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

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

12 v.

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

NO. 15-2-05069-0

**RESPONSE BY MOUNT
DALLAS ASSOCIATION TO
PLAINTIFFS' MOTION TO
STRIKE**

16 The Mount Dallas Association filed and served for hearing today its motion for partial
17 summary judgment, addressing the same issue presented by the Plaintiffs' concurrent summary
18 judgment motion.

19 The Plaintiffs now move to strike the Association's motion, alleging two reasons: (1)
20 the Association is illegitimate and lacks standing; and (2) the Association did not properly serve
21 all parties.
22

23 **(1) Standing.**

24 The Plaintiffs' first argument is based on the fallacy that the Mount Dallas Association
25 purports to be a homeowners association. The Association does not assert and has never
26 asserted that it is a homeowners association. Rather, the Association is a voluntary association
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1 of property owners, with no contractual or real-property covenant based relationship with any
2 property owner who is not a voluntary member.

3 This State's statutory chapter governing homeowners associations Chapter 64.38 RCW
4 (Homeowners Associations) defines "Homeowners Associations" as:

5 "... a corporation, unincorporated association, or other legal entity, **each member of which is**
6 **an owner of residential real property located within the association's jurisdiction, as**
7 **described in the governing documents,** and by virtue of membership or ownership of property
8 is obligated to pay real property taxes, insurance premiums, maintenance costs, or for
9 improvement of real property other than that which is owned by the member."
RCW 64.38.010(11) (Emphasis added).

10 Thus, a true homeowners association is created in part by a real property covenant that
11 binds a group of property owners within a certain "jurisdiction." In contrast, the Mount Dallas
12 Association and its Road Maintenance Agreement purport to govern only those property owners
13 who record a Joinder which names them and defines their real property as being bound. This is
14 in stark contrast to a non-voluntary homeowners association that governs all properties within
15 its jurisdiction regardless of whether the owners consent.
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17 The recent case of Halme v. Walsh, 47129-9-II (Wash. App. March 8, 2016), cited by
18 the Plaintiffs is inapplicable for this reason. There, a set of property owners created an
19 organization and recorded a set of covenants which purported to govern all properties within a
20 certain defined "jurisdiction." However, not all properties within the jurisdiction were bound by
21 a covenant or contract to be subject to the organization and its recorded document. The Halme
22 court held that such covenants were therefore invalid, because they purported to govern all
23 properties without a subadjacent covenant or contract binding all such properties. Halme
24 clearly cannot apply to the Mount Dallas Association and its Road Maintenance Agreements,
25 which do not purport to govern any certain jurisdiction, and are not binding upon any real
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1 property whose owner has not recorded a Joinder. [For factual support and additional legal
2 argument, please see the "Mount Dallas Association's Memorandum in Opposition to Motion to
3 Amend Complaint and to Cancel Road Maintenance Agreement," and its supporting
4 Declarations, filed concurrently herewith.]

5 The Association has never asserted that it is other than a voluntary organization. This
6 Court heard argument and ruled on the Plaintiffs' initial summary judgment motion in October
7 2015, at which the central issue was the Association's status and standing. There, the Court
8 ruled that the Association has no covenant or contract that binds all owners within a certain
9 jurisdiction, but that the Association has an equitable right to continue to maintain the Mount
10 Dallas Road per its agreements with those property owners who have consented to its
11 governance.

12 The Plaintiffs are aware of this ruling, and of the facts and allegations in this matter.
13 Their argument that the Association lacks standing under Chapter 64.38 RCW and the Halme
14 case is frivolous, because they lack any basis in fact or law. The Plaintiffs' motion to strike
15 based upon the Association's lack of standing should be denied.

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20 **(2) Service of Process.**

21 The Plaintiffs assert that the Association served "some of the Benefitted Owners" via
22 email. They argue that the Association's motion should therefore be stricken for failure to
23 comply with CR 5(a).

24 The Plaintiffs do not assert that they themselves were not properly served. Rather, they
25 assert the standing of some of their named Defendants. The Plaintiffs lack standing to assert the
26 rights of third parties under CR 5. To have standing, they must have a personal stake in the
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1 outcome of the issue, and have a clear legal or equitable right to relief in the face of a well-
2 grounded expectation of invasion of that right. See Gustafson v. Gustafson, 47 Wn.App. 272,
3 276 (Div. I, 1987):

4 "The doctrine of standing requires that a plaintiff must have a personal stake in the outcome of
5 the case in order to bring suit. The Supreme Court once described this requirement as "one
6 seeking relief must show a clear legal or equitable right and a well-grounded fear of immediate
invasion [734 P.2d 953] of that right.

7 In any event, as the Plaintiffs note, such service is valid if the parties consent in writing.
8 In this case, the parties who were not conventionally served have consented in writing. See the
9 Declaration of Susan D. Allen in Opposition to Plaintiffs' Motion to Strike.
10

11 The Plaintiffs fail to define which set of Defendants they are referring to - those who
12 answered and/or appeared, and those who did not. CR 5 applies only to those parties who have
13 appeared or answered:

14 "... No service need be made on parties in default for failure to appear except that pleadings
15 asserting new or additional claims for relief against them shall be served upon them in the
16 manner provided for service of summons in rule 4." CR 5(a).

17 Therefore, if the Plaintiffs have standing (which is denied), their argument applies only
18 to those parties who have appeared or answered.
19

20 In this matter, apart from the Plaintiffs, the San Juan Preservation Trust, and Ms. Swin
21 (all of whom were served conventionally), and apart from the Association and Mr. Widdoes
22 (whose Memorandum this is), there are only 10 Defendants who have answered or appeared
23 (Allen, Hawley, Tauscher, Guard, McAlary, Boyd, Kaufman, Eichler, Leibman and Bienvenu).
24 Of those, 6 are on the Board of the Association (Allen, Hawley, Tauscher, Guard, McAlary and
25 Kaufman).
26

1 As to the remaining four, the Association has written agreements with each of them, that
2 the Association may email them a link to documents posted on the Association's website and
3 stating that if they would like to receive a printed copy, to simply reply. See Declaration of
4 Susan Allen in Opposition to Plaintiffs' Motion to Strike.

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6 Therefore, because the Plaintiffs lack standing to raise this issue, and regardless, because
7 the Association has agreements regarding service with all parties who might be prejudiced, the
8 Plaintiffs' motion to strike for failure to properly serve certain Beneficial Owners should be
9 denied.

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12 DEREK MANN & ASSOCIATES PLLC

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

14  4/11/16

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