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JUN 26 2017

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 SANDRA J. HAWLEY IN SUPPORT OF DEFENDANTS' THIRD MOTION FOR SUMMARY JUDGMENT**

I, SANDRA J. HAWLEY, 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.

2. I have previously filed declarations in this case dated October 16, 2015; April 4, 2016; April 11, 2016; June 19, 2016; December 22, 2016; and January 27, 2017. I hereby restate everything in those previous declarations.

3. I have been a Certified Public Accountant for over 30 years. I hold a Bachelor's Degree in Accounting and a Master's Degree in Financial Accounting. In 1990, I purchased a CPA firm in Friday Harbor and sold it in 2009. I have had many

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hours of CPA Continuing Education in the area of association accounting and auditing. I have done accounting and prepared tax returns for numerous homeowner/condo, water and road associations both on San Juan Island and on other islands in San Juan County. In addition, I have performed annual audits, reviews and compilations for many of those associations.

4. I currently serve as a member of the Board of Directors of the Mount Dallas Association ("MDA"). I served as Treasurer of the MDA from 2012 until August 2014, and again from February 2015 until July 2016.

5. Prior to 2012, MDA revenues and costs were not shown on a profit-and-loss statement, but were simply listed on a yearly report showing the date, amount paid and a brief description as to what each payment was for.

6. When I became Treasurer in 2012, I began to use Quickbooks to track MDA financial activity, and I created a chart of accounts for the MDA. This is when "Administrative" Costs" was first used as an expense category separate from the category "Road Maintenance Costs". In 2013, the "Reserves" category was introduced. In 2015, the "Firewise Costs" category was introduced.

7. Administrative Costs traditionally cover the miscellaneous costs of running an association. MDA Administrative Costs include the State of Washington annual license fee, bank charges, check orders, P.O. box fee, mailings, paper, envelopes, printing, postage, website hosting, signage, surveying fees, insurance costs, accounting fees, legal fees (not including the fees involved in this lawsuit), and similar items.

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8. Based on my experience as a CPA and as an MDA Board member, I believe that it would not be possible for any entity to properly and responsibly manage Mount Dallas Road without incurring administrative costs similar to those described above. That said, the MDA operates as a community of volunteers, not as a profit-seeking corporation; *donated labor, facilities, utilities, and equipment available to the MDA substantially reduce total Administrative Costs for the MDA*.

9. The Firewise Costs category was added in 2015. This category includes primarily routine weed whacking and brush clearing along the sides of the road. Firewise Costs also include trimming of trees and removal of dead trees considered to be fire hazards along the sides of the road.

10. *Firewise Costs are a necessary road-maintenance expense.* The San Juan Island Fire Department has informed the MDA Board that the Mount Dallas area is the most hazardous fire area on San Juan Island. MDA Board members and other property owners who have worked with the SJI Fire Department have informed the MDA Board that wildfires are most likely to start in our area as a result of vehicular traffic igniting uncut dry grass and brush along the sides of the road. The MDA has accepted responsibility for maintaining the road and is obligated to carry out that responsibility to the best of its ability. *The MDA would be grossly negligent in performing its road-maintenance obligations if it failed to diligently clear fire hazards from along the sides of the road.* Because Firewise work benefits all property owners equally by preventing wildfires that would

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devastate the entire community, Firewise Costs are divided equally among all parcels.

11. Administrative expenses also include the costs of liability insurance. The MDA began purchasing liability insurance in 1996. According to the MDA's insurance agent, the MDA's liability insurance protects the MDA from lawsuits arising from incidents that occur on the easements maintained by the MDA due to maintenance issues that may be claimed to be the responsibility of the MDA.

12. Based on my experience as a CPA, I believe that liability insurance is a normal and widely accepted expense for road associations. The MDA has accepted responsibility for maintaining the road. The MDA may be sued for vehicular incidents that occur anywhere in the vicinity of the roadway maintained by the MDA, regardless of whether the MDA is at fault. *It would be grossly irresponsible for any entity managing the road to fail to keep liability insurance in place.* Because liability insurance protects the MDA, it benefits all property owners equally; therefore, the cost for such insurance is allocated equally among all parcels.

13. Based on my experience as a CPA, I believe that Director's and Officer's (D&O) insurance is a normal and widely accepted expense for road associations. The MDA does not currently have D&O insurance in place. It is the expressed opinion of the MDA Board that D&O insurance is prohibitively expensive at this time, due entirely to the ongoing litigation initiated by the Welkers.

