

Minutes of the 200th Port Ludlow Drainage District
 Regularly Scheduled Meeting
 Thursday April 9, 2015 10:00 AM
 ~ Approved ~

The April 9, 2015 PLDD Meeting was Called to Order in the Bay View Room at the Beach Club, 121 Marina View Drive, Port Ludlow, Washington at 10:00 a.m. by Chair Commissioner Dwayne Wilcox.

Roll Call: Commissioner Boyer, present. Commissioner Uyeda, present. Commissioner Wilcox, present. A quorum was reached.

Attendance: Administrative Assistant Sue Bartkus. Engineer Nancy Lockett. Guests included: Brian Belmont, Ron Gregory, Lyle Newlin, and Elizabeth Van Zonneveld.

Minutes: Commissioner Boyer made a motion to approve the minutes of the March, 2015 Regular Meeting. Commissioner Wilcox seconded the motion. Commissioner Uyeda carried the motion. Motion approved 3-0.

- **Expenses:** Commissioner Wilcox reviewed expenses, explaining each charge for guests. Commissioner Boyer made a motion to approve the vouchers from March 7, 2015 to April 3, 2015 for a total of \$5,582.63. Motion was seconded by Commissioner Uyeda. Motion was carried by Commissioner Wilcox. Motion approved 3-0.

Voucher Summary:

| | | |
|--------|-----------------------|----------|
| 15-022 | Artemis Computing | 225.00 |
| 15-023 | Gray & Osborne Inc. | 3,010.92 |
| 15-024 | Port Townsend Leader | 63.88 |
| 15-025 | Dwayne Wilcox | 360.00 |
| 15-026 | Allen Uyeda | 270.00 |
| 15-027 | Jim Boyer | 360.00 |
| 15-028 | Susan Bartkus | 2,100.92 |
| 15-029 | Glessing & Associates | 78.00 |
| 15-030 | Dept. of L&I | 11.32 |

Financial Summary:

| | |
|-------------------------------------|-------------------------|
| PLDD CASH ACCOUNT | \$285,954.32 |
| PLDD RESERVE ACCOUNT | \$ 40,000.00 |
| PLDD INTEREST INCOME RESERVE FUND | \$ 6,357.39 |
| EXPENSES – CURRENT MONTH FROM ABOVE | <u>\$ (5,582.63)</u> |
| NET TOTAL ALL ACCOUNTS | <u>\$326,729.08</u> |
| SEPCIAL ASSESSMENT 2015 | \$123,000.00 |
| PAID TO DATE | <u>\$ (13,586.33)</u> |
| UNPAID (REMAINING) | \$109,413.67 |

Old Business:

1. Engineer Lockett reported that the contracts and the Notice to Proceed for the **Trader Lane** project had been given, and the work was in process. Engineer Lockett noted that the contractor, Nordland Construction, felt that a tree located on a vacant lot next to the project, should be removed as the roots would be compromised by the work. Commissioners agreed to recess this day's meeting, and resume it at the jobsite to assess the situation and get an opinion from the arborist as to what the best course of action would be. Ron Gregory asked if the PLDD had gotten a contribution amount from Jefferson County. Commissioner Wilcox stated that a letter will be sent to Public Works, after the project was completed. Engineer Lockett noted that Monte was fine with the cost, the contractor just needs to submit his bill.
2. Engineer Lockett reported that she and Commissioner Uyeda had met with the Torres and Snow families regarding the needed Construction Easement requests for the **Cascade Lane** project. Both are unwilling to have the work done on their properties. She and Commissioner Uyeda will attempt to speak with Mr. Barnes and Mr. Collins to see if approximately 60 feet could be put onto their properties, as an alternative solution. Ms. Lockett also reported that she spoke with Jefferson County; they will look at the area one more time and then issue a Washington State Stormwater permit. The project can be split into two schedules of approximately \$80,000. Each. Ideally, the project could start in August/September, and last approximately 10 days to one month maximum. Ms. Lockett noted that she had been informed that three owners were putting their properties up for sale.

