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FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2018 APR 16 PM 3:30

Linda Myhre Enlow
Thurston County Clerk

EXPEDITE (if filing within 5 court days of hearing)

Hearing is set:

Date: April 20, 2018
Time: 9:00 a.m.
Judge/Calendar: The Honorable John C. Skinder

No hearing is set

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

THERESA J. LOWE, a single woman;
LOREN J. BOSSHARD and DONNA A.
BOSSHARD, husband and wife;
BURLEIGH M. CUBERT and CAROLYN
CUBERT, husband and wife,

Plaintiffs,

v.

FOXHALL COMMUNITY
ASSOCIATION, a nonprofit corporation,

Defendant.

NO. 17-2-00812-34

**DECLARATION OF THERESA J.
LOWE IN SUPPORT OF REPLY ON
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

17-2-00812-34
DCLR 76
Declaration Affidavit
2935863



I, Theresa J. Lowe, declare as follows:

1. I am over the age of eighteen years old, competent to testify, and make this declaration based on my personal knowledge.

2. I have lived in the Foxhall community for many years. I am a member in good standing of the Foxhall Community Association. I have served on the Association's Board of Directors and am familiar with the covenants and bylaws.

3. Attached hereto as Exhibit A is a true and correct copy of a photo of the sign at Foxhall Park. The sign indicates the park is for "Residents Only". Signs in the community have always stated that community amenities are for residents and accompanied guests.

**DECLARATION OF THERESA J. LOWE IN SUPPORT
OF REPLY ON PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT - 1**

Bean, Gentry, Wheeler & Peternell, PLLC
910 Lakeridge Way SW
Olympia, WA 98502
(360) 357-2852
Fax (360) 786-6943

1 4. Attached hereto as Exhibit B is a true and correct copy of a letter from the
2 Association's President in 1997, which emphasizes the trails have always been restricted to use
3 by community members and accompanied guests.

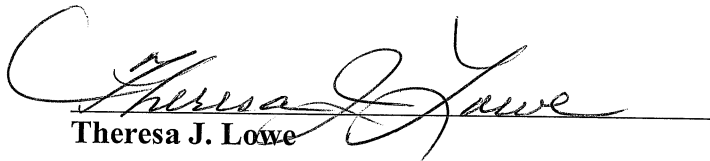
4 5. Attached hereto as Exhibit C is a true and correct copy of a Facebook
5 advertisement posted to the community page. In this advertisement, Judy Johnston appears to
6 market the use of Foxhall's private trails to members of the public.

7 6. Attached hereto as Exhibit D are true and correct copies of correspondence with
8 Foxhall's insurance broker Ben Houk.

9 7. Attached hereto as Exhibit E are true and correct copies of correspondence with
10 Foxhall's insurance broker Jack Stanford.

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

13 DATED this 10th day of April, 2018, at Olympia, Washington.

14
15 
16 Theresa J. Lowe

PROOF OF SERVICE

I certify that I caused to be served a copy of the foregoing document on the following parties of record on the date below as follows:

Steve Goldstein
Shawna M. Lydon
Betts, Patterson Mines, P.S.
One Convention Place
Suite 1400
701 Pike Street
Seattle, WA 98101-3927
Email: sgoldstein@bpmlaw.com
slydon@bpmlaw.com

Robert D. Wilson-Hoss
Hoss & Wilson-Hoss, LLP
236 West Birch Street
Shelton, WA 98584
Email: rob@hetc.com

US Mail Postage Prepaid
 Electronic transmission (email)

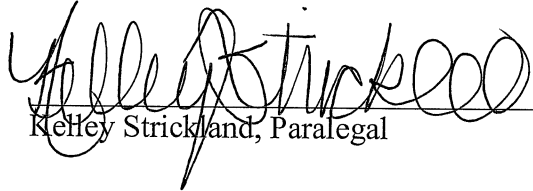
US Mail Postage Prepaid
 Electronic transmission (email)

Loren John Bosshard
Donna Anne Bosshard
5928 Foxhall Court NE
Olympia, WA 98516

US Mail Postage Prepaid

I certify under penalty of perjury under the laws of the state of Washington and the United States of America that the foregoing is true and correct.

DATED this 16th day of April, 2018 at Olympia, Washington.



Kelley Strickland, Paralegal

EXHIBIT A

FOXHALL PARK
PARKING PERMIT
RESIDENTS ONLY
NO OTHER VEHICLES
ALLOWED
SEE SIGN FOR DETAILS

FOXHALL PARK

**RESIDENTS
ONLY**

EXHIBIT B

Nancy Allen
5242 Puget Road NE
Olympia, WA 98516

November 15, 1997

Dear Mrs. Allen

This letter is to serve as notification about the status of the Foxhall Development abutting your property.

