

**NO. 73725-2**  
**IN THE COURT OF APPEALS**  
**OF THE STATE OF WASHINGTON**  
**DIVISION I**

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**ROBERT WILBUR and DUSTIN FREDERICK,**

**Plaintiffs,**

**vs.**

**ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation; and**  
**JEAN SALLS, MARIA CHAMBERLAIN, KAREN SHAAK, ROBERT PEETZ,**  
**ELSA PALMER, ED DELAHANTY AND DAN JONES, individuals,**

**Defendants.**

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**SUE CORLISS,**

**Intervenor/Appellant,**

**vs.**

**DUSTIN FREDERICK; ROBERT WILBUR; ADMIRAL'S COVE BEACH CLUB,**  
**a Washington non-profit corporation; and its BOARD OF DIRECTORS,**

**Respondents.**

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**APPEAL FROM ISLAND COUNTY SUPERIOR COURT**  
**Honorable Alan R. Hancock, Judge**

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**MOTION FOR RECONSIDERATION OF RESPONDENT**  
**ADMIRAL'S COVE BEACH CLUB BOARD OF DIRECTORS**

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**REED McCLURE**

**By Christopher J. Nye            WSBA #29690**

**Marilee C. Erickson        WSBA #16144**

**Attorneys for Respondent Admiral's**  
**Cove Beach Club Board of Directors**

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## **I. IDENTITY OF MOVING PARTY**

The Board of Directors of a non-profit corporation, Admiral's Cove Beach Club ("ACBC"), seeks the relief designated in part II.

## **II. RELIEF SOUGHT**

Pursuant to RAP 12.4, ACBC respectfully requests that the Court reconsider its opinion and reinstate the superior court's decision. ACBC also asks this Court to modify its decision to correct a misstatement of fact.

## **III. FACTS RELEVANT TO MOTION**

On August 1, 2016, Division I of the Washington State Court of Appeals issued its decision. The decision held:

We conclude that the Club's current governing documents give it the power to remove or decommission the pool. We also conclude that the October 2012 motion did not prohibit the Club from allowing the members to vote whether to remove the pool. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

Decision at 11 (copy attached as Appendix A).

## **IV. GROUNDS FOR RELIEF AND ARGUMENT**

### **A. THE FACTS SECTION CONTAINS AN INCORRECT STATEMENT.**

The statement of facts section of the decision states: "Owners of lots within the plat are eligible for membership in the Admiral's Cove Beach Club." Decision at 2. This sentence misstates the facts. An owner

of property in Admiral's Cove is a Club member. A member may lose eligibility to vote, but a member does not lose the membership status.

The Bylaws expressly provide that "Active Members shall be owners of property in Admiral's Cove Development, Division 1 through 7." CP 703 - Bylaws, Article III, § 2. Active Members do not lose their membership status so long as they own real property in Admiral's Cove. Active Members can lose the status of "Good Standing." CP 703 - Bylaws, Article III, § 4. "Good Standing" requires a member to have paid all dues and assessments. *Id.* An Active Member who is not in "Good Standing" is ineligible to vote. CP 705 - Bylaws, Article V, § 1. An Active Member or an Associate Member who has failed to pay dues also loses the right to the Club privileges, including use of the swimming pool. CP 704 - Bylaws, Article III, § 6.

Accordingly, ACBC respectfully requests that this Court modify its decision by striking the second sentence in the Facts section and substitute the following sentences: "Owners of lots within the plat are Active Members in the Admiral's Cove Beach Club (Club), a nonprofit corporation. The Club has two classes of members, Active and Associates. Both classes of members have the rights and privilege to use Club facilities and the swimming pool if current in their payment of dues and any assessments."

**B. THE 2013 VOTE IS INVALID BECAUSE THE BALLOT FAILED TO INCLUDE A “NO” OPTION.**

This Court’s decision states “Wilbur fails to establish the invalidity of the May 2013 vote.” Decision at 9. The Court did not, however, address the fundamental reason why the 2013 vote is invalid: the ballot did not give the members the option of voting against an assessment. The 2013 ballot automatically imposed an assessment. The only option was whether the assessment was high or low. CP 874, 1193.

The Bylaws require a member vote for special assessments (i.e., assessments that increase 10 percent or more from the prior assessment). CP 709 - Bylaws, Article VIII, § 7. Logically the members must be allowed to vote for or against an assessment. In other words, any ballot that presents a special assessment must contain an option to vote against imposition of the assessment. The 2013 ballot contained only two options—an assessment to improve the pool at a cost of \$650,000 or an assessment to demolish the pool at a cost of \$200,000. CP 874. Members were not provided with an option to vote no on the assessments. CP 874, 1193. The lack of a “no” option rendered the 2013 ballot defective. A vote on a defective ballot is not valid and cannot stand. ACBC respectfully requests that this Court reconsider and revise its decision to

hold the 2013 ballot and vote were defective and invalid as a matter of law.

**C. THIS COURT'S DECISION IMPERMISSIBLY ALLOWS AN AMENDMENT TO THE CLUB'S PURPOSE WITHOUT THE REQUISITE TWO-THIRDS MAJORITY VOTE.**

This Court has concluded that the swimming pool constitutes property and the Board has the authority to dispose of property. The swimming pool admittedly fits within the definition of property. Yet, the decision has a broader effect because the swimming pool is not just any property. The swimming pool is a special category of property under the club's governing documents. It is a recreational facility. By concluding the Board can by ballot and a simple majority vote dispose of the swimming pool, this Court's conclusion ignores significant applicable provisions of the governing documents and impermissibly changes the Club's purpose and object without a two-thirds majority vote.