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14. After the conclusion of this lawsuit, the MDA Board intends to procure D&O insurance for its officers and directors. Based on my experience as a member of the MDA Board, I believe that *it will not be possible for the MDA or any other managing entity to retain officers and directors without such insurance*. Because D&O insurance is a normal and necessary operating expense for any managing entity, the costs of such insurance should be allocated equally among all parcels.

15. The first letter/minutes sent by the MDA, dated December 17, 1989, basically said that all fees collected were considered "reserves": The letter stated that "...fees not used ... would be saved for the time that we could begin some real road work". I believe that the intention of the founders of the MDA was to receive dues, spend only what was absolutely necessary, use as much volunteer labor as possible, and save any excess funds for the future, to be used when necessary, on whatever road work was most important. That's the way this community has always worked in the past – based on trust, volunteers, lots of hard work, and *practical decision making by reasonable people who talk to their neighbors*. Although the community's culture of trust has been violated by the Welkers' litigation, for now, and until the Court orders otherwise, the MDA will continue to treat the Reserves category the same as it always has, i.e., as available for whatever road work is most important, not earmarked for any specific type of work.

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16. Based on my experience as a CPA, I believe that it is normal and widely accepted for road associations to maintain a reserve fund for future expected maintenance, and to require benefited owners to make annual deposits to the reserve fund.

17. Based on my experience as a Board member and longstanding member of the Mount Dallas Community, I believe that, if the full cost of periodic major road work such as resurfacing were assessed in one lump sum at the time the work was required, some property owners would be unable or unwilling to timely pay the large assessment due.

18. I strongly believe that it would not be practical for the MDA or any other managing entity to plan for, contract for, or to timely pay for major periodic major road maintenance such as resurfacing without a reserve fund in place and benefited owners obligated to make annual deposits to the fund.

19. As of June 20, 2017, the total amount in the MDA main-road reserve fund was $77,807.58. A summary of MDA main-road revenues and expenses for each year from 1989 through 2016 is shown in Exhibit A, attached hereto.

20. Plaintiffs own only a single parcel out of 84 total parcels accessed via Mount Dallas Road. Owners of at least 58 parcels (69%) have signed Joinders to the MDA's RMA for Mount Dallas Road and are contractually bound by the terms of that RMA (these are "Consenting Owners"). The rights and obligations provided per the MDA's RMA are reasonably fair, equitable, practical and effective. I believe that the Court *must not disrupt any terms of those contracts* unless it

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finds those terms to be substantially defective when considered as binding only Consenting Owners. Barring such finding, *any terms of a Court Order in this case that would be inconsistent with the terms of the MDA's RMA must bind only Non-Consenting Owners.*

21. Owners of a supermajority of parcels have already consented to the terms of the MDA's RMA and are bound by a fair-and-equitable formula for allocating road-maintenance expenses. If the Court orders owners who have not consented to the MDA's RMA to pay expenses according to a different formula, the MDA will be required to manage two different formulas. If the Court orders all owners to pay expenses according to a different formula, the MDA will be required not only to manage two different formulas, but to reconcile the differences between the formulas for owners bound by both formulas. Based on my experience as an MDA Board member and Treasurer, I believe that managing two different formulas and reconciling the differences between them for owners bound by both formulas would be unnecessarily complex, would cause confusion in the community, and would cause undue burden for the MDA, the Board, and the community as a whole.

22. I believe that the best outcome of this lawsuit for the Mount Dallas community as a whole would be for the Court to bind all owners (both Consenting and Non-Consenting) to a comprehensive Order consistent with the terms of the MDA's RMA for Mount Dallas Road.

23. Regardless, I believe that the Court should order all owners to (i) equally share

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reasonable operating expenses incurred by the MDA in managing and administering maintenance of Mount Dallas Road, including Firewise Costs, insurance costs, and other Administrative Costs shown above; and (ii) pay annual deposits to a reserve fund for future planned resurfacing, including preparation for resurfacing.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and that this Declaration was executed at Friday Harbor, Washington on June 23, 2017.