New Business:

1. Commissioner Wilcox informed everyone that he had received information that the PLDD was eligible to become a participant in **City of Port Townsend Natural Hazard Mitigation Plan (CPTNHMP)**. The benefit would be that if a natural disaster were to occur, monetary relief would be available. Ron Gregory expressed that he felt if it wasn't required, PLDD shouldn't sign up for it. Commissioner Boyer expressed that since Port Ludlow wasn't in close proximity to Port Townsend, he was inclined to agree. Engineer Lockett noted that with the insurance policy, the values would be listed; there would be no need to spend time re-evaluating the PLDD ditches and systems. Commissioner Wilcox said that he would call Enduris Insurance to see if it would make a difference in the PLDD insurance rates. Commissioner made a motion to have Commissioner Wilcox contact Enduris to ascertain whether enrolling in the CPTNHMP would benefit the PLDD, and if so to start the process. Motion was seconded by Commissioner Uyeda. Motion carried by Commissioner Wilcox. Motion approved 3-0.
2. Commissioner Wilcox noted that he received an email from David Alvarez regarding the eligibility of condominium owners voting status within the PLDD. After much discussion, Commissioner Boyer stated that the matter of how elections are recorded and decided is by the Commission. Our next step is to verify that if we resolve to allow all assessed citizens that vote, are entitled to serve. Elizabeth Van Zonneveld noted that the PLDD decision should be recognized by formal Resolution. Commissioner Uyeda noted that it should be

put to the constituency. Commissioner Wilcox asked that both letters he received regarding the matter, one from The State Attorney General, and the other from The Jefferson County Auditor, be included within the meeting minutes verbatim. The letters will be attached to these minutes.

The meeting was recessed at 10:50 a.m. to reconvene at Trader Lane.

Meeting reconvened at 11:14 a.m. at Trader Lane. Jason Cecil, certified Arborist consulted with Commissioners, Nordland Construction, and Engineer Lockett regarding a tree located on lot # 41, abutting the construction area. His recommendation was complete removal as 60% of the buttress root system was located under the area of construction; in his opinion the construction would severely compromise the future health of the tree. Commissioners were given an estimate of \$475.00 by Mr. Cecil to have his company; TREGUY (sub-contracting for Nordland) take down the tree. Nordland Construction estimated that removal and cleanup would add approximately \$1,500.00 to the cost of the project. Commissioner Boyer made a motion to have Engineer Lockett contact the property owner to see if they are willing to agree to the tree's removal, and if so, to authorize TREGUY and Nordland Construction proceed with the removal. Commissioner Uyeda seconded the motion. Commissioner Wilcox carried the motion. Motion approved 3-0.

Commissioner Wilcox made a motion to adjourn the April 9, 2015 PLDD Regular Meeting at 11:24 a.m. Commissioner Boyer seconded the motion. Commissioner Uyeda carried the motion. Motion approved 3-0.

The next regularly scheduled meeting of the PLDD will be held on Thursday, May 14, 2015 in the Bay View room at the Beach Club at 10:00 a.m.

Respectfully Submitted by: Susan Bartkus, Administrative Assistant

Approved:



Dwayne Wilcox
Drainage District
Commissioner

Approved:



Allen Uyeda
Drainage District
Commissioner

Approved:



Jim Boyer
Drainage District
Commissioner



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

November 18, 2014

The Honorable Steve Tharinger
State Representative, District 24
PO Box 40600
Olympia, WA 98504-0600

Dear Representative Tharinger:

By letter previously acknowledged, you have requested an opinion on the following question:

Does the owner of a residential condominium that is governed by the Horizontal Property Regimes Act, RCW 64.32, and located within the boundaries of a drainage district satisfy the property ownership requirements of RCW 85.38 for serving as a member of the district's governing body?

BRIEF ANSWER

Yes. Although there is room for reasonable people to disagree, my conclusion is that the owner of a residential condominium that is governed by the Horizontal Property Regimes Act, located within the boundaries of a drainage district, satisfies the property ownership requirements of RCW 85.38 for serving as a member of the district's governing body.