Article VII of the Articles of Incorporation states:

The purpose for which this corporation is created and/or these Articles of Incorporation may be altered, modified, enlarged or diminished by the vote of two-thirds (2/3rds) of all of the members at a meeting duly called for such purpose, notice of which meeting shall be given in the manner provided by law for the giving of notice for the meetings of members.

CP 699. The purpose and object of the corporation, i.e., the Club, is stated in the Bylaws. The Club was created to provide and operate recreational facilities. Article II, Section 1 states:

OBJECT – The object of the Club shall be to:

- a. Provide and operate recreational facilities for the benefit of the members.
- b. Procure, maintain, operate, and protect the recreational (and associated safety) concerns of the members of the community of Admiral's Cove, subject to the approval of the members of the Club.

CP 703.

Article V, Section 1 of the Articles of Incorporation includes a similar statement of the Club's object and purpose:

To construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefits of the members.

CP 698.

This Court stated that interpreting the pool as “an athletic and recreational facility” is strained because (a) the pool is included in property and the Articles and Bylaws do not exclude the pool from disposal by the Club, and (b) other sections of the Bylaws show intent that the phrase “property and assets” includes the “pool.” Decision at 10. Yet, this Court's decision refers to only one section of the Bylaw section: Article III, § 7. The decision construes this section to mean that once

property is sold, the rights of membership, including the use of the swimming pool, end.

Article III, § 7 deals with Active Membership only. CP 704. Article III, § 7 does state that Active Membership ends when property is sold or transferred and that upon sale or transfer, there is no entitlement to share or participate in any of the property or assets of the Club. *Id.* This Court construed the sentence to mean use of the pool.

The Court's construction and interpretation of Article III, § 7 ignores that the Club consists of two classes of members: Active and Associate. Article III, § 7 deals only with Active members. Associate members do not own property in Admiral's Cove. CP 703 - Article III, § 3. Club privileges and property are available to all Active and Associate Members and their families who are current in their dues and any assessments. CP 704 - Article III, § 6. Guests (which expressly excludes any member who is not in good standing) have Club privileges when accompanied by a Member. Guest privileges include use of the swimming pool for a daily fee. CP 704.

Therefore, contrary to the decision, use of Club privileges and property does not necessarily end when a person sells his or her property in Admiral's Cove. A person may continue to enjoy Club privileges and use Club property, including recreational facilities as an Associate

Member. Therefore, the superior court correctly ruled that the pool fits within the specific term recreational facility, not the general term property.

Bylaws and articles are to be construed together because they are “correlated documents.” *Rodruck v. Sand Point Maintenance Commission*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956). The “correlated documents” are construed as contracts. *Save Columbia CU Committee v. Columbia Community Credit Union*, 134 Wn. App. 175, 181, 139 P.3d 386 (2006). The “correlated documents” are construed as a whole. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 669-70, 15 P.3d 115 (2000).

More importantly, this Court’s decision overlooks the overriding purpose of the Club: providing and operating recreational facilities. Recreational facilities are specific terms, not general terms. The specific terms shall be given greater weight. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 354–55, 103 P.3d 773 (2004). By using the terms “recreational facilities,” the Bylaws reveal an intent to treat recreational facilities as something more significant than mere “property.” CP 703.

The words are also to be given their plain meaning. *Hearst Commc’ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). The adjective recreational comes from the word recreation. Recreation means “refreshment of strength and spirits after work; *also* : a



means of refreshment or diversion: HOBBY.” WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY at 985 (1984). Facility is defined as: “something (as a hospital) that is built, installed, or established to serve a particular purpose.” *Id.* at 444. The swimming pool certainly meets the ordinary definition of a recreational facility.

While the Board has power to dispose of property, when the property is a recreational facility that requires a special assessment, any vote must pass by a two-thirds majority because disposing of the recreational facility alters the purpose and object of the Club. Assuming the 2013 ballot and votes were valid, there was not a two-thirds majority vote to remove the pool, i.e., amend the Club’s purposes. Accordingly, the 2013 vote cannot be implemented. ACBC respectfully requests that this Court reconsider and revise its decision to hold that the 2013 vote was a vote to amend the Club’s purpose and because the vote did not obtain a two-thirds majority, the 2013 ballot result is unenforceable.

**D. THE MARCH 2016 VOTE SUPERSEDES THE 2013 VOTE.**

Allowing the 2013 vote to stand conflicts with current circumstances. The results of a March 2016 ballot regarding the pool reflect the will of the current Club membership. The March 2016 vote supersedes the 2013 vote.

Corliss appealed in June 2015. (CP 1-2) No request was made to the superior court or to this Court to stay enforcement of the May 2015 order. The Board, relying on Judge Hancock's May 2015 order ("Order"), proceeded to act to fulfill its obligation "to maintain, repair and operate the swimming pool and its related facilities in a reasonable manner." (CP 18) The Board discussed swimming pool renovations and upgrades at numerous open public Board meetings and at the annual Members' meetings. See Declaration of Ed Delahanty in Support of ACBC's Opposition to Appellant's RAP 8.3 Motion ("Delahanty Dec.") ¶ 5, attached as Appendix B.

