

EXHIBIT E

Welkers' New Method

Simple Two-Segment Example

# Welkers' Allocation Method – Simple Two-Segment Example

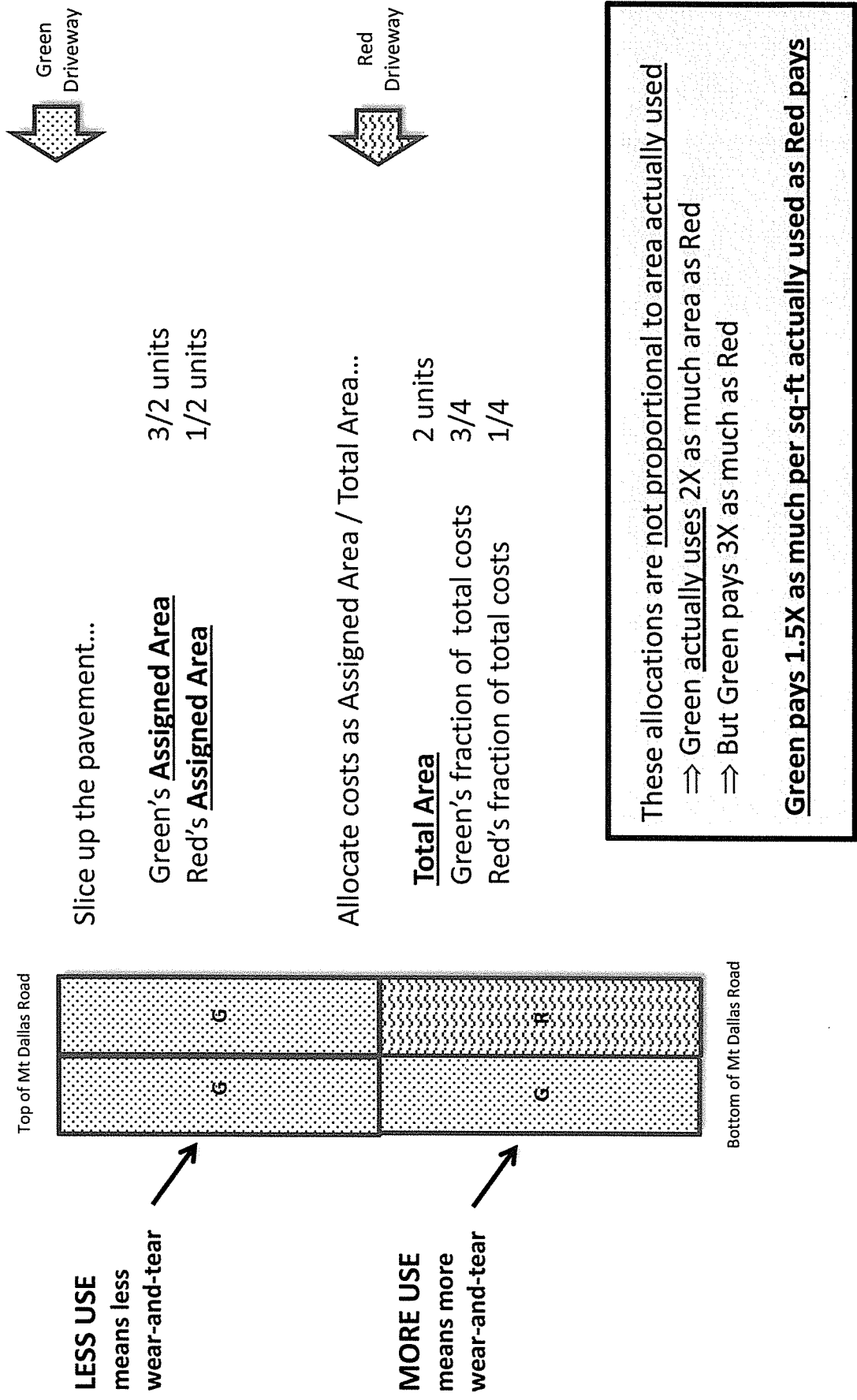
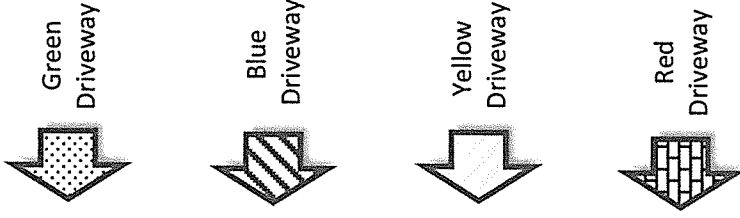
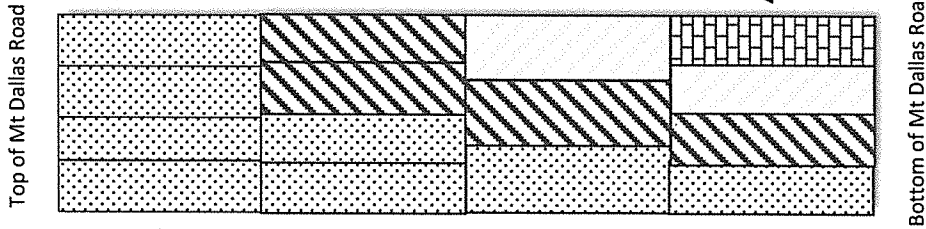