BACKGROUND

Drainage districts are special purpose districts created for the purpose of establishing or modifying drainage systems within a specific geographic area. RCW 85.06.010; RCW 85.38.020-.030, .180. The authority of a drainage district, its creation, and elections are governed by RCW 85.38. That chapter also governs other special purpose districts such as drainage improvement districts, diking districts, sewerage improvement districts, and flood control districts. RCW 85.38.010(4). Drainage districts are typically governed by a three-member governing body.¹ RCW 85.38.070(1). To serve as a member of a governing body of a drainage district, one must be a qualified voter of the special district. RCW 85.38.070(6). A qualified voter must be an "owner of land." RCW 85.38.010(3). In turn, "owner of land" is defined by statute as:

¹ A special district, including a drainage district, can be governed by five members if five or more special districts have consolidated and the district had five governing members as of July 28, 1985. RCW 85.38.090(2).



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[T]he record owner of at least a majority ownership interest in a separate and legally created lot or parcel of land, as determined by the records of the county auditor It is assumed, unless shown otherwise, that the name appearing as the owner of property on the property tax rolls is the current owner.

RCW 85.38.010(2).

The Horizontal Property Regimes Act (HPRA) governs condominiums established in Washington between 1963 and July 1, 1990. *See generally* RCW 64.32 (enacted in 1963 and addressing condominiums); RCW 64.34.010 (Condominiums Act applicable to all condominiums created after July 1, 1990). The HPRA allows each apartment owner in a building containing multiple apartments to have exclusive ownership and possession of the apartment and a joint ownership in land, common areas, and facilities. RCW 64.32.010(6), .040. More specifically, the apartment is owned in fee simple or any other way that real property can be owned, and each apartment owner is entitled to an undivided interest in land and other common areas and facilities in a certain percentage. RCW 64.32.010(2), (6), .040.

The HPRA establishes that each apartment, together with its undivided interest in the common areas and facilities (including land), “shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property.” RCW 64.32.030. Similarly, the HPRA declares that “[e]ach apartment and its undivided interest in the common area and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including . . . special assessments.” RCW 64.32.190.

ANALYSIS

Your question regarding whether condominium ownership satisfies the “ownership of land” requirement for purposes of eligibility to serve on a drainage district governing board is one of statutory construction. The fundamental object of statutory construction is to ascertain and carry out legislative intent. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). If a statute’s meaning is plain from the face of the statute, then courts give effect to its “plain meaning” as expressing legislative intent. *Id.* at 9-10. Courts apply statutory definitions when the statute sets forth a definition and, where terms are undefined, words are given their common and ordinary meaning. *E.g., State v. Chester*, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997). Courts may look to dictionary definitions in construing terms that are not defined by statute. *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010).

Here, the answer to your question turns on whether a condominium apartment is a “separate and legally created lot or parcel of land” for purposes of RCW 85.38.010(2). If a condominium apartment is a “separate and legally created lot or parcel of land,” then an

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apartment owner would satisfy the statutory definition of “owner of land” in RCW 85.38.010(2), and if otherwise qualified, would be eligible to vote in drainage district elections and serve on a drainage district’s governing board.²

A condominium apartment subject to the HPRA is by statute deemed “real property” and “a parcel.” RCW 64.32.030, .190. As discussed below, examining the dictionary definitions of these terms (because they are otherwise not defined in the HPRA) leads me to conclude that condominium apartments should be considered “separate and legally created . . . parcel[s] of land” for purposes of RCW 85.38.010, and a condominium apartment owner would thus be qualified to vote in drainage district elections and serve on drainage district governing boards. I also conclude that condominium apartments are “separate” parcels of land because the HPRA treats each apartment as separately owned. *E.g.*, RCW 64.32.070 (stating that liens may be created against each apartment to the same extent as against “any other separate parcel of real property subject to individual ownership”); RCW 64.32.190 (condominium apartments are parcels subject to “separate assessments and taxation”).

