

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  
SUSAN ALLEN  
IN SUPPORT OF  
DEFENDANTS' THIRD MOTION  
FOR SUMMARY JUDGMENT**

I, SUSAN ALLEN, state as follows:

1. I am over the age of 18 and am competent to be a witness in this lawsuit. I make the following statements based upon my personal knowledge.
2. I am currently the Vice President of the Mount Dallas Association ("MDA"). I served as President for the previous two years, and I have served as a Director since August, 2012.
3. My husband, James Timothy Allen, and I are Defendants in this lawsuit. We own two parcels on Mount Dallas and have signed Joinders to the MDA RMA for both properties.

DECLARATION OF  
SUSAN ALLEN  
IN SUPPORT OF  
DEFENDANTS' THIRD MOTION  
FOR SUMMARY JUDGMENT - 1

Law Offices of  
Stephanie Johnson O'Day  
Post Office Box 2112  
Friday Harbor, WA 98250  
Phone (360) 378-6278

1 4. I have previously filed declarations in this case dated 4/11/16, 4/1/16, 3/17/16,  
2 10/19/2015 and 10/16/2015. I hereby restate everything in those previous  
3 declarations.

4  
5 5. There are 84 properties on Mount Dallas. Not one single owner of any property,  
6 developed or undeveloped, has supported any of the proposals made by Clare  
7 and Abby Welker. The Welkers only own one developed parcel, and therefore  
8 represent the views of only 1% of all property owners on Mount Dallas.  
9

10 6. Managing Entity. Owners of 69% of Mount Dallas parcels have selected the  
11 MDA to be the managing entity of Mount Dallas Road by signing Joinders to the  
12 MDA RMA recorded March 2, 2016. Owners of 75% of Mount Dallas parcels  
13 have authorized the MDA to serve as the managing entity for Mount Dallas Road  
14 by signing petitions that were submitted to the Court on October 16, 2015. It is  
15 clear that a supermajority of property owners want a single entity to manage the  
16 road, and want that single entity to be the MDA.  
17  
18

19 Over the course of this lawsuit, the Welkers have changed their minds about  
20 who the managing entity should be. Most recently, they proposed that multiple  
21 managing entities should be permitted. That would be a complete fiasco. The  
22 31% of property owners that have not selected the MDA to be the managing  
23 entity are not grouped together in one area of the road -- they are located in  
24 various locations from the bottom of the road all the way up to the top of the  
25 road. How would it be possible for an individual owner to separately maintain his  
26 or her portion of the road when other owners who have easement rights over the  
27  
28

1 same portion of the road have assigned maintenance responsibility to the MDA?  
2 Would that one individual be permitted to hire his own contractor to chip seal his  
3 or her portion of the road? Would the chip sealing be done at the time of the  
4 individual owner's choosing? What if that owner's maintenance interfered with  
5 maintenance by the MDA? Would he or she be required to pay for damage  
6 caused by heavy equipment to portions of the road not being chip sealed at that  
7 time? How could anyone expect a high-quality road when the work is done by a  
8 hodgepodge of contractors? Regardless of the main goal of ensuring the quality  
9 of Mount Dallas Road, it would be chaos to have multiple entities scheduling  
10 projects, managing budgets, invoicing owners, and collecting payments. And  
11 would there be separate voting to authorize the maintenance of separate  
12 portions of the road? In any event, I believe that it would be practically  
13 impossible to find volunteer Board members who would be willing to work in a  
14 chaotic system that permits multiple entities to manage the road.  
15  
16  
17

18 *It is not logical, practical, or economical for multiple entities to manage Mount*  
19 *Dallas Road. The Court should order that the MDA shall be the sole managing*  
20 *entity for Mount Dallas Road.*  
21

- 22 7. Voting Rights. It is the policy of the MDA that all property owners who are paid-  
23 up on their assessments have the right to vote on the annual budget. This is a  
24 fair policy. Why should someone who is not current on their financial obligations  
25 have the right to vote on a budget that they are not contributing to?  
26

27 *The Court should order that all property owners who have paid their*  
28

1 *assessments, and only those property owners, shall have the right to vote on the*  
2 *annual budget.*

3  
4 8. Administrative Expenses. The MDA has always operated in a frugal manner.  
5 Property owners willingly volunteer their time to be on the Board -- to clean out  
6 ditches, to clear out brush, to walk the road and see where maintenance needs  
7 to be done, to work with contractors to get the best bids and much, much more.  
8 Many Board members have incurred expenses for ink, paper, envelopes,  
9 website hosting, hosting meetings, and much more. They have never asked to  
10 be reimbursed.  
11

12  
13 The administrative expenses that the MDA incurs are minimal, but they are  
14 necessary. These expenses include such items as postage, road liability  
15 insurance, professional fees, and state licensing fees. Such expenses benefit all  
16 property owners equally.  
17

18 In the future, the MDA will also need to obtain a Director's and Officer's Liability  
19 policy. In 2014 when Mrs. Welker was on the Board, she specifically requested  
20 that the MDA obtain a D&O policy. She was a firm believer that D&O insurance  
21 is necessary, and she said that she did not feel comfortable being on the Board  
22 without such insurance. I believe that in the future it will be practically  
23 impossible to recruit and retain Board members without D&O insurance.  
24

25 Any group, corporation or non-profit that manages projects that require  
26 assessing and collecting fees, filing corporate documents, paying bills and  
27 communicating with a large number of property owners will necessarily have  
28