EXHIBIT F

Welkers' New Method

Simple Four-Segment Example

# Welkers' Allocation Method – Simple Four-Segment Example



**LESS USE**  
means less  
wear-and-tear

**Assigned Area is not Actual Use!**

$(16.11' / 84) = 2.3''$ -wide strips at the bottom of the road

Green's allocation:

**Assigned Area** is  $1 + 1/2 + 1/3 + 1/4$  units

**Total Area** is 4 units

Assigned Area / Total Area =  $\frac{25}{48}$

Blue's allocation =  $(1/2 + 1/3 + 1/4) / 4 = \frac{13}{48}$

Yellow's allocation =  $(1/3 + 1/4) / 4 = \frac{7}{48}$

Red's allocation =  $(1/4) / 4 = \frac{3}{48}$

Total allocations =  $(25 + 13 + 7 + 3) / 48 = \frac{48}{48}$

**MORE USE**  
means more  
wear-and-tear

These allocations are not proportional to area actually used  
 ⇒ Green actually uses 4X as much area as Red  
 ⇒ But Green pays 8.3X as much as Red  
**Green pays 2.1X as much per sq-ft actually used as Red pays**

How could a strip of road 2.3" wide be the Welkers' Actual Use of the bottom segment?

EXHIBIT G

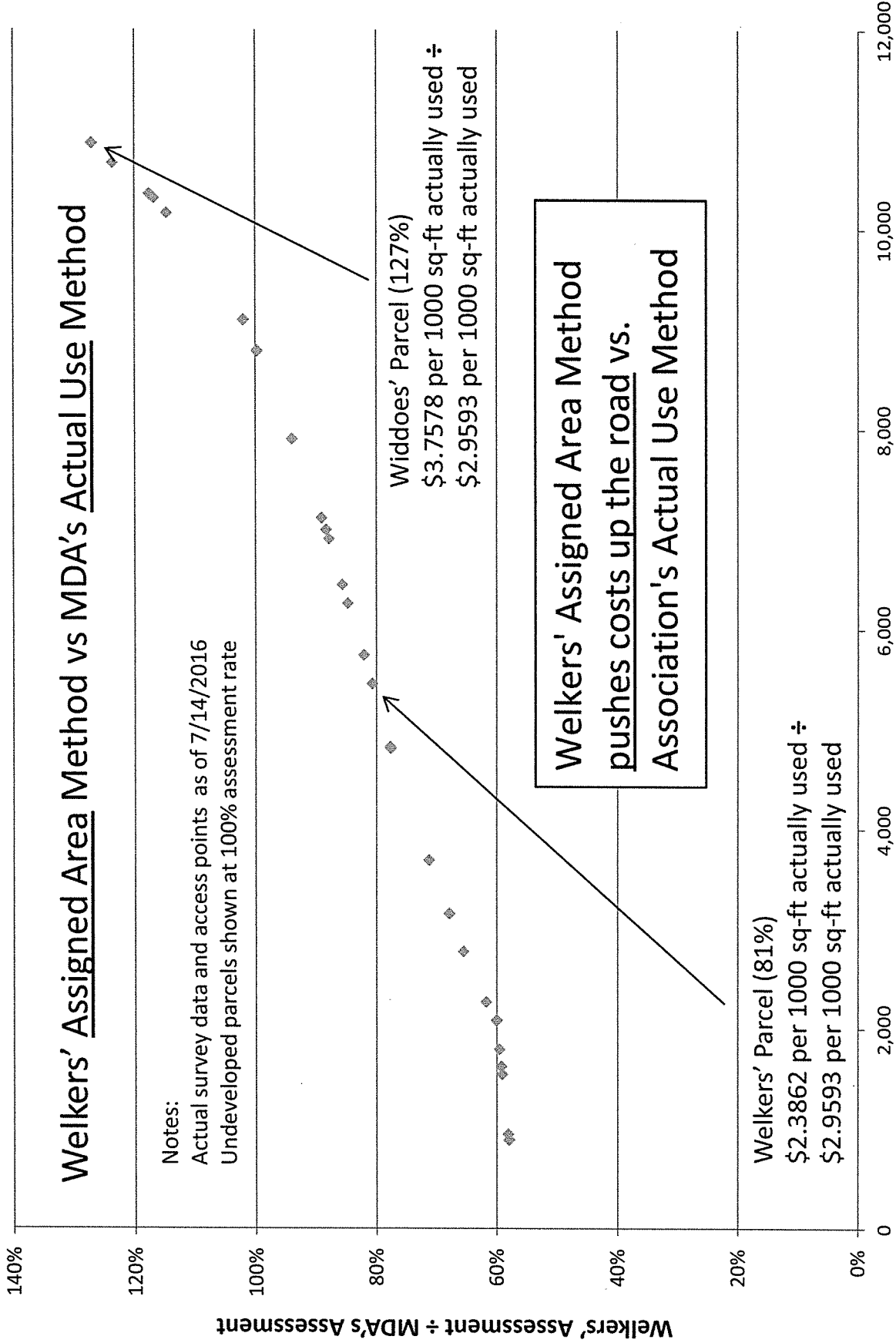
Welkers' New Method (Assigned Area)

