

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

SANDY POINT IMPROVEMENT
COMPANY,

Respondent.

DOCKET UW-121408

DECLARATION OF ANGELIA WESCH

I, ANGELIA WESCH, hereby declares and states as follows:

1. I am over the age of 18 and otherwise competent to testify herein and I have personal knowledge of the facts stated herein.
2. I am an attorney in private practice in the state of Washington. I have been licensed to practice law in Washington since 1993. I am also licensed to practice in Texas and Alaska and was originally licensed in 1989 in Texas. I have provided legal advice to real estate developers, homeowners associations, and condominium associations relating to property acquisition, development, documentation, and governance issues for more than 24 years. A copy of my CV is attached.
3. As part of my representation of clients, I have had to become familiar with the relevant statutory framework within which homeowners associations govern themselves.

4. RCW 64.38 provides the statutory framework relating to homeowners associations. Although the statute provides few annotated cases upon which to rely in determining whether or not an organization falls within the definition of a homeowners association, the statute defines a “homeowners association” as a “corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association’s jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member.” RCW 64.38.010(11). In practice, these criteria provide a basic framework for a determination that an entity by form and function acts as a “homeowners association”.

5. The definition section in RCW 64.38.010 is not restricted to only the functions identified in the definition; what constitutes a homeowners association is best defined by how it functions and operates. Governance is the key to understanding whether the entity created is intended to function as a homeowners association or is intended to serve some other purpose.

6. What constitutes being “within the association’s jurisdiction” is not defined within RCW 64.38; however, the association’s governing documents are essential to an understanding of how the association is intended to function.

7. RCW 64.38 does not specify all owners must have equal voting rights or interests to qualify as a homeowners association. In fact, in my experience in drafting documentation used by developers and property owners to create a homeowners association, different voting shares or rights are utilized to allow for a smooth governance transition after the developer attains a certain percentage of sales or transfers of interests. Size of lot owned or type of ownership interest may also dictate when developer turnover occurs and the association begins to govern on its own after the period of developer control ends. It is common to allow for different share votes

or classification of voting rights in creating the relevant association documents such as covenants, conditions and restrictions, easement rights, Articles of Incorporation and Bylaws.

8. RCW 64.38.015 defines association membership as “the owners of all real property over which the Association has jurisdiction, both developed and undeveloped.” No guidance or annotations are provided as to when the association is determined to have “jurisdiction over property.” The association’s governing documents play a pivotal role in determining whether a group of real property owners function as a “homeowners association.”

9. I have been retained by the Sandy Point Improvement Company to provide an opinion as to whether or not the governing documents relevant to Sandy Point Improvement Company support a determination that the Sandy Point Improvement Company functions as a “homeowners association” as set forth in RCW 64.38.

10. I have reviewed the following documents, provided by Sandy Point Improvement Company:

- Amended and Restated Articles of Incorporation of Sandy Point Improvement Co., dated February 10, 2012, and file stamped by the Washington Secretary of State’s Office February 13, 2012.
- Restated Bylaws of Sandy Point Improvement Co., dated November 2012.
- Plat map of Bolster’s Sandy Point Tracts, together with a copy of Declarations of Protective Covenants and Restrictions for same dated September 13, 1957.
- Plat map of Bolster’s Sandy Point Tracts No. 2, together with a copy of building restrictions, easements and reservations for same dated September 7, 1967 (titled “Covenants” in handwriting).
- Plat map of Bolster’s Sandy Point Tracts No. 3, together with a copy of Declarations of Protective Covenants and Restrictions for same dated June 1, 1958.

- Plat map of Bolster's Sandy Point Tracts No. 4, together with a copy of Declaration of Protective Covenants and Restrictions for same dated February 6, 1963.
- Plat map of Sandy Point Garden Tracts, together with copies of a Dedication and Declarations of Protective Covenants and Restrictions for same dated September 13, 1957.
- Plat map of Sandy Point Shores No. 1, together with a copy of Declaration of Restrictions, Easements and Reservations for same dated August 1, 1966.
- Plat map of Sandy Point Shores No. 2, together with a copy of Amendment to Declaration of Restrictions, Easements & Reservations for same notarized on May 2, 1980, with attached initial Declaration of Restrictions, Easements & Reservations dated June 13, 1967.
- Plat map of Sandy Point Shores No. 3, together with a copy of Amendment to Declaration of Restrictions, Easements and Reservations for same dated April 9, 1980, with attached initial Declaration of Restrictions, Easements & Reservations dated August 17, 1967.
- Plat map of Sandy Point Shores No. 4, together with a copy of Declaration of Restrictions, Easements and Reservations for same dated May 20, 1968.
- Plat map of Sandy Point Heights, together with a copy of Declaration of Restrictions, Easements, and Reservations for same dated December 10, 1982.
- Plat map of Neptune Heights, together with a copy of Declaration of Restrictions, Easements and Reservations for same dated August 31, 1970, and amendments and corrections thereto.
- Plat map of Sandy Point Arm, together with a copy of Amendment and Restatement of Covenants, Restrictions and Easements for same dated August 14,

1990, and Declaration of Restrictions, Easements and Reservations dated May 3, 1971.