The Board evaluated renovation strategies and cost, engaged a consultant who evaluated regulatory constraints, contractor bids, other costs and prepared a budget and plan for the project. After the consultant's presentation at the annual Members meeting the Board carefully constructed a pool renovation assessment ballot with support materials for the consideration of the Members in Good Standing. See Delahanty Dec. ¶¶ 7-8.

The ballot provided two assessment propositions: Proposition 1, Pool Renovation and Proposition 2, Heat Pump Option. The 2016 ballot, unlike the deficient 2013 ballot, did not automatically impose a special assessment. Unlike the 2013 vote, the 2016 ballot allowed members to

vote either Yes or No on each proposition. See Delahanty Dec. ¶¶ 10-11, Exhibit A. The March 2016 ballot proposition for repair and renovation of the pool passed by a 7 percent margin. The heat pump option failed. See Delahanty Dec. ¶ 14.

The March 2016 vote supersedes the 2013 vote. Since the 2013 vote, the membership of the Club has changed. Members who voted in 2013 have since sold their lots in Admiral's Cove. The persons who purchased those lots became Members who then voted on the 2016 ballot. This Court's Commissioner implicitly recognized the validity of the 2016 vote in her June 3, 2016, ruling on the motion to stay. The current assessment based on the valid 2016 ballot and vote supersedes the defective 2013 ballot and vote.

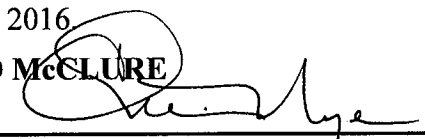
#### V. CONCLUSION

ACBC respectfully asks this Court to reconsider its decision and affirm the superior court's decision. ACBC also asks the Court to modify the decision as set forth above.

DATED this 22 day of August, 2016.

**REED McCLURE**

By

  
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

ROBERT WILBUR and DUSTIN FREDERICK,	)	No. 73725-2-1
	)	
Plaintiffs,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation; and JEAN SALLS, MARIA CHAMBERLAIN, KAREN SHAAK, ROBERT PEETZ, ELSA PALMER, ED DELAHANTY and DAN JONES, individuals,	)	FILED: August 1, 2016
	)	
Defendants,	)	
	)	
SUE CORLISS,	)	
	)	
Appellant,	)	
	)	
DUSTIN FREDERICK, ROBERT WILBUR, ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation, and its BOARD OF DIRECTORS,	)	
	)	
Respondents.	)	
	)	

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LEACH, J. — In this dispute regarding interpretation of a nonprofit corporation's governing documents, intervenor Susan Corliss appeals from an order granting partial summary judgment and a declaratory judgment in favor of Robert Wilbur. Because Wilbur failed to establish that he was entitled to such a judgment as a matter of law, we reverse and remand for further proceedings.

## FACTS

The Plat of Admiral's Cove, Divisions 1 through 7, is located on Whidbey Island. Owners of lots within the plat are eligible for membership in the Admiral's Cove Beach Club (Club), a nonprofit corporation. Incorporated in 1969, the Club governs the development. Club members enjoy the use of Club-owned recreational facilities, including an outdoor Olympic-sized pool with views of Puget Sound and the Olympic Mountains. The Club owns other recreational assets: a large waterfront beach area, fire pit and picnic area, volleyball and basketball courts, and a playground.

A Board of Directors (Board), elected by the members at the Club's annual membership meeting, manages the Club's day-to-day operations. The Board levies annual dues and is authorized to propose "special assessments" for unexpected costs or maintenance "at any time." A simple majority vote is required to impose special assessments on Club members. Club members vote by mail-in ballot.

Article V of the Club's articles of incorporation state its "purposes, objects and powers." Pertinent to this lawsuit, these include the power:

1. To construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefit of the members.

4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property . . . .

5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets.

The articles of incorporation make no specific reference to a pool, but the Club's bylaws do. The Club's bylaws list two objectives: to "[p]rovide and operate recreational facilities for the benefit of the members" and to "procure, maintain, operate, and protect the recreational (and associated safety) concerns of the members of the community." The bylaws also establish six standing committees. Two are devoted to the pool. The Pool Operations and Safety Committee "set[s] policies for operation of the club swimming pool, and establish[es] and enforce[s] safety rules and procedures." The Pool Maintenance and Improvement Committee is responsible for "maintenance of the Club Swimming Pool and the operating machinery, the buildings housing the pool equipment, rest rooms, office and fence enclosing the pool complex, pool supplies, heating, lighting, etc." and "shall obtain estimates as necessary for accomplishing such maintenance."

Over time, the pool fell into a state of disrepair. By 2012, it was largely unusable. At the Club's October 2012 annual meeting, the members unanimously passed the following motion:

By November 10, 2012, Pool Planning by members of the Pool Maintenance, Long Range Planning and Budget Committees will work with a nonresident facilitator, as an ex-officio team member and may consult with legal counsel as warranted . . . .

Under the overall objective of having the pool open as soon as a funding and construction schedule allow, the committees shall have three (3) tasks to complete by February 28, 2013, or sooner:

(1) To identify and evaluate various options related to the pool's future, including but not limited to needed equipment, a permanent pool cover, and repairs to the pool and its building, foundation, plumbing, and electrical system, and to recommend the best cost and timing options. A basic and simple plan to identify projects for contractor bidding shall be developed to guide these efforts; the plan shall also recommend an implementation schedule for ADA [Americans with Disability Act] compliance from both a financial and legal standpoint.