Sandra J. Hawley

Sandra J. Hawley

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Exhibit A

Summary of MDA Main-Road Revenues and Expenses 1989-2016

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MDA Main-Road Income & Expense Summary 1989-2016

1989		
Receipts		
Fees/Dues	2,297.23	
Jeep Ad	200.00	2,497.23
Road Expenses		
Shale	1,023.25	
Culverts	231.53	1,254.78
Operating/Administrative Expenses		
License	20.00	
Secy of State	20.00	
Bank chg & ck order	15.42	
Maps	13.25	
Telephone	4.00	
Room Rental	20.00	
Mailings	17.77	
IRS Nonprofit Application	150.00	260.44
Total expenses		1,515.22

1990		
Receipts		
Fees/Dues	9,040.00	
Other	0.00	9,040.00
Road Expenses		
Bulldozing	6,339.58	
Backhoe/ shale/grading	1,139.50	7,479.08
Operating/Administrative Expenses		
Newsletter & mailing	67.82	
PO Box Rental	6.50	
Addl mailing expense	25.47	99.79
Total expenses		7,578.87

1991		
Receipts		
Fees/Dues	1,985.00	
Other	0.00	1,985.00
Road Expenses		
Road grading	1,854.37	
		1,854.37
Operating/Administrative Expenses		
Road sign	107.50	
PO Box Rental	7.25	
Saw chains	45.75	160.50
Total expenses		2,014.87

1992		
Receipts		
Fees/Dues	2,580.00	
Other	0.00	2,580.00
Road Expenses		
Ditching & grading	3,500.00	
Other	0.00	3,500.00
Operating/Administrative Expenses		
Secy expenses plus sign	281.42	
Annual meeting costs	60.00	
PO Box fee	7.25	
Journal advertising	125.00	473.67
Total expenses		3,973.67

1993		
Receipts		
Fees/Dues	2,055.00	
Bounced check	-50.00	
Schuman refund	62.88	2,067.88
Road Expenses		
Road work	287.50	
Shale & grading	834.20	1,121.70
Operating/Administrative Expenses		
	0.00	0.00
Total expenses		1,121.70

1994		
Receipts		
Fees/Dues	1,980.00	
Other	0.00	1,980.00
Road Expenses		
Road work	440.00	
Shale & sand	585.88	1,025.88
Operating/Administrative Expenses		
Secy expense	56.78	
Journal "no hunting"	123.00	179.78
Total expenses		1,205.66

1995		
Receipts		
Fees/Dues	2,560.00	
Major Road	26,000.00	28,560.00
Road Expenses		
Shale/culvert	655.75	
Ditch clearing/potholes	1,000.00	1,655.75
Operating/Administrative Expenses		
Other	0.00	
PO Box	8.00	
Secy expenses	25.88	
Journal ads	63.50	97.38
Total expenses		1,753.13

1996		
Receipts		
Fees/Dues	1,355.00	
Gate	200.00	
Extra	1500	
Reimb donation	-1500	
Major Road	1000	2,555.00
Road Expenses		
Major road work	27,667.09	
Grading/shale	1,200.35	28,867.44
Operating/Administrative Expenses		
PO Box Rental	8.00	
Other	0.00	
Road sign	45.00	
Liability insurance	280.00	333.00
Total expenses		29,200.44

1997		
Receipts		
Fees/Dues	5,910.00	
Other	0.00	5,910.00
Road Expenses		
Road Expenses	549.27	
Road grading	1,163.16	
		1,712.43
Operating/Administrative Expenses		
Bank charges	39.20	
PO Box Rental	0.00	
Saw chains	0.00	
Liability insurance	265.00	304.20
Total expenses		2,016.63

1998		
Receipts		
Fees/Dues	4,210.00	
Other	0.00	4,210.00
Road Expenses		
Road work	3,850.28	
Potholes	269.25	
Road materials	187.51	4,307.04
Operating/Administrative Expenses		
Secy expenses	204.69	
Liability insurance	259.00	
PO Box fee	12.00	
Wetland research	130.00	605.69
Total expenses		4,912.73

1999		
Receipts		
Fees/Dues	6,805.00	
Other	0.00	6,805.00
Road Expenses		
Road work	1,806.29	
Supplies	241.02	2,047.31
Operating/Administrative Expenses		
PO Box fee	14.00	
Liability insurance	274.00	
Bank charge	36.00	324.00
Total expenses		2,371.31