“Real property” is defined as “[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.” *Black’s Law Dictionary* 1254 (8th ed. 2004). Similarly, relevant definitions of “parcel” generally define it as land: “A tract of land; esp., a continuous tract or plot of land in one possession, no part of which is separated from the rest by intervening land in another’s possession.” *Black’s* at 1144. “**2.a** : a continuous tract or plot of land in one possession no part of which is separated from the rest by intervening land in other possession **b** : a tract or plot of land whose boundaries are readily ascertainable by natural or artificial monuments or markers[.]” *Webster’s Third New International Dictionary* 1640 (2002). Numerous other statutes refer to “parcel” or “parcel of land” seemingly interchangeably, and I am aware of no use of “parcel” when referring to real estate that does not refer to “land.” *See, e.g.*, RCW 6.21.090(2) (“Bids on all land except town lots may be by the acre or by tract or parcel.”); RCW 35.13.340 (using “parcel” and “parcel of land” interchangeably); RCW 76.13.130 (addressing “parcels of twenty contiguous acres or less”).

² The statutory definition of “owner of land” is “the record owner of at least a majority ownership interest in a separate and legally created lot or parcel of land, *as determined by the records of the county auditor . . .*” RCW 85.38.010(2) (emphasis added). The statute also establishes a presumption “that the name appearing as the owner of property on the property tax rolls is the current owner.” RCW 85.38.010(2). I do not read this language as granting the county auditor the authority to determine who may vote in special district elections, but rather as an administrative way of determining which lots or parcels reside in the special district. In any event, my understanding is that county auditor records do not determine whether particular lots or condominium apartments are legal parcels of land, but rather simply record deeds and other documents showing legal title to property, including documents evidencing ownership of condominium apartments. *See* RCW 64.32.140 (stating that instruments affecting any apartment are entitled to be recorded in the office of the county auditor). In addition, my understanding is that property tax rolls separately list condominiums with separate parcel numbers for purposes of assessing taxes. *See* RCW 64.32.190 (each apartment assessed separately and considered a separate parcel).

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Given these dictionary definitions, it appears the legislature intended to treat condominium apartments as parcels of land for all legal purposes. The HPR states that apartments “shall for all purposes constitute and be classified as real property.” RCW 64.32.030. In addition, it provides that each apartment and its undivided interest in the common area “shall be deemed to be a parcel” RCW 64.32.190. As you allude to in your letter, the heading for this latter statutory provision is “[s]eparate assessments and taxation,” but unless explicitly adopted by the legislature, statute headings are not considered part of the law. *See* RCW 1.08.017(3); *State v. Lundell*, 7 Wn. App. 779, 782 n.1, 503 P.2d 774 (1972) (section headings placed by code reviser not part of the law). Thus, the statutory language under this heading would not necessarily be limited to taxes and assessments. Moreover, this statutory provision ends by expansively stating: “Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel *for any purpose*.” RCW 64.32.190 (emphasis added). In the context of your question, if an individual apartment were not considered a “parcel of land” for purposes of RCW 85.38.010, then in order for a condominium property within a drainage district to have any representation, the building and land would have to be considered a “parcel of land,” which is contrary to the statutory requirement that the building and land not be considered a parcel “for any purpose.”

Because a condominium apartment, together with its undivided interest in the common areas and facilities (including land) is legally considered real estate and a parcel, I conclude that ownership of a condominium within a drainage district satisfies the requirement of being an “owner of land” within the district for purposes of RCW 85.38.010, and an apartment owner, if otherwise qualified, would be a qualified voter in the drainage district and eligible to serve on the governing body of the district.

I acknowledge that an argument could be made for the opposite conclusion. The treatment of condominium apartments as real estate and parcels of land can in some circumstances amount to a legal fiction, causing tension with statutes regarding drainage districts and drainage improvement districts that focus on the physical attributes (such as acreage) of land. For example, in special district elections, qualified voters generally receive two votes to cast in each election. RCW 85.38.105. But landowners within drainage improvement districts and flood control districts who own more than 10 acres of land receive an additional two votes per 10 acres, up to a maximum of 40 votes. RCW 85.08.025; RCW 86.09.377. This appears to be a legislative recognition that drainage and flood control affect landowners in proportion to the amount of physical land owned, and may be inconsistent with providing two votes to each condominium apartment owner rather than two votes to the condominium homeowner’s association for the building as a whole. Providing two votes to each condominium apartment owner could also give condominiums voting power disproportionate to the physical land affected by decisions of the drainage district.