(2) Investigate and develop payment options related to assessment costs and dues under task one and to select the approach that produces the best balance between recreational benefits and costs to members. The assessment total will be offset by the amount of donations accumulated for that purpose.

(3) Upon completion of tasks 1 and 2, the committees shall submit the findings to the Board and subsequently work with Board as appropriate.

Over the next several months, committee members held meetings and gathered cost estimates. A consultant's inspection revealed widespread problems with the pool and pool buildings, and the consultant recommended significant renovations at a cost of approximately \$650,000. The committee presented this information to the Board.

In May 2013, the Board sent a ballot to all Club members for a vote about the pool's future. The ballot presented two choices: (1) "refurbish, remodel and update the pool," requiring a special assessment of approximately \$650,000, or (2) "remove the pool," requiring a special assessment of approximately \$200,000. The Board included a two-page "Frequently Asked Questions" document explaining various options and

issues related to the vote. In a relatively close vote, a majority of Club members voted to remove the pool instead of refurbish it.

In September 2013, Robert Wilbur, a “pro-pool” Club member, filed a lawsuit against the Club seeking a declaration that (1) the May 2013 vote was invalid because it was inconsistent with the October 2012 motion and (2) the Club’s articles of incorporation and bylaws did not permit the Board to remove or decommission the pool. Wilbur also sought an injunction restraining the Club from taking any action to remove the pool.

Wilbur moved for summary judgment. The Club took “no position” on the motion and asked the trial court to issue a declaratory ruling clarifying its legal responsibilities regarding the pool.<sup>1</sup> Corliss, an “anti-pool” Club member, intervened and filed a cross motion for dismissal of Wilbur’s complaint.

The trial court granted partial summary judgment in favor of Wilbur and issued the following declaratory judgment:

1. The Admiral’s Cove Beach Club (“ACBC”) swimming pool and related facilities are among the athletic and recreational facilities contemplated under Article V of the Articles of Incorporation of ACBC which provides that the purpose of ACBC is “[t]o construct, install, maintain and/or own and operate athletic and recreational facilities of all types and kinds for the benefits of the members.”

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<sup>1</sup> After Wilbur filed his complaint but prior to the summary judgment hearing, Club members held their annual elections and replaced several “anti-pool” directors with “pro-pool” candidates.



2. ACBC and its Board of Directors must adhere to the requirements and directives set forth in the motion that was made and approved at the Defendant's annual membership meeting on October 27, 2012, unless said motion is properly repealed or amended to remove the duties of the Board of Directors and ACBC, which duties are presently embodied in this motion. That particular motion, as approved, does not contain language that could be construed to permit the demolition or decommissioning of the swimming pool or related facilities as an option for the membership's future consideration.
3. The prior Board's action to present a ballot to the membership with the option to decommission the pool was contrary to the October 27, 2012, motion. It was therefore invalid and of no force and effect.
- .....
6. In consideration of the applicable provisions of the Articles of Incorporation and Bylaws, the context in which they were promulgated, the circumstances surrounding their promulgation, and the other rules for their interpretation, the general power to dispose of property as set forth in the Articles of Incorporation and Bylaws governing ACBC, does not provide authority to the Board to dispose of the ACBC swimming pool and related facilities.
7. Any vote on a motion or other action item submitted to the membership at a regular or special meeting of the membership that would result in the demolition or decommissioning of the ACBC swimming pool, would be invalid and of no effect unless the governing documents of ACBC were first properly amended or changed to allow such action.
8. Under the governing documents as presently constituted, the members of the Board of Directors of ACBC have a legal duty and fiduciary obligation:
  - a. to maintain, repair and operate the swimming pool and its related facilities in a reasonable manner and as may be required by local, state

and federal law and the governing documents themselves; and

- b. to take affirmative action, consistent with the governing documents of Admiral's Cove Beach Club, to budget for and raise funds through properly authorized dues and assessments to carry out these duties.

- 9. The Board's duties in this regard include sufficient budgeting and funding decisions that will allow for the future and continued operation and maintenance of the swimming pool and related facilities.

The trial court denied Wilbur's request for injunctive relief. Corliss appeals.<sup>2</sup>

#### ANALYSIS

##### I. Necessary Parties

As a preliminary matter, we address Corliss's claim that the trial court lacked the authority to enter a declaratory judgment because Wilbur failed to join all Club members as necessary parties. Corliss relies on RCW 7.24.110. This statute requires that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." A "necessary party" for a

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<sup>2</sup> In her assignments of error, Corliss challenges the grant of partial summary judgment in favor of Wilbur and the denial of her motion for summary judgment dismissal. However, the trial court did not deny Corliss's motion. Corliss failed to renege her motion following a request for a continuance, and it was not properly before the trial court at the time of the hearing. Instead, the trial court declined to rule on Corliss's cross motion as moot.

declaratory judgment action is one “whose ability to protect its interest in the subject matter of the litigation would be impeded by a judgment.”<sup>3</sup>

We disagree with Corliss. There are only two positions in this case: that the Club has the authority to remove the pool or that it does not. Both positions are adequately represented by the parties to the case. The joinder of additional Club members as parties was not necessary to resolve this controversy.