- Copies of assessor's maps of the Sandy Point area (11 pages).
- Articles of Incorporation of Sandy Point Improvement Co. filed with the Washington Secretary of State on April 22, 1965, together with Articles of Amendment and Articles of Reduction of Capital Stock filed October 31, 1966.
- Miscellaneous statutory warranty deeds.
- Sale Agreement between Sandy Point Co. (Seller) and R. E. Rogers, Stuart Rogers, and Robert R. Walker (Purchasers), dated April 8, 1965.
- Amendment to Sale Agreement, dated June 4, 1965.
- Second Amendment to Sale Agreement, dated April 29, 1966.
- Assignment of Easement, from Sandy Point Co. as Grantee to R. E. Rogers, Stuart Rogers, and Robert R. Walker as Assignee, dated June 4, 1965.
- Assignment Approval and Hold Harmless Agreement among R. D. Metcalf and Shirley M. Metcalf, and R. W. Walker, S. E. Rogers, and Stuart Rogers notarized May 28, 1965.
- Assignment of Water Permit and Franchise between James F. Bolster as Assignor and R. E. Rogers, Stuart Rogers, and Robert R. Walker as Assignee, dated June 4, 1965.
- Real Estate Contract between Sandy Point Co. as Seller and R. E. Walker and others as Purchaser recorded July 10, 1967.
- Statutory Warranty Deed between Sandy Point Co. as Grantor and R. E. Rogers, Stuart E. Rogers, and Robert R. Walker dated April 4, 1967.

- Notice to Public of Water System Connection and Continuation Charges concerning Sandy Point Improvement Company water service area dated March 9, 1984.

11. Several of the documents reviewed include language that is specifically included in homeowner association covenants, conditions, and restrictions. These include, but are not limited to, building restrictions, *Declaration of Restrictions, Easements and Reservations for Sandy Point Shores No. 1, recorded under Auditor's recording number 1012290*, land use restrictions, easements and reservations, and right to injunctive relief procedures for amendment.

12. The building restrictions are so specific as to require submittal of all plans and specifications to the Sandy Point Improvement Company. The requirements are very detailed, akin to a functioning architectural control committee for a homeowners association: location of the structure, elevation, lot grade, general design, interior layout, exterior materials finish and color, and allowing the Sandy Point Improvement Company to establish standards involving aesthetic consideration of harmony of structure and color which it determines to be in the best interest of providing for an attractive development. *Amendment to Declaration of Restrictions, Easements & Reservations, Sandy Point Shores No. 2, recorded under Auditor's recording number 1356343.*

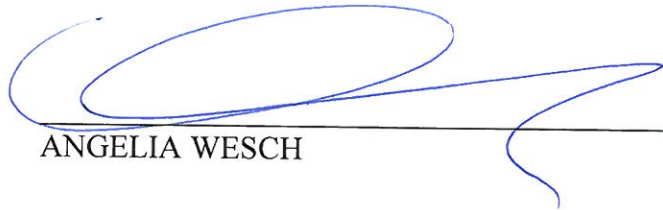
13. All owners are within the association's jurisdiction and subject to the governance requirements and authority of the Sandy Point Improvement Company Board of Directors. The framework is similar in form and function to a master association that grants rights and duties to a board of directors created to govern all owners of residential real property located within the association's jurisdiction. All types of owners with differing classes of ownership within the Sandy Point Improvement Company have voting rights and all owners can serve on the Sandy Point Improvement Company Board of Directors. This function is consistent with the treatment

of similar homeowner associations I have created on behalf of my clients and for whom I have been asked to interpret, revise, and prepare their governing documents.

14. After review of extensive documents recorded and prepared to assist the Sandy Point Improvement Company with its internal governance and operations, it is my opinion that the Sandy Point Improvement Company acts and functions as a “homeowners association” as defined by RCW 64.38.010(11).

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of May, 2013, at Olympia, Washington.



ANGELIA WESCH

ANGELIA D. WESCH ----CURRICULUM VITAE

Phillips Wesch Burgess PLLC, 724 Columbia St. NW, Ste. 140, Olympia, WA 98501 | 360-742-3500 | awesch@pwblawgroup.com

EDUCATION

Texas Tech University J.D. Law Review, Moot Court	1989
University of Texas at Austin B.A, with honors in History	1986

PROFESSIONAL EXPERIENCE

Phillips Wesch Burgess PLLC-	2012-present
<ul style="list-style-type: none">• Co-founder of law firm practicing exclusively in business, real estate, land use, environmental and related insurance coverage law.• 20+ years experience advising developers, homeowners associations, property management firms and construction clients in high value real estate transactions, significant retail, commercial, residential and mixed-use development projects.• General Counsel to one of the Puget Sound's largest property management firms providing advice on documentation, statutory compliance, homeowner association governance and liability issues to hundreds of neighborhood associations across Washington.	
Eisenhower Carlson PLLC-Tacoma, WA	1997-2011
<ul style="list-style-type: none">• Member 2000-2011, Chair, Real Estate and Land Use Practice Group, Executive Committee	
Stanislaw Ashbaugh –Seattle, WA	1993-1997
<ul style="list-style-type: none">• Associate attorney, Real Estate and Land Use/Construction Group	
Andrews Kurth LLP—Houston, TX	1989-1993
<ul style="list-style-type: none">• Associate attorney, Litigation and Appellate Sections	

PROFESSIONAL AFFILIATIONS AND MEMBERSHIPS

Commercial Real Estate Women, Seattle and Sound Chapter	1994-present
<ul style="list-style-type: none">• Chapter President• National CREW Network, Board of Directors• South Sound chapter steering committee	
NAIOP (National Association of industrial and Office Properties), South Sound Chapter Member of state bars of Washington, Texas (inactive status) and Alaska (inactive status) Washington State Bar-Environmental and Land Use Section	2012-present