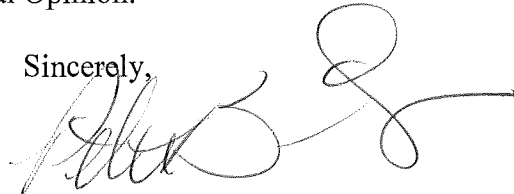
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Nevertheless, I conclude that condominium apartment owners are “owners of land” and qualified voters in a drainage district for two reasons. First, although the legislature has recognized that large landowners should receive a greater number of votes than smaller landowners, it has not set any minimum acreage for landowners to receive votes. Therefore, the legislative recognition that drainage district actions affect landowners proportionate to acreage is not absolute. Second, although the consideration of a condominium apartment as a parcel of land may be considered a legal fiction, it is a legal fiction that the legislature apparently intended to have legal effect. While treating a condominium apartment as a parcel of land may fit more neatly with some land-related statutes than others, absent a conflict between statutes, the HPRA statutory language guides the result. These are, of course, policy matters that the legislature may choose to clarify.

I hope the foregoing information will prove useful. This is an informal opinion and will not be published as an official Attorney General Opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter B. Gonick', with a long, sweeping flourish extending to the right.

PETER B. GONICK
Deputy Solicitor General
(360) 753-6245

wros

From: David Alvarez <DAlvarez@co.jefferson.wa.us>
Subject: Qualified voters in the Port Ludlow Drainage District
Date: April 8, 2015 12:01:10 PM PDT
To: Patrick Sullivan <psullivan@ptleader.com>

Patrick-

Thought about this some more and decided the PLDD should be able to determine for itself who is or is not a qualified voter and there is some basis for stating that condo owners are voters.

David Alvarez

From: David Alvarez
Sent: Wednesday, April 08, 2015 11:38 AM
To: Rose Ann Carroll
Cc: Michael Haas; 'commish@pldd.org'; 'kathymacc@hotmail.com'; Jeff Chapman
Subject: Qualified voters in the Port Ludlow Drainage District

The question has arisen whether a condominium owner whose condo is located within the boundary of the Port Ludlow Drainage District ("PLDD") is a qualified voter, i.e., qualified to vote for PLDD Commissioners.

There are now three opinions out there regarding this question, Shane Seaman concluded such a person would be a qualified voter, David Alvarez, the undersigned, concluded they would not be and now there is a third INFORMAL opinion from the Attorney General's Office concluding that such a person would be a qualified voter.

Each of these is just an opinion from a lawyer and I hold to my conclusion that having condo owners vote in an election held pursuant to Ch. 85.38 RCW goes against the policy in that state statute of having land (not persons) vote.

HOWEVER,

Based on the Horizontal Property Regime Act, which governs most condominiums, and because the owners of a condo (in general) own not only the interior of their unit but ALSO an undivided fractional interest in the building and real estate where their condo is located, it is a reasonable interpretation of the definition of qualified voter found in RCW 85.38.010(3) to conclude that a condominium owner is an owner of land and thus a qualified voter for purposes of the next election for the PLDD Commission.

This is a different interpretation of the law than the one applied by former County Auditor Donna Eldridge to prior PLDD elections.

It is the obligation of the PLDD Commission under RCW 85.38.110 to “prepare and maintain” the “list of presumed eligible voters.” It will be up to the PLDD to work with the Auditor and the Assessor to get the names and addresses of those persons the PLDD Commission considers to be eligible voters. The PLDD must prepare this list before November 1, 2015 for the election to be held in February 2016, again according to RCW 85.38.110. If that deadline is missed, then the County Auditor must compile the “list of presumed eligible voters.”

The current Auditor is requested to work with the PLDD Commission based on this new interpretation, i.e., that the condo owners are qualified voters.

Jeff Chapman: FYI only

David Alvarez. Chief Civil DPA, Jefferson County (360) 385-9219