## II. Summary Judgment

We review the grant of summary judgment de novo.<sup>4</sup> Summary judgment is appropriate only if the moving party is entitled to judgment as a matter of law.<sup>5</sup> We interpret the governing documents of a corporation in accordance with accepted rules of contract interpretation.<sup>6</sup> We give the words in a contract their plain, ordinary meaning unless the contract as a whole clearly demonstrates a contrary intent.<sup>7</sup> Articles of incorporation and bylaws are “correlated documents” that are construed together.<sup>8</sup> “[S]ummary judgment is proper if the parties’ written contract, viewed in light of the parties’ other objective manifestations, has only one reasonable meaning.”<sup>9</sup>

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<sup>3</sup> Primark, Inc. v. Burien Gardens Assocs., 63 Wn. App. 900, 907, 823 P.2d 1116 (1992).

<sup>4</sup> Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

<sup>5</sup> CR 56(c).

<sup>6</sup> Roats v. Blakely Island Maint. Comm’n, Inc., 169 Wn. App. 263, 273-74, 279 P.3d 943 (2012).

<sup>7</sup> 4105 1st Ave. S. Invs., LLC v. Green Depot WA Pac. Coast, LLC, 179 Wn. App. 777, 784, 321 P.3d 254, review denied, 181 Wn.2d 1004 (2014).

<sup>8</sup> Roats, 169 Wn. App. at 274 (quoting Rodruck v. Sand Point Maint. Comm’n, 48 Wn.2d 565, 577, 295 P.2d 714 (1956)).

<sup>9</sup> Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003) (quoting Hall v. Custom Craft Fixtures, Inc., 87 Wn. App. 1, 9, 937 P.2d 1143 (1997)).

First, we consider if the Board had the authority to present Club members with the option of voting to remove the pool. We conclude that it did.

The October 2012 motion required the establishment of a committee to identify needed repairs, investigate costs, and submit this information to the Board. Wilbur does not dispute that the committee performed its assigned task. Instead, Wilbur contends the Board ignored the committee's findings and presented the Club's members with the option to remove the pool, a choice not contemplated by the motion. He argues that this option is inconsistent with the motion's stated objective of "having the pool open as soon as a funding and construction schedule allow." But the October 2012 motion governed only the actions of the committee. It did not impose any duties or constraints on the Board. And the Club's bylaws permit the Board to present special assessments to the members for a vote "at any time," regardless of whether they have been approved by motion. As a matter of law, Wilbur fails to establish the invalidity of the May 2013 vote.

Corliss also asserts that the Club has the authority, pursuant to its governing documents, to remove the pool at any time. We agree.

The articles of incorporation expressly give the Club the power to "sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of the property and assets."<sup>10</sup> "Dispose of" is defined as "to transfer into new hands or to

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<sup>10</sup> This language is identical to that found in RCW 24.03.035(5), which provides that any nonprofit corporation has the power to "sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets."

the control of someone else (as by selling or bargaining away) . . . to get rid of: throw away: discard . . . to treat or handle (something) with the result of finishing or finishing with.”<sup>11</sup> Thus, a plain reading of the Club’s governing documents demonstrates the Club has the broad authority to remove or decommission any of its “property and assets.”

Wilbur argues that the words “property” and “assets” are general terms that do not include the pool. Instead, Wilbur contends, the pool is an “athletic and recreational facility” which the articles of incorporation require to be “maintained and operated.” We find this interpretation strained. First, the articles of incorporation state that the Club may dispose of “all or any part” of the property. This phrase states that anything the Club owns is subject to disposal. The articles of incorporation do not mention the pool by name or specifically exempt the pool from disposal. Second, the use of the phrase “property and assets” elsewhere in the bylaws shows an intent that these words include the pool. For example, article III, section 7 of the bylaws, which provides that Club membership is appurtenant to ownership of property in Admiral’s Cove, states that “no member whose membership is transferred [through sale or devise of the property] shall be entitled to share or participate in any of the property or assets of the Club.” (Emphasis added.) This clearly indicates that if a Club member ceases to belong to the Club, he or she loses the benefits of Club membership, including use of the swimming pool.

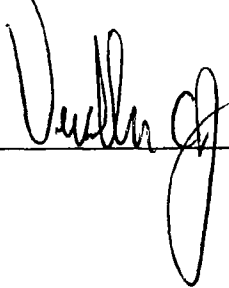
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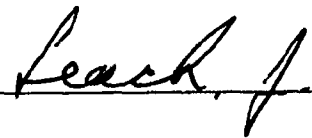
<sup>11</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 654 (2002).

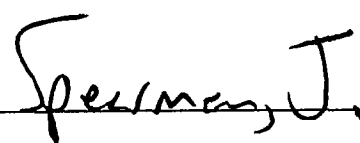
Wilbur argues that because the bylaws establish two committees devoted to pool-related issues, this shows a strong intent to maintain and operate the pool. But the existence of these committees does not guarantee or compel the perpetual presence of a pool.<sup>12</sup> For example, the bylaws also establish a Grounds and Building Committee, which is responsible for maintenance of and improvements to the Club's grounds, including "playfields, playground equipment, the shelter and stoves, picnic tables, flower beds, etc." But this does not mean that the Club lacks the authority to get rid of a broken swing set or a dilapidated picnic shelter.