2000		
Receipts		
Fees/Dues	8,650.00	
Other	0.00	8,650.00
Road Expenses		
Grade road	8,876.83	
Asphalt	646.20	
Shale & sand		9,523.03
Operating/Administrative Expenses		
Envelopes, postage etc	96.79	
Bank charge	36.00	
Printonyx	19.89	
Postage	19.80	
PO Box fee	14.00	
Liability insurance	624.88	
Traffic signs	15.97	827.33
Total expenses		10,350.36

2001		
Receipts		
Fees/Dues	6,650.00	
Other	0.00	6,650.00
Road Expenses		
Grading	3,519.24	
Repair asphalt	544.50	4,063.74
Operating/Administrative Expenses		
Endorsement stamp	23.70	
PO Box	20.00	
Bank charges	49.70	
Traffic signs	50.22	
Postage & Printing	54.40	
Posts & Cement	37.47	
Printing	35.13	
Liability insurance	546.00	816.62
Total expenses		4,880.36

2002		
Receipts		
Fees/Dues	7,270.00	
Other	0.00	7,270.00
Road Expenses		
Grading	10,620.73	
		10,620.73
Operating/Administrative Expenses		
Traffic signs	48.39	
PO Box Rental	24.00	
Liability insurance	626.00	
Mailings	48.50	746.89
Total expenses		11,367.62

2003		
Receipts		
Fees/Dues	6,550.00	
Major Road	5,840.00	12,390.00
Road Expenses		
Road grading	3,535.25	
Entrance work	3,115.76	6,651.01
Operating/Administrative Expenses		
Postage & supplies	133.25	
PO Box Rental	24.00	
Liability insurance	659.00	
Annual meeting exp	16.60	832.85
Total expenses		7,483.86

2004		
Receipts		
Fees/Dues	8,650.00	
Extra	600.00	
Major road	350.00	9,600.00
Road Expenses		
Road grading	3,686.03	
Road materials	4,598.79	
Mowing	823.91	9,108.73
Operating/Administrative Expenses		
Mailings	57.08	
Other	30.66	
PO Box fee	24.00	
Liability insurance	738.00	849.74
Total expenses		9,958.47

2005		
Receipts		
Fees/Dues	6,566.64	
Major road chipseal	121,092.00	
Interest & workparty gift	323.48	127,982.12
Road Expenses		
Road grading	7,334.37	
Road material	990.84	
Rock entrance	538.50	
Ditch repair	323.10	9,186.81
Operating/Administrative Expenses		
Legal	157.50	
PO Box fee	24.00	
Mailing	115.86	
Secy of State	30.00	
Entrance sign	546.11	
Liability insurance	688.00	1,561.47
Chipseal expense		
Michael H Wold Co	109,659.96	
Misc marking paint etc.	138.76	
Total Chipseal expense		109,798.72
Total expenses		120,547.00

2006		
Receipts		
Fees/Dues	15,020.00	
Major road chipseal	6,000.00	
Mailbox fees	1400.00	
Extra storm cleanup	500	22,920.00
Road Expenses		
Sweeping	2,153.84	
		2,153.84
Operating/Administrative Expenses		
Postage, copying	129.81	
Postage	48.36	
Printing	37.15	
Office Misc	7.19	
License	10.00	
Liability insurance	501.00	
PO Box	26.00	
Mailbox expenses	4,415.70	
Firewise sign, etc	148.14	
Marking paint	12.69	5,336.04
Total expenses		7,489.88

2007		
Receipts		
Fees/Dues	15,475.00	
Extra	1,250.00	
Mailbox fee	100.00	
Reimb Firewise sign	120.62	16,945.62
Road Expenses		
Main road repair	11,647.76	
Storm cleanup & equip time	3,233.00	
Weed Whacking	1,435.00	16,315.76
Operating/Administrative Expenses		
License & permits	10.00	
Secy of State	10.00	
Annual meeting expense	52.56	
PO Box	36.00	
Liability ins	528.00	
Paint to mark road	34.42	
Income taxes + tax prep	88.00	758.98
Total expenses		17,074.74

2008		
Receipts		
Fees/Dues	14,751.75	
close chipseal acct	21.25	
Refund dues to Swin	-135.42	14,637.58
Road Expenses		
Main road repair	900.00	
Drainage repair	1,500.00	
Weed Whacking	2,920.00	5,320.00
Operating/Administrative Expenses		
Annual mailing	141.53	
PO Box Rental	38.00	
Legal & Court fee	342.50	
Sign & website	145.39	
Liability ins	535.00	
Paint to mark road	19.98	
Income taxes + tax prep	165.00	1,387.40
Total expenses		6,707.40

