead, on August 10, 2016, the Court signed an Order
13 granting the MDA's "Motion Adopting the Actual Use Method for Allocation of Road
14 Maintenance Expenses". The Order states, in part:
15
16

17 *"3. The Court grants the Defendant Mount Dallas Association's Motion for*
18 *partial Summary Judgment establishing the Actual Use Method as the*
19 *distance component to be factored into an allocation formula as to those*
20 *Mount Dallas Road maintenance expenses that may be fairly prorated*
21 *among the benefitted parcels.*

22 *4. In such allocation formula, a benefitted parcel's Actual Use shall be*
23 *measured as the total area of Mount Dallas Road actually traversed in*
24 *accessing such parcel, from the County Road (West Side Road) to the*
25 *parcel's furthest access point along Mount Dallas Road."*

26 (8/10/16 Order sub 299)

27 There are numerous issues that have yet to be resolved in this case. The MDA
28 and Dr. Widdoes now ask the Court to rule on four narrow, core issues. They believe that
resolution of these issues should not be delayed, given that ongoing road maintenance

1 is urgently needed. They also believe that resolution of these core issues will help
2 substantially in moving the case forward.

3 4 III. ISSUES

5 A. Should the Mount Dallas Association remain the managing entity for Mount
6 Dallas Road?

7 B. Is the Road Maintenance Agreement for Mount Dallas Road legally
8 binding on Consenting Property Owners?

9 C. Should the Mount Dallas Association remain the managing entity for the
10 following seven Mount Dallas side roads: Lower No-Name Road, Kiya Way, Tumac
11 Road, Rascal Road, Stormridge Road, Rockledge Road and Skylark Lane?
12

13 D. Are the Road Maintenance Agreements for Lower No-Name Road, Kiya
14 Way, Tumac Road, Rascal Road, Stormridge Road, Rockledge Road and Skylark Lane
15 legally binding on Consenting Property Owners?
16

17 IV. SUMMARY JUDGMENT

18 Summary judgment is proper if the records on file with the trial Court show "there
19 is no genuine issue as to any material fact" and "the moving party is entitled to a judgment
20 as a matter of law." CR 56(c). A genuine issue is one upon which reasonable people may
21 disagree; a material fact is one controlling the litigation's outcome. *Morris v. McNicol*, 83
22 Wash.2d 491, 494, 519 P.2d 7 (1974); *Ranger Ins., Co. v. Pierce County*, 164 Wash.2d
23 545, 552, 192 P.3d 886 (2008).
24

25 Initially, the moving party bears the burden of proving no genuine issue of material
26 fact exists. *LaPlante v. State*, 85 Wash.2d 154, 158, 531 P.2d 299 (1975). The Court
27

1 reviews the facts and all reasonable inferences therefrom in the light most favorable to the
2 nonmoving party. *Holmquist v. King County*, 182 Wash. App 200, 207, 328 P.3d
3 1000. Once there has been an initial showing of the absence of any genuine issue of
4 material fact, the party opposing summary judgment must respond with more than
5 conclusory allegations, speculative statements, or argumentative assertions of the
6 existence of unresolved factual issues. *Rucker v. Novastar Mortg. Inc.*, 177 Wash. App
7 1, 10, 311 P.3d 31 (2013)
8

9
10 This case is ripe for summary judgment on the issues presented – there are no
11 issues of material fact relevant to those issues.

12 V. ARGUMENT

13 A. THE WILL OF THE PEOPLE SHOULD BE HONORED

14
15 The Mount Dallas Association has been successfully managing the Mount Dallas
16 Road system since 1989. The MDA operates democratically. Dues-paying members
17 elect the Board and vote on the critical issues. It is a difficult task, to say the least, to
18 convince the owners of 84 properties to voluntarily pay their fair share of the costs of
19 maintenance of the five-mile Mount Dallas road system. It is a difficult task, also, to
20 actually effect the maintenance that is required. Nevertheless, the volunteer, unpaid
21 Board has done both of those jobs well -- successfully raising funds and maintaining the
22 road system over the years. There is no reason for the management entity or
23 management method to be changed.
24
25

26 After the lawsuit was filed, the MDA Board tallied the preferences of property
27 owners. Owners of a 75% super majority of properties accessed via MDR agreed that

1 the MDA should continue to manage the entire network of Mount Dallas roads. (See new
2 Declaration of Hawley). Subsequently, the MDA Board asked each property owner to sign
3 a Joinder to the RMA for Mount Dallas Road. As of this writing, owners of 64% of the
4 parcels accessed via MDR have signed and notarized such a Joinder, each owner
5 declaring it to be their intent that they be legally bound by the RMA for Mount Dallas Road.
6 Likewise, the MDA Board made available separate RMAs and associated Joinders for the
7 side roads. At least 60% of the owners of properties accessed via each of the seven
8 subject side roads have signed and notarized Joinders to the corresponding RMAs,
9 declaring that they agree to be and are legally bound by those RMAs. Collectively, these
10 Consenting Property Owners have clearly requested that the MDA remain the managing
11 entity for both the main road and the seven subject side roads. (See new Declaration of
12 Hawley).