1 expenses associated with running the organization. Both Clare and Abigail  
2 Welker served on the MDA Board. Neither of them complained about paying for  
3 those types of expenses before they filed this lawsuit. Neither of them ever  
4 suggested that such expenses should not be equally shared by all property  
5 owners.  
6

7 *The Court should order that all owners shall equally share administrative*  
8 *expenses.*  
9

10 9. Firewise Expenses. The MDA has been a Firewise Community since 2005. The  
11 Association keeps the brush cleared from the sides of the road during the dry,  
12 summer season in order to help reduce the risk of traffic on the road igniting a  
13 wildfire. Currently, the cost of the clearing the brush each year is about \$30 per  
14 parcel. The cost of losing a single home far exceeds this nominal expense. Any  
15 work done to reduce the spread of a wildfire is well worth the nominal fee  
16 assessed to property owners. Regardless, the MDA would be negligent if it did  
17 not maintain the road in such a way as to minimize the risk of a wildfire.  
18  
19

20 *The Court should order that all owners shall equally share Firewise expenses.*  
21

22 10. Allocation Method. The MDA RMA has adopted the same formula for allocating  
23 road-maintenance expenses that has been proposed by the Washington State  
24 Legislature in various bills over the years, most recently HB 1494. The Welkers'  
25 allocation formula does not conform to HB 1494. If Washington State passes  
26 such legislation and this Court does not order Non-Consenting Owners to pay  
27 according to the same formula, Non-Consenting Owners may later bring suit,  
28

1 arguing that the HB 1494 formula should apply to them. Such litigation would be  
2 wasteful and should not be encouraged by the Court.

3  
4 Furthermore, owners of a supermajority of parcels have already consented to  
5 the terms of the MDA's RMA and are bound by the MDA's formula. If the Court  
6 orders owners who have not consented to the MDA's RMA to pay expenses  
7 according to a different formula, the MDA will be required to manage two  
8 different formulas. If the Court orders all owners to pay expenses according to a  
9 different formula, the MDA will be required not only to manage two different  
10 formulas, but to reconcile the differences between the formulas for owners  
11 bound by both formulas. Managing two different formulas and reconciling the  
12 differences between them for owners bound by both formulas would be  
13 unnecessarily complex, would cause confusion in the community, and would  
14 cause undue burden for the MDA, the Board, and the community as a whole.

15  
16 *The Court should adopt the MDA RMA's formula for allocating road-*  
17 *maintenance expenses, which conforms to HB 1494.*

18  
19  
20 11. Reserve Fund. I strongly believe that a Reserve Fund is necessary to effectively  
21 manage the maintenance of Mount Dallas Road. In the past, Board members  
22 have spent countless hours trying to collect funds for major road work. Every  
23 prudent organization collects funds in advance for large projects. Would the San  
24 Juan County Public Works Department be willing plan for and manage a major  
25 road project before securing the funds to pay for the project?  
26  
27

28 *The Court should order that all owners shall pay annual deposits to a Reserve*

1           *Fund for future planned periodic resurfacing, including preparation for*  
2           *resurfacing.*

3  
4       12. Discount for Undeveloped Properties. The MDA RMA assesses undeveloped  
5       parcels at a 25% rate for road-maintenance expenses. Only 15 parcels that are  
6       not bound by the MDA RMA are undeveloped. Owners of 9 of those 15  
7       undeveloped parcels also own at least one parcel that is developed. If the Court  
8       orders undeveloped parcels to be assessed at a 100% rate and undeveloped  
9       parcels to be assessed at a 25% rate, owners of those 9 undeveloped parcels  
10      will clearly be paying at least their fair share for the wear-and-tear that they  
11      cause to the road. Owners of the other 6 undeveloped parcels cause essentially  
12      no wear-and-tear to the road – at a 25% assessment rate, they will clearly be  
13      paying their fair share as well.


14  
15  
16           *The Court should order that undeveloped parcels shall be assessed for road-*  
17           *maintenance expenses at a 25% rate.*

18  
19       13. Mount Dallas Community. When I moved to San Juan Island in August, 2012, I  
20       was welcomed into the community. I attended my first MDA Annual Meeting in  
21       September, 2012, and volunteered to serve on the MDA Board. I quickly learned  
22       that islanders are do-it-yourselfers and are always willing to help out a neighbor.  
23       That is part of the appeal of living on San Juan Island -- in particular, on Mount  
24       Dallas. The Mount Dallas community has pulled together to work through this  
25       lawsuit, with neighbors contributing in various ways according to their skills and  
26       financial means. At least 29 property owners have contributed to the MDA's  
27  
28

1 Legal Defense Fund to help the MDA fight this lawsuit. The high percentage  
2 (69%) of property owners who have signed Joinders to the MDA RMA, the high  
3 percentages (72% - 75%) of property owners who signed petitions concerning  
4 the various issues, and the high percentage of property owners who pay their  
5 fair share of assessments, all clearly indicate strong support of the MDA and its  
6 RMA.  
7

8  
9 14. I believe that the Court should order owners who have not consented to the  
10 MDA RMA to pay road-maintenance expenses, administrative expenses, and  
11 Firewise expenses according to exactly the same terms that already bind  
12 owners who have consented to the MDA RMA, including a 25% assessment rate  
13 for undeveloped parcels, and annual deposits to a Reserve Fund for periodic  
14 resurfacing.  
15

16  
17 I declare under penalty of perjury under the laws of the state of  
18 Washington that the foregoing is true and correct and that this Declaration was  
19 executed at Friday Harbor, Washington on 6-23-, 2017.  
20

21  
22   
23 Susan Allen  
24