2009		
Receipts		
Fees/Dues	15,180.00	
Mailbox fee	100.00	15,280.00
Road Expenses		
Road grading & Asphalt	1,376.48	
Remove dump truck	1,078.00	
Weed Whacking	2,307.28	
Gravel bins & supplies	1,772.52	6,534.28
Operating/Administrative Expenses		
Annual mailing	180.49	
PO Box Rental	40.00	
License & permits	25.00	
Liability insurance	636.00	
Misc	150.00	
Website exp & secytl	295.74	
Tax prep	200.00	1,527.23
Total expenses		8,061.51

2010		
Receipts		
Fees/Dues	15,265.00	
Major chipseal	47,181.00	
Interest Income	717.92	63,163.92
Road Expenses		
Repair Mt Dallas Road	18,591.03	
		18,591.03
Operating/Administrative Expenses		
Postage & copying	24.35	
Transfer	9,000.00	
Tax preparation	200.00	
Paint to mark road	30.59	
Webhosting	107.40	
Signs	101.30	
License	30.00	
PO Box	40.00	
Liability insurance	687.00	10,220.64
Total expenses		28,811.67

2011		
Receipts		
Fees/Dues	14,013.79	
Major chipseal	24,814.00	
Fog Seal	900.00	
Interest Income	324.07	40,051.86
Road Expenses		
Chipsealing & prep work	110,217.73	
Supplies paint etc	283.21	110,500.94
Operating/Administrative Expenses		
Liability ins	687.00	
Licenses & permits	10.00	
PO box	42.00	
Postage & copying	243.72	
Federal Tax paid	128.00	1,110.72
Total expenses		1,110.72

2012		
Receipts		
Fees/Dues	16,912.50	
Mailboxes	100.00	
Interest Income	15.10	17,027.60
Road Expenses		
Road repair &maint	4,614.00	
Weed Whacking	2,160.00	6,774.00
Operating/Administrative Expenses		
Liability ins	743.00	
Licenses & permits	10.00	
PO box	44.00	
Postage & copying	45.00	
Office expense	17.03	
Interest expense	23.02	
Federal Tax paid	10.00	892.05
Total expenses		7,666.05

2013		
Receipts		
Fees/Dues	14,667.68	
Mt Dallas Reserves	4,247.32	
Extra	1,604.00	
Mailbox fee	200.00	
Interest Income	17.82	20,736.82
Road Expenses		
Weed Whacking	2,200.00	
Other	0.00	2,200.00
Operating/Administrative Expenses		
License	10.00	
Office expenses	30.81	
PO Box	44.00	
Liability insurance	780.00	
Postage & copying	46.00	910.81
Total expenses		3,110.81

2014		
Receipts		
Fees/Dues	4,285.62	
Mt Dallas Reserves	15,990.70	
Building fee	443.00	
Mailbox fee	200.00	
Interest Income	17.82	20,937.14
Road Expenses		
Storm Cleanup	1,604.00	
Weed Whacking	2,200.00	
		3,804.00
Operating/Administrative Expenses		
Liability insurance	813.00	
License & Permits	10.00	
PO Box	56.00	
Postage & copying	49.00	
Legal	412.50	1,340.50
Total expenses		5,144.50

2015		
Receipts		
Annual operating income	2,220.00	
Mt Dallas Reserves	8,290.19	
Building fee	1,000.00	
Other refund dues	-92.06	
Interest Income	29.30	11,447.43
Road Expenses		
Road grading	0.00	
Weed Whacking	2,121.00	2,121.00
Operating/Administrative Expenses		
Bank charge & checks	92.73	
PO Box Rental	56.00	
License	10.00	
Liability insurance	759.00	
Postage & envelopes	119.44	
Tax prep cost	50.81	
Legal	18.00	1,105.98
Total expenses		3,226.98

2016		
Receipts		
Fees/Dues	6,021.44	
Mt Dallas Reserves	19,163.63	
Mailboxe fees	100	
Interest Income	58.90	25,343.97
Road Expenses		
Road Expenses	0.00	
Weed whacking	1,920.00	
Side roads	0.00	1,920.00
Operating/Administrative Expenses		
PO Box rent	60.00	
Legal	383.50	
Liability Insurance	709.00	
Bank charges	80.00	1,232.50
Total expenses		3,152.50