13
14
15
16 In contrast, the Welkers' petition, sent out in July 2015, seeking support for an
17 alternative method of managing the road system, *was not approved by even a single*
18 *property owner*. Mr. Welker himself testified that he would never be able to get full support
19 for his proposal. Mr. Welker also testified that he would abide by the Court's decision in
20 this case. (See transcript excerpt in Declaration of O'Day).

21
22 There is no dispute about the facts: Most of the folks who own property on Mount
23 Dallas Road have stepped forward to urge the Court to accept their preference that the
24 MDA continue managing the road system. Nobody other than the Welkers has requested
25 that any other entity be assigned the management job. **This Court should rule, as a**
26 **matter of law, that the Mount Dallas Association shall remain the managing entity**

1 **for Mount Dallas Road System and the seven subject side roads.**

2
3 **B. THE ROAD MAINTENANCE AGREEMENT WAS ONCE AN OFFER – IS**
4 **NOW A CONTRACT.**

5 There can be no question that the Mount Dallas Association is an entity capable
6 of entering into a contract. RCW 24.03.035. A contract, in its simplest form, contains an
7 offer, acceptance, and consideration.

8 The essential elements of a contract are “ ‘the subject matter of the contract, the
9 parties, the promise, the terms and conditions, and (in some but not all jurisdictions) the
10 price or consideration.’ ” *DePhillips v. Zolt Constr. Co., Inc.*, 136 Wash.2d 26, 31, 959
11 P.2d 1104 (1998) (quoting *Family Med. Bldg., Inc. v. D.S.H.S.*, 104 Wash.2d 105, 108,
12 702 P.2d 459 (1985)). *Bogle & Gates, P.L.L.C. v. Holly Mountain Res.*, 108 Wn. App. 557,
13 561, 32 P.3d 1002, 1004 (2001)
14

15 The Road Maintenance Agreement for Mount Dallas Road, dated March 2, 2016,
16 contains the essential elements of a contract:
17

18 **Subject Matter:** Maintenance, Upkeep and Governance of MDR

19 **Parties:** MDA and each Consenting Property Owner

20 **Terms:** Agreement, paragraph 2 et seq. gives the MDA “...authority
21 to perform maintenance and improvements of the Main Road, and to assess, collect, and
22 manage fees for such maintenance and improvements, as specified herein.”
23

24 **Consideration:** Maintenance and Upkeep of the Road. “*The Association*
25 *agrees that, to the extent of its financial ability, it shall maintain and improve the Main*
26 *Road as set forth herein, and that it shall carry out such maintenance and improvements*
27 *in a responsible and economical manner.*”

28 SUPPORTING BRIEF TO WIDDOES/MDA
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JUDGMENT-15

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1 What is this RMA creature? It is an agreement between the Mount Dallas
2 Association, a Washington State non-profit corporation, and Consenting Property
3 Owners, i.e., specific owners of real property who access their properties via Mount Dallas
4 Road who have signed and notarized Joinders to the RMA, and who have delivered said
5 Joinders to the Association. The "offer" by the MDA has been "accepted" by each and
6 every property owner who has signed a Joinder made available by the MDA. (The first
7 several Joinders to the Mount Dallas Road RMA were signed the very same day as the
8 Mount Dallas Road RMA was signed by the President and Secretary of the MDA. See
9 new Declaration of Hawley.)
10
11

12 Likewise for each of the seven subject side roads. Offer was made March 2, 2016.
13 Offer was accepted via Joinders signed beginning March, 2016, and continuing to this
14 date.
15

16 C. THE SIGNATORS ACCEPTED THE OFFER

17 The first paragraph of the RMA for Mount Dallas Road sets the scene:

18 *This Road Maintenance Agreement ("Agreement") effective as of the 2nd*
19 *day of March, 2016, is made by and among Mount Dallas Association, a*
20 *Washington State non-profit corporation ("The Association"), and those*
21 *owners of parcels of real property accessed via Mount Dallas Road who*
22 *have signed and delivered to the Association joinders to this Agreement*
23 *("Consenting Property Owners").*