We conclude that the Club's current governing documents give it the power to remove or decommission the pool. We also conclude that the October 2012 motion did not prohibit the Club from allowing the members to vote whether to remove the pool. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

WE CONCUR:

  
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<sup>12</sup> We note that while Wilbur argued below that he possessed a property interest in the pool, he expressly abandons this claim on appeal.

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

ROBERT WILBUR and DUSTIN  
FREDERICK

Plaintiffs,

vs.

ADMIRAL'S COVE BEACH CLUB,  
a Washington non-profit corporation;  
and JEAN SALLS, MARIA  
CHAMBERLAIN, KAREN SHAAK,  
ROBERT PEETZ, ELSA PALMER,  
ED DELAHANTY AND DAN  
JONES, individuals,

Defendants.

No. 73725-2

DECLARATION OF ED  
DELAHANTY IN SUPPORT  
OF ACBC'S OPPOSITION TO  
APPELLANT'S RAP 8.3  
MOTION

Ed Delahanty, declares as follows:

1. My name is Ed Delahanty and I am the current Vice President of the Board of Directors ("Board") for Admiral's Cove Beach Club ("ACBC"). In May 2015, I was President of the ACBC Board. I am over the age of 18 and competent to testify to the matters herein.

2. Since Judge Hancock issued his May 2015 Order ("Order") and because there has been no request for a stay of enforcement of the Order, the Board has taken steps to comply with the Order.

3. Pursuant to the Order, the Board has acted to fulfill its obligation “to maintain, repair and operate the swimming pool and its related facilities in a reasonable manner.”

4. Since the Order, the swimming pool was open from June through Labor Day 2015 with the approval of the Island County and Washington State Health Departments. The pool will be open again in 2016 subject to the same approvals.

5. The Board has discussed swimming pool renovations and upgrades at numerous open monthly public Board meetings and at the annual Members’ meetings.

6. The minutes of the Board meetings are posted on the ACBC website shortly after each meeting and accessible to anyone who accesses the website.

7. The Board spent much time since the Order carefully developing a ballot to ACBC members about the swimming pool renovation including spending \$13,694 for a construction consultant’s evaluation of pool supplier, electrical and mechanical contractor estimates. This cost was an integral part of estimating the project cost and setting the amount for the assessment ballot.

8. The Board evaluated renovation strategies and cost, engaged a consultant who evaluated regulatory constraints, contractor



bids, other costs and prepared a budget and plan for the project. After the consultant's presentation at the annual Members meeting the Board carefully constructed a pool renovation assessment ballot with support materials for the consideration of the Members in Good Standing.

9. Members in Good Standing are those who are current on assessments and dues. The annual dues for ACBC are merely \$183.50.

10. The ballot provided two assessment propositions: Proposition 1, Pool Renovation and Proposition 2, Heat Pump Option. Members in Good Standing were allowed to vote either Yes or No on each proposition. The ballot was mailed to Members in Good Standing in sufficient time for each to return the ballot by March 11, 2016.

11. Attached as Exhibit A is a true and correct copy of the ballot (hereafter called "March 2016 ballot.")

12. Two additional items were mailed with each ballot: a fact sheet labeled "ACBC Pool Renovation Ballot Q & A" and a brochure. Attached as Exhibit B is a true and correct copy of the fact sheet. Attached as Exhibit C is a true and correct copy of the brochure.

13. ACBC spent at least \$1,700 to print and mail the March 2016 ballot, fact sheet, and brochure.

14. The March 2016 ballot proposition for repair and renovation of the pool passed by a 7% margin. The heat pump option failed.

15. With the passage of the assessments, the Board has spent many hours and much effort determining the procedure and logistics of mailing the billings for the authorized assessments.

16. ACBC members will be offered the opportunity to negotiate a range of payment plans to pay the March 2016 assessment.

17. The billings for the assessments were originally scheduled to be sent in April but have been delayed. The billings for the assessments are expected to be mailed in the near future.

18. All funds collected will be deposited into a special designated account. It is expected that the majority of funds will be collected by late fall or early winter 2016.

19. As the funds are collected, the Board contemplates spending a very small portion of the funds to begin the process of applying for and securing the necessary County and State permits. It is estimated to take four months to secure the permits.

20. The bulk of the funds collected would not begin to be used until early 2017.

21. It is important to be able to proceed with collecting the assessments now so that the Board is ready to fund the detailed planning and drawings, apply for permits, deal with shoreline and environmental issues, and perform the actual renovation before the 2017 swim season.

22. If any part of this process is delayed and ACBC has to wait another year (i.e. until 2018 or later), ACBC will likely incur significant additional costs.

23. ACBC has obtained a project proposal from a project consultant. The project consultant included a 5% cost escalation clause. Using a projected total cost of \$600,000 for the March 2016 member approved pool renovation, a delay until 2018 or later results in a cost increase of at least \$30,000 a year.

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

Dated this 28<sup>th</sup> day of April, 2016, at COUPEVILLE, Washington.

  
ED DELAHANTY

**EXHIBIT A**

## ACBC POOL RENOVATION BALLOT

*Please vote on the two assessment propositions below.*

### **Proposition 1: Pool Renovation**

Shall ACBC assess \$1,000 per perc lot, \$500 per non-perc lot, and approve spending for complete refurbishment of the Admiral's Cove Beach Club Pool?

YES       NO

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### **Proposition 2: Heat Pump Option**

Shall ACBC assess an additional \$113 per perc lot, \$56 per non-perc lot, and approve spending to install heat pumps during the renovation?