The "Bridle Trails" in Foxhall (Tracts A, H, I, J, and K) are for the benefit of, and to be used by, the members of the Foxhall Community Association and their **accompanied** guests. Signs are posted on the Bridle Trails indicating that these trails are for the exclusive use of Foxhall Community Association members and their **accompanied** guests. The signs also indicate that any violations will be treated as trespassing according to RCW 9A.52.080.

While this may seem the unneighborly thing to do, but due to the current (and future) developments around Foxhall, homeowner security, and insurance/liability concerns, we feel this is an essential step in protecting the investment of Foxhall Community Association members. **Please do not utilize these trails unless a bona fide member of the Foxhall Community Association accompanies you.** Simply having permission by a member – or on your way to visit them -- is not considered a bona fide use.

Please forward any questions/concerns to me

Sincerely,

Dennis Longnecker, President
Foxhall Community Association
6345 Foxtrail Court NE
Olympia, WA 98516

EXHIBIT C

From: "Judy Johnston" <notification+o0ozac9c@facebookmail.com>

Date: September 20, 2014 at 12:01:42 PM PDT

To: Foxhall Community Folks <413275092077258@groups.facebook.com>

Subject: [Foxhall Community Folks] Equestrian Boarding Facility and Community...

Reply-To: Reply to Comment

<g+4186908v0000009owu3s006zxvng6b7q000000a8d0f42q746@groups.facebook.com>

Judy Johnston posted in Foxhall Community Folks



Judy Johnston

12:01pm Sep 20

Equestrian Boarding Facility and Community Private Facility, groomed trails, heated barn, indoor arena, round pen, Large Stalls 12 x 12, We feed Orchard Grass Mix and Alfalfa. We also fee Strategy GX and Equine Senior in the evening. We can feed your vitamins or supplements if needed.

7 days a week turn out – Large Separate Pastures for Geldings & Mares

Indoor hot water wash rack with a washer & dryer and more. \$450 per month.

This barn has a mature group of women who love their horses and we ride a lot. It is an active barn and we are happy to say that we also have some gentlemen who are riding and taking lessons. We have a dressage trainer and a trail savvy trainer and well known horsewomen who give classes at our barn. Many of our people have been with us for a long period of time, and we have a few stalls opening. When winter is close, we fill up quickly, so please come by for a visit and let us show you around. At times we haul out for trail riding, have ocean beach outings and do camping trips in the summer. Look forward to meeting you soon!!

Judy & Gary Johnston.....Johnston Farm Arabians

[View Post on Facebook](#) · [Edit Email Settings](#) ·

[Reply to this email to add a comment.](#)

EXHIBIT D

Fwd: Foxhall HOA insurance

From : Denise Solveson <denise.solveson@gmail.com>
Subject : Fwd: Foxhall HOA insurance
To : Theresa Lowe <theresajlowe@comcast.net>

Wed, Mar 29, 2017 01:39 PM

6 attachments

Begin forwarded message:

From: Denise Solveson <denise.solveson@gmail.com>
Date: September 24, 2015 at 1:20:36 PM PDT
To: denise.solveson@gmail.com
Subject: Fwd: Foxhall HOA insurance

Denise Solveson

Begin forwarded message:

From: "Ben Houk" <ben@nichinsure.com>
Date: September 18, 2015 at 1:30:22 PM CDT
To: <denise.solveson@gmail.com>
Subject: FW: Foxhall HOA insurance

Hi Denise,

Please see the responses to your questions below in red. Thanks for your time and I will see you this evening.



Ben Houk
Agent - Account
Executive

1802 Black Lake Blvd SW, Suite
301
Olympia, WA. 98512
Cell: (360)250-2062
Ph: (360)352-8444 Ext. 126
Fax: (360)943-9712
Ben@nichinsure.com



www.nicholson-insurance.com

We Appreciate Your Referrals!

>> On Sep 16, 2015, at 4:37 PM, Denise Solveson <denise.solveson@gmail.com> wrote:

>>

>> Hi Ben,
>>
>> Bert gave me your statement regarding intended coverage and it says "bodily injury or property damage occurs to ANY person or persons on association common area". The rest of that sentence you quoted said "and the association is found negligent". The company is not going to pay for peoples injuries if there is no negligence on the part of the association.
>>
>> Bert told us the MOI would address commercial activities (eg. commercial boarding stable's clients) using association common areas (parks and trails). How does this policy protect the association in this instance? The use of the common areas and trails is intended for association members and their guests.
>>
>> Also, are there any exclusions for activity on the trails/parks such as horse riding lessons, groups of children on horseback NOT accompanied by a resident, mountain bike races, ATV use (we have no enforcement mechanism), combined driving events for horses, or a vet clinic for residents and nonresident's horses? When gathering the information to do the quote I was told that there are 7 1/2 plus miles of maintained trails that are used for walking, biking and horseback riding. Motorized vehicles unless used to maintain trails were not allowed. The implementation of enforcement is something the board would need discuss. The insurance companies would probably start with requiring signage at various entry points.
>>
>> Also, our board is going in the direction of allowing "public use" of the common areas.
>> Does this insurance firmly insure us for UNACCOMPANIED NONRESIDENTS using the parks and trails for games, sports, and athletic activities? The policy does not exclude unaccompanied "guests" but again would probably like to see signage to the effect – Trails and common areas are for the use of association members and their guests only.
>>
>> If you could answer these questions with an email to me, it would help shorten the meeting.
>>
>> Thanks,
>>
>> Denise Solveson
>> Facilities Manager
>> FCA Board



image001.png
22 KB



image002.jpg
3 KB

image003.jpg
846 B

EXHIBIT E



Denise Solveson <denise.solveson@gmail.com>

Fwd: Foxhall policy

1 message

Bert Lewis <bertlewis500@gmail.com>

Mon, Aug 24, 2015 at 2:46 PM

To: Denise Solveson <denise.solveson@gmail.com>, Bruce Brinton <maytownskier@comcast.net>, Paul Carlson <paul@carlsongroup.com>, Theresa Lowe <theresajlowe@comcast.net>

Message from Jack.

----- Forwarded message -----

From: Jack Stanford <jack@stanfordinsurance.com>

Date: Mon, Aug 24, 2015 at 2:32 PM

Subject: RE: Foxhall policy

To: Bert Lewis <bertlewis500@gmail.com>

Hi Bert, There is no exclusion in the policy but the company wants off the risk now if Boarding operation or operations allows non-residents to use trails, they consider this to be public use. They are willing to stay on account until feb if only resident homeowners and their own guests are allowed on trails. We set this up that way and that is the only way Mutual of Enumclaw will stay on account. They want written statement stating you agree to the terms and want it ASAP. The Boarding operation and the so-called public use is making it hard to find insurance for HOA even with fact that the boarding operation has it's own coverage. I have a tentative quote for 1mil in coverage for around 3800.00 from another insurance company but they have not reached final decision. I just had another carrier decline , really was hoping to be able to offer them to the HOA. Looks like my options are running out, will keep looking, please confirm that your Board is advised of this email since you really need to vote on this issue. Jack

From: Bert Lewis [mailto:bertlewis500@gmail.com]**Sent:** Monday, August 24, 2015 1:12 PM**To:** Jack Stanford**Subject:** Foxhall policy

We have a board meeting tonight and insurance is sure to come up. So where are we?

I can't over emphasize the squabbling going on over the issue of the boarders on the trails and other non-residents in the park, squabbling that can to some extent be quieted by complete insurance coverage.

And someone will argue tonight that we have no coverage now if a non-resident sues us, either from a horse related event or a fall from a swing in the park. Is that correct?

Let me know what you've found available. I think we'll have a board meeting devoted to just the insurance issue during the week after Labor day and ask you to come down and answer questions. More on that later.

Bert Lewis

From: "Bert Lewis" <bertlewis500@gmail.com>
To: "Theresa Lowe" <theresajlowe@comcast.net>, "Bruce Brinton" <maytownskier@comcast.net>, "Denise Solveson" <denise.solveson@gmail.com>, "Paul Carlson" <fpaul@carlsongroup.com>
Sent: Thursday, July 16, 2015 10:47:06 AM
Subject: Fwd: greetings from Foxhall

PROBLEM! I just got this email from Jack. We already had insurance on the agenda for Monday -- that just moved up a notch in importance.

I will also forward this to Judy Johnston as she is so involved.

Bert

----- Forwarded message -----

From: **Jack Stanford** <jack@stanfordinsurance.com>
Date: Thu, Jul 16, 2015 at 10:26 AM
Subject: RE: greetings from Foxhall
To: Bert Lewis <bertlewis500@gmail.com>

Hi Bert, I guess we opened up a can of worms. The company just advised me this morning they had made exception in regard to riding by a guest of a resident but they will not cover any riding by non-residents that have horses boarded by property owners. In order to stay with this insurance company the Thursday program has to stop since there would be no coverage, if that is a problem we need to find another insurance company right away. They also advised me that they are not interested in staying on account past next feb. This decision is not based on your account only but HOA's in general that have riding trails. Please share this email with the Board and let me know very soon about the guest program. I am now going to start a market search for insurance companies that allow horse riding in community owned property and also will ask about riding by guests. I will get some prices for the Board and then we can schedule a meeting to discuss options. I am sorry if this just makes your current situation more complicated but it is something we have to deal with now. Regards, Jack