24 The first paragraph of the RMA for each of the seven subject side roads contains
25 identical language – with the exception that the named side road is referenced in place
26 of Mount Dallas Road, for example, for Kiya Way:

27 *This Road Maintenance Agreement ("Agreement") effective as of the*
28 *2nd day of March, 2016, is made by and among Mount Dallas*

1 *Association, a Washington State non-profit corporation ("The*
2 *Association"), and those owners of parcels of real property accessed*
3 *via **Kiya Way** who have signed and delivered to the Association*
4 *joinders to this Agreement ("Consenting Property Owners").*

5 "Consenting Property Owner" is specifically defined in these RMAs as a property
6 owner who has signed and delivered to the Association a Joinder to the relevant
7 agreement: *The term "Consenting Property Owner" is intended to have that same*
8 *meaning throughout this brief.*

9 Each Joinder includes a specific reference to the appropriate RMA, as well as a
10 declaration that the Consenting Property Owner agrees that their legally described parcel
11 shall be forever held, sold, and conveyed subject to the covenants and conditions set
12 forth in full in the RMA. The moving parties acknowledge that the RMA is not binding on
13 any property owner who has not signed a Joinder to it, nor, due to the fact that neither
14 the RMA nor the Joinder has been recorded, is the RMA binding on any successor owner
15 of the Consenting Property Owner's property. *But the RMAs are certainly binding on the*
16 *Consenting Property Owners themselves.*

17 The RMA is an agreement between the MDA and Consenting Property Owners.
18 A Joinder to the RMA is a covenant to be bound by the RMA. By its very terms, a Joinder
19 is a pronounced covenant which is deemed *"To enhance and protect the value and*
20 *desirability of the parcel described in Exhibit A".*

21 Even though the Court ordered the Mount Dallas Road RMA to be "unrecorded",
22 the *Consenting Property Owners* continue to be bound by the terms of the RMA. To
23 conclude otherwise would defy basic contract and covenant law.

1 The Association clearly had and continues to have legal authority to enter into
2 binding agreements with Consenting Property Owners. The Court should affirm that the
3 MDA's various Road Maintenance Agreements are legally binding on the Consenting
4 Property Owners.
5

6 D. JOINDERS ARE COVENANTS

7 Clearly each signed, notarized Joinder constitutes a covenant to be bound. What
8 is a covenant?
9

10 *A covenant is:[A]n agreement or promise of two or more parties that*
11 *something is done, will be done, or will not be done. In modern usage, the*
12 *term covenant generally describes promises relating to real property that*
13 *are created in conveyances or other instruments. 9 Richard R. Powell,*
14 *Powell on Real Property § 60.01[2], at 60-5 (1998) (footnotes omitted);*
15 *Shafer v. Board of Trustees of Sandy Hook Yacht Club Estates, Inc., 76*
16 *Wash.App. 267, 274, 883 P.2d 1387 (1994). See also 17 William B.*
17 *Stoebuck, Washington Practice: Real Estate—Property Law § 3.1, at 121*
18 *(1995). Hollis v. Garwall, Inc., 137 Wn.2d 683, 974 P.2d 836, 840 (1999).*

19 The clear, unambiguous language of each Joinder states that the signatory, i.e.
20 each Consenting Property Owner, "wishes to join" in the RMA, and that the property shall
21 be held "subject to the covenants and conditions which are set forth in full" in the RMA.
22 The notarized signing of a Joinder legally binds the signatory to the terms of the contract.
23 Each Consenting Property Owner has agreed to be and is bound by each RMA to which
24 he or she has signed a Joinder.

25 VI. CONCLUSIONS

26 This Court should rule as a matter of law that:

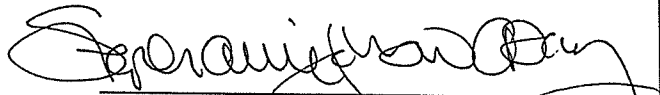
27 A. The Mount Dallas Association shall remain the managing entity for Mount
28 Dallas Road.

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

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

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

13 Dated this 29th day of December, 2016.



14
15 Stephanie Johnson O'Day/WSBA 17266
16 Attorney for L. Curtis Widdoes, Jr. and
17 The Mount Dallas Association