YES       NO

---

### **How to submit:**

1. Fold this page and place it in the small confidential white envelope
2. Place the white envelope in the post-paid blue return envelope
3. Fill in your name and address for verification of your vote
4. Mail

**Your ballot must arrive on or before March 11, 2016 to be counted  
Results will be announced at a special Members' Meeting on March 12 at 2pm at the Shelter.**

**EXHIBIT B**

## ACBC Pool Renovation Ballot Q&A

*The ACBC Board of Directors, Pool Committees, Long Range Planning Committee, along with a host of others have worked long and hard to prepare this ballot and ask for your "YES" vote.*

### **Proposition 1: Pool Renovation**

This ballot covers complete renovation of the pool, its decks, plaster surfaces, tiles, railings, plumbing, drains, electrical system and relocation of mechanical equipment. It also covers required safety and access upgrades including two main drains, an ADA compliant lift, and a new entry ramp and gate.

**Assessment: \$1,000 per perc lot                      \$500 per Non-perc lot**

### **Proposition 2: Heat Pump Option**

Adding heat pumps would dramatically reduce energy costs and CO<sub>2</sub> emissions. Even with significant installation costs, including a utility upgrade for power, the initial payback is only 7 years. This is a cost saving and environmentally sound option.

**Assessment: \$113 per perc lot                      \$56 per Non-perc lot**

---

### **Why renovate the pool? Why now?**

Island County Superior Court affirmed in 2015 that we are required to maintain and operate all club facilities under the existing Articles of Incorporation, Bylaws, Covenants and other documents. The pool, built in the late 1960's, has been under-maintained. It now has cracked decking, an abrasive pool surface, uneven stairs, and other deterioration. While it can still be operated with Band-Aid measures, we want it up to current standards, a pool we can be proud of.

### **Where did these numbers come from?**

The Board worked with an experienced consultant/project manager to develop the assessment numbers. Initial bids for the pool work were evaluated then merged with bids for electrical and plumbing work to meet regulatory requirements. Permitting and associated costs were included and some contingency built in. We believe these estimates to be reasonable yet conservative. The consultant's presentation can be found on our website's Documents tab at [www.acbc-whitbey.org](http://www.acbc-whitbey.org).

### **What about the building?**

The building will be addressed in the future. We envision kicking off community sessions to come to a consensus on the many alternatives available to us. The feasibility study done in early 2015 shows a number of options for improving the pool building and the shelter. The Alternative Vision study and member survey identified many potential ways to improve our buildings such as upgrading the outside bathrooms, covering the pool, adding a kitchen, meeting room or exercise room.

### **What is the timing?**

The pool will be open early June into September as it was last year, with construction to take place after the pool season and adequate funds have been collected.

### **But I can't write a check for \$1,000.**

We realize that this is a significant amount of money so help ease the pain, we are offering monthly payment plans spreading payments over up to 6 months with no finance charges. For members who need smaller payments or who have prior unpaid balances, we will offer extended terms by special arrangement. In addition, limited hardship funds are also available to help.

**EXHIBIT C**

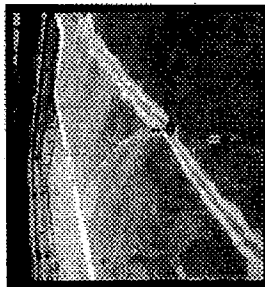


## Why renovate now?

The ACBC pool was built in the 1960's and has had very little maintenance since. Nearly fifty years of wear and tear has left it in dire need of renovation. The Board and many volunteers have worked tirelessly the past two years to get our pool opened for summer, but band-aids can only do so much. Now is the time to complete phase one of our pool and clubhouse renovation for our community to enjoy and for future generations to come.

### Pool Deck

- Exhibits severe weathering, cracking and damage
- Pool deck needs replacing and strip drains installed

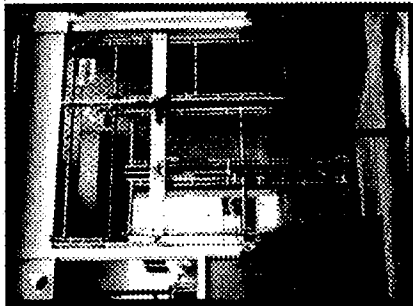


### Pool Surface

- Plaster has worn off leaving a very rough surface
- Tiles severely weathered

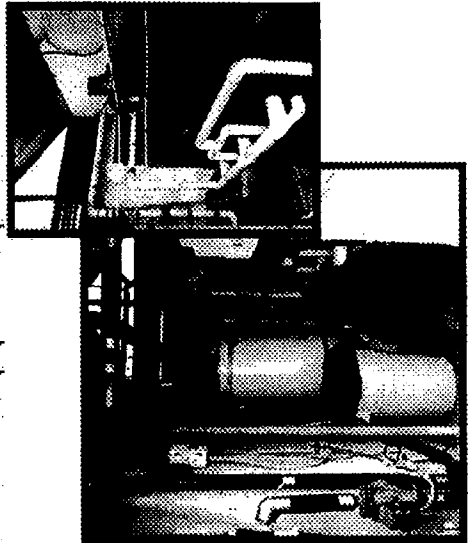
## ADA/Accessibility

- Pool itself does not meet ADA access requirements
- Front entry and ramp do not meet ADA access requirements
- Locking gate needs to be updated for safety and security