vs.

MDA's Allocation Method (Actual Use)

# Welkers' Assigned Area Method vs MDA's Actual Use Method

Notes:  
Actual survey data and access points as of 7/14/2016  
Undeveloped parcels shown at 100% assessment rate



Widdoes' Parcel (127%)  
\$3.7578 per 1000 sq-ft actually used ÷  
\$2.9593 per 1000 sq-ft actually used

Welkers' Assigned Area Method  
pushes costs up the road vs.  
Association's Actual Use Method

Welkers' Parcel (81%)  
\$2.3862 per 1000 sq-ft actually used ÷  
\$2.9593 per 1000 sq-ft actually used

Distance from West Side Road (Feet)

EXHIBIT H

Welkers' New Method  
Examples of Assessments

## Some Specific Examples per the Welkers' Assigned Area Method

Assume a \$21,000 total assessment (i.e., the 2016 assessment).

Actual calculated assessments for selected developed parcels per the Welkers' method (undeveloped parcels assessed at 100% rate):

Albert	\$1.7155	per thousand sq-ft
Swinn #1	\$1.7619	"
Welker	\$2.3862	"
Guard	\$3.0180	"
Allen #1	\$3.4545	"
Widdoes #1	\$3.7578	"

### **Not fair!**

Why should different owners be assessed different amounts per sq-ft for the portions of the road that they actually use to access their parcels?



EXHIBIT I

Welkers' New Method

Mathematics of  
Who Pays for Road Beyond the Welkers' Access Point

Per the Association's proportional allocation method, who pays for maintaining the road beyond the Welkers' access point?

First, suppose the road ends at the Welkers' access point...

- ⇒ Let  $W$  be the road area actually used to access the Welkers' parcel.
- ⇒ Let  $U$  be the total of all actual use for all parcels.
- ⇒ Let  $F$  be the Welkers' fractional allocation ( $F = W / U$ ).
- ⇒ Let  $M$  be the total maintenance cost for the road.

Now, add a section of road beyond the Welkers' access point...

- ⇒ Let  $\Delta U$  be the additional actual use, i.e., the total of all actual use for those parcels having access points in the new section.

For the longer road...

- ⇒ Total maintenance cost is increased in proportion to total use:
- ⇒ The Welkers' fraction is decreased in inverse proportion to total use:

$$M' = M \times (U + \Delta U) / U$$

$$F' = F \times U / (U + \Delta U)$$

The Welkers pay the same amount ( $M' \times F' = M \times F$ )!

Parcels in the new section pay all the additional maintenance costs.

EXHIBIT J

Plaintiffs' Vacuous Argument

Plaintiffs' Memorandum Regarding Plaintiffs' Actual Use Method Filed in Support of Plaintiffs' Proposed Order on Same, dated June 13, 2016, page 6, lines 4-16:

"Again, unless one ties actual use to the portion of the Road actually used by a Parcel, as well as to legal use, and recognizes the exclusive easement rights as to each segment of the Road [1], one ends up with something like the method that the Association is proposing, which overcharges the Parcels at the beginning of the Road, and undercharges the parcels at the end of the Road [2]. The main difference is that the Association determines a Parcel's Allocated Square Footage and pro-rata percentage of Expenses without taking into account the segmented exclusivity of the portions of the Road actually used and that such Parcels do not (and cannot) use the portion of the Road beyond their access point [3]. To truly allocate Road expenses on an "actual use" basis, the Parcels should only be charged a pro-rata share of the Expenses for the section of the Road that they actually use and no portion of the Road they do not use. This is what the Plaintiff's Actual Use Method achieves [4], while concurrently recognizing (with any conflict with the Actual Use Method) the underlying legal parameters and restrictions under the Road was created [5]."

