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JOAN P. WHITE  
SAN JUAN COUNTY, WASHINGTON

**SUPERIOR COURT OF WASHINGTON, COUNTY OF SAN JUAN**

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

v.

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

**NO. 15-2-05069-0**

**DECLARATION OF JAMES  
GUARD IN RESPONSE TO  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGEMENT**

I, James Guard, declare as follows:

1. I am over the age of 18, and I am competent to be a witness in this lawsuit. I make the following statements based upon my personal knowledge. I am a Board member of the Mount Dallas Association, one of the Defendants in this lawsuit. I am a past president of the Association and was instrumental in its formation in 1989. I have spent hundreds of hours working on the roads and have been a member of the Road Committee since the inception of the Association in 1989. My wife, Mary Guard and I, also Defendants in this lawsuit, own one tax parcel of land on Mt. Dallas, which we access via Rockledge Road and Mount Dallas Road.

2. In reviewing the Plaintiffs' motion for Summary Judgment, I found the Welker's proposal of utilizing the Legal Use Method to be unfair and wrought with errors and mistakes. The unfairness stems primarily from the fact that 32 parcels would be required to pay for paved

1 road area that they do not actually traverse to access their properties. The following list of tax  
2 parcels is part of a spreadsheet prepared by Bob Wilson that was submitted in his Declaration for  
3 the April 15, 2016 Summary Judgment hearing as Exhibit C.

<u>Owner</u>	<u>Sq. Ft. Actual Use</u>	<u>Sq. Ft. Legal Use</u>
Gerhardstein	15,184	28,242
Preservation Trust	21,061	28,242
Haberman	24,971	28,242
Swin	27,734	28,242
Swin	32,076	34,286
Swin	32,076	34,286
Twoomey	34,783	36,423
Bienvenu	41,850	44,142
Bailor	47,470	54,036
Przybylski	47,470	54,036
Schumy	47,470	54,036
Kaufman	47,470	54,036
Whalen	47,470	54,036
Gimlett	47,470	54,036
Graham	69,766	82,020
Henneman	69,766	76,964
Gero	82,542	86,317
Auth	89,555	98,346
Meyerott	92,077	98,346

1	Keeler	98,111	98,346
2	Rath	123,359	144,152
3	Hohenlohe	127,248	144,152
4	Smith	127,248	144,152
5	Guard	127,248	134,612
6	Rath	130,588	144,152
7	Smith	134,612	144,152
8	Rath	136,456	144,152
9	Stanton	141,128	144,152
10	Meyerott	141,128	144,152
11	Ballenger	141,128	144,152
12	McClellan	141,128	144,152
13	Allen	140,503	144,152

16 I presume Bob's figures are accurate, and if they are, these 32 properties that are being asked to  
17 pay for the maintenance of 218,798 square feet of road area that they do not drive over to access  
18 their property. To put this number in perspective, the entire paved area of the Mt. Dallas Road is  
19 145,728 square feet. If we are trying to create a fair system, the Legal Use Method is certainly  
20 not equitable.  
21

22 3. The Welkers support the Legal Use Method, and they argue that it "will result in  
23 allocation percentages remaining legally fixed and static over time, whereas an allocation based  
24 upon Actual Use will necessarily include potential variability in the future." This is blatantly  
25 false! If property owners were interested in reducing their allocation percentages, they could  
26 rescind the portions of their easements that extend past their driveways. In fact, they could even  
27  
28

1 rescind their easements to the very beginning of their property -- one does not need an easement  
2 to cross one's own property. Rescinding an easement is easy to do, it's fast and it's inexpensive.  
3 However, if a property owner wanted to move their driveway to the beginning of their property,  
4 that would require a considerable amount of money, a lot of inconvenience and many days of  
5 work. So I would say that the Welkers are incorrect, and that it is the Actual Use or Area  
6 Traversed Method which is more static and fixed and offers more continuity over time simply  
7 because it is more difficult to change and more expensive to implement. The Legal Use Method  
8 is clearly easier to change and is more readily manipulated and consequently less permanent.  
9