## Equipment

- Equipment room needs to be relocated and equipment replaced



## Estimated Costs and Assessments

### Costs

Pool Renovation: \$517,500  
Heat Pump Option: \$58,500

For more information, please see the Pool Renovation Presentation at [ACBC-Whidbey.org](http://ACBC-Whidbey.org)

### Estimated Assessments

#### Pool Renovation:

- Perc Lot: \$1000
- Non-perc Lots \$500

#### Heat Pump Option:

- Perc Lot \$113
- Non-perc Lots \$56

## Payment Options

- One-time payment in full\*
- Up to 6 monthly payments without a finance charge\*
- Alternate payment agreements available

\*As an added incentive, the pay in full option includes 10 individual swim passes for this summer and another 10 for next summer. The 6 monthly payments option includes 5 passes for this summer and 5 for next summer.

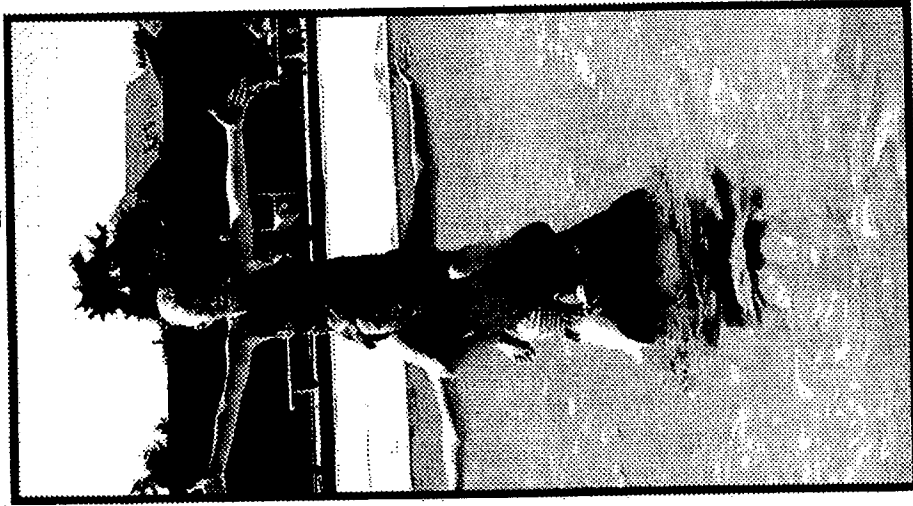
## *What are the benefits of the proposed pool renovation?*

- Pool will be like new with new electrical, plumbing, pool surface, decks, handrails, ladders, and shallow stairs
- The Pool will be ADA compliant, complete with a poolside lift
- Complex entry and gate will be ADA compliant
- Pool drains will comply with all safety standards
- Decks will be replaced and include strip drains
- Equipment will be upgraded and relocated to comply with new safety standards
- Volume of pool will be decreased to reduce heating and chemical costs
- Heat Pump option will result in long term cost savings for pool heating

### *Not to mention...*

- Increased property values
- Pride of ownership of our beach club and pool
- Joy on the faces of our ACBC families and friends enjoying our pool on a summer day

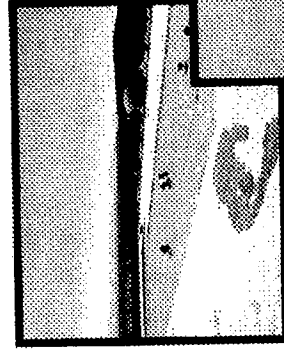
*Save our pool!*



## *Admiral's Cove Beach Club*



*Why vote YES on our pool assessment?*



Admiral's Cove Beach Club  
PO Box 366  
Coupeville, WA 98239  
[ACBC-Whidbey.org](http://ACBC-Whidbey.org)

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

ROBERT WILBUR and DUSTIN  
FREDERICK

Plaintiffs,

vs.

ADMIRAL'S COVE BEACH CLUB,  
a Washington non-profit corporation;  
and JEAN SALLS, MARIA  
CHAMBERLAIN, KAREN SHAAK,  
ROBERT PEETZ, ELSA PALMER,  
ED DELAHANTY AND DAN  
JONES, individuals,

Defendants.

No. 73725-2

DECLARATION PURSUANT  
TO GR 17(A)(2)

SUE CORLISS

Intervenor/Appellant,

vs.

DUSTIN FREDERICK , ROBERT  
WILBUR, ADMIRAL'S COVE  
BEACH CLUB, a Washington non-  
profit corporation, and its BOARD OF  
DIRECTORS,

Respondents.

I, MARILEE C. ERICKSON, declare as follows

1. I am over the age of 18 and competent to testify as to the following matters.
2. I submit this affidavit pursuant to GR 17(a)(2) as recipient of "Declaration of Ed Delahanty in Support of ACBC's Opposition to

Appellant's RAP 8.3 Motion" received via electronic mail for filing with the Court in this matter.

3. I have examined the document. The "Declaration of Ed Delahanty in Support of Opposition to Appellant's RAP 8.3 Motion" consists of twelve (12) pages, including the signature page, and this Declaration page. It is complete and legible.

4. The original of said declaration shall be kept file in our law offices for a period of time consistent with our firm's records retention policies.

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

DATED this 29<sup>th</sup> day of April, 2016, at Seattle,

Washington.

By   
Marilee C. Erickson