Notes re the Plaintiffs' argument:

- [1] Assessments according to the MDA's allocation method are strictly proportional to Actual Use, as defined in the August 10, 2016, Order of this Court. According to that definition, Actual Use "[is tied] to the portion of the Road actually used by a Parcel, as well as to legal use, and recognizes the exclusive easement rights as to each segment of the Road." The MDA's allocation method certainly complies with this condition.
- [2] Plaintiffs' argument says that if an allocation method violates the condition in the first part of the sentence, then it must be overcharging parcels at the beginning of the road. The MDA's allocation method complies with the condition. The premise is false; therefore the conclusion does not follow.
- [3] By definition, the Actual Use measure "[takes] into account the segmented exclusivity of the portions of the Road actually used and that such Parcels do not (and cannot) use the portion of the Road beyond their access point." Therefore, this statement is false.
- [4] The MDA's allocation method certainly charges "a pro-rata share of the Expenses for the section of the Road that they actually use and no portion of the Road they do not use". The whole debate is about how to calculate the pro-rata share. The Plaintiffs simply assume that their calculation is fair and equitable. They use that assumption to infer that the MDA's calculation is not fair and not equitable. Their argument is vacuous.
- [5] Both methods "[recognize]... the underlying legal parameters and restrictions", so this clause, if it means anything at all, is irrelevant.

**EXHIBIT K**

**Selected Statements by Plaintiffs' Attorneys**

The Welkers think the Association is charging them for maintaining portions of the road beyond their access point...

Plaintiffs' Memorandum Regarding Plaintiffs' Actual Use Method, June 13, 2016, page 6, lines 8-12:

"The main difference is that the Association determines a Parcel's Allocated Square Footage and pro-rata percentage of Expenses without taking into account the segmented exclusivity of the portions of the Road actually used and that such Parcels do not (and cannot) use the portion of the Road beyond their access point." [Emphasis added]

Wrong!

Assessments per the Association's method are strictly proportional to area actually used (area actually traversed in accessing each parcel).

The method does not allocate to any parcel any expenses for any part of the road that is not used for actually accessing the parcel.

The Welkers' attorney is confused about the mathematics of proportional allocation (?!)

Chris Brain's email to Stephanie O'Day, August 4, 2016, "explaining" the Association's AUM:

"The fundamental problem with ... the [Association's] AUM is that the method assumes the use of the Road is non-exclusive over its entire length." [Emphasis added]

"The [Association's] AUM is not an actual use method because it charges for portions of the Road that are not actually used beyond the owner's access point." [Emphasis added]

"... it is obvious that an owner is paying for the costs of the Road beyond its access point and the statement that 'Assessments are strictly proportional to the area of the road actually used for access' is simply not true." [Emphasis added]

Every one of these statements is objectively false.  
Simply read Exhibit B of the Association's recorded RMA.

The Welker's *thought* their original method was charging them for maintaining portions of the road they are not entitled to use...

Mr. Brain's letter to Mt. Dallas Property Owners, June 30, 2016 (page 1, paragraph 3):

"[The Welkers' new] method 'harmonizes' with the fact that ... Parcel owners are not entitled to use the Road beyond the end of their respective easement segment and as such, **should not be required to share in the maintenance expenses for portions of the Road they do not actually use and are not entitled to use.**" [Emphasis added]

...but, in fact, allocation proportional to area actually used does not charge any owner any expenses for any part of the road that is not used for actually accessing the owner's parcel!



The Welkers say that assessments should be proportional to area actually used....

Plaintiffs' Proposed Order Adopting AUM, June 24, 2016 (page 2, lines 22-23):

“Stated otherwise, each Parcel should be proportionally responsible for maintaining the portion of the Road that they actually use to access their Parcel, and nothing more.” [Emphasis added]

Mr. Brain's letter to Mt. Dallas Property Owners, June 30, 2016 (page 1, paragraph 3):

“Therefore, [per the Welkers' new method,] a Parcel owner only pays their respective proportional share of Road expenses for the portion of the Road they actually use.” [Emphasis added]

...but assessments according to their new allocation method are, in fact, not proportional to area actually used!