10 4. In Bob Wilson's spreadsheet (Exhibit C in his Declaration), all the calculations  
11 are based upon a road length of 10,662' and an area of 144,152 square feet. These numbers refer  
12 to an endpoint that is ~200' short of the actual end of the paved road. The Mt. Dallas  
13 Association and the property owners certainly want to maintain that last 200' of paved roadway!  
14 Over the years we have paid for three coats of chip seal on that portion of the road. Why should  
15 it be excluded?  
16

17  
18 It seems that Bob Wilson selected the 10,662' point as "the end of the road" because that  
19 is where the paved road diverges from an old easement (AFN 58585). It is likely that Bob  
20 Wilson overlooked the fact that part of the 58585 easement was rescinded (across Crawford's  
21 property and Eichler's property in December of 2001, and that a new easement was granted to  
22 substitute for the rescinded portion. The new easement (AFN 2001-1226016) covers the last 200'  
23 of the paved road and serves seven tax parcels accessed via Upper No-Name Road. This error on  
24 Wilson's part throws off every number in his spreadsheet.  
25

26 Bob Wilson's spreadsheet also assesses undeveloped properties at the same rate as  
27 developed properties. This is convenient, but again, it is not fair. The Mt. Dallas Association has  
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1 always felt that, although undeveloped lots benefit from having a well maintained road for  
2 access, owners of undeveloped lots use the road substantially less frequently than owners of  
3 developed lots and should therefore pay less for road maintenance. Half of the lots in the  
4 neighborhood (42 of 84) are undeveloped. Some of these owners do not come to their property  
5 even once a year. The Legal Use Method treats all these undeveloped lots unfairly by charging  
6 them the same as developed properties.  
7

8 So, there are errors in Bob Wilson's map, as well as in his spreadsheet, and there are  
9 assumptions (e.g., excluding the last 200' of paved road and charging undeveloped lots full fare)  
10 that throw off all the calculations. In addition, there are various errors in the spreadsheet in  
11 assigning the access roads utilized for both of the Hohenlohe lots and the lots of Liebman, Moss,  
12 Smith, Guard, Erskine, Swanson and Widdoes. All of these errors and assumptions indicate that  
13 the spreadsheet is not a well-thought-out and accurately researched document. Indeed, much of  
14 the information as presented in it is inaccurate and misleading.  
15

16 5. If the Court makes a decision regarding how to allocate road maintenance  
17 expenses, I hope that it will consider and approve the method described in the Road Management  
18 Agreement (RMA) for Mt. Dallas Road that was created by the Mt. Dallas Association. The  
19 Association's RMA for Mt. Dallas Road is fair, well thought-out and comprehensive, and it was  
20 subjected to scrutiny by three attorneys. The RMA for Mt. Dallas Road has been recorded with  
21 San Juan County (AFN 2016-0302026). Furthermore, owners of a majority of the tax parcels  
22 accessed via Mt. Dallas Road have already approved, signed, and notarized this RMA via  
23 Joinders. Those Joinders are already in hand together with checks from the property owners  
24 made out to the San Juan County Auditor and are ready to be recorded. The Association has  
25 done exactly what the Court suggested last fall at the first Summary Judgment hearing. It has  
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1 returned to Court with a recordable RMA signed and supported by a majority of the property  
2 owners in the Mt. Dallas community.

3 6. Throughout this lawsuit, the Mt. Dallas Association has had broad support from  
4 the community that it serves. Even in this Year of the Lawsuit, 79% of the owners of tax parcels  
5 paid their 2015 assessments which were based upon the area traversed or Actual Use for road  
6 reserves and Equal Use for expenses that benefit everyone equally. Over the past 27 years, the  
7 Association has successfully paved Mt. Dallas Road twice and has continuously maintained and  
8 improved the road network. Over \$500,000.00 has been given to the Association to do all this  
9 work. All of this is indicative of community support and satisfaction with the job that the Mt.  
10 Dallas Association is doing. It is very sad to me that a new property owner can move into our  
11 community and try to dictate changes to the methods of road maintenance when there is almost  
12 no community support for the Welker's actions and for their methods. Please end this nonsense  
13 in an expeditious manner so our neighborhood can heal and approve the Mt. Dallas Association's  
14 Road Maintenance Agreement for the Mt. Dallas Road.  
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19 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is  
20 true and correct.

21 DATED THIS 15 day of APRIL, 2015.

22  
23  
24 James Guard  
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