

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF ISLAND

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4 ROBERT WILBUR and DUSTIN)
 FREDERICK,)
 5)
 Plaintiffs,)
 6)
 vs.) Cause No: 13-2-00741-4
 7)
 ADMIRAL'S COVE BEACH CLUB, a)
 8 Washington non-profit)
 Corporation; and JEAN SALLS,)
 9 MARIA CHAMBERLAIN, KAREN)
 SHAAK, ROBERT PEETZ, ELSA)
 10 PALMER, ED DELAHANTY AND DAN)
 JONES, individuals,)
 11)
 Defendants.)

12 -----

13 SUE CORLISS,)
)
 Intervenor,)
 14)
 vs.)
 15)
 DUSTIN FREDERICK, ROBERT)
 16 WILBUR, ADMIRAL'S COVE BEACH)
 CLUB, a Washington non-profit)
 17 corporation, and its BOARD OF)
 DIRECTORS,)
 18)
 Defendants.)

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20 Verbatim Report of Court's Oral Ruling

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22

23 BE IT REMEMBERED, that on Friday, March 27,
 24 2015, the above-named and numbered cause came on
 25 regularly for hearing before the HONORABLE ALAN R.

1 HANCOCK, sitting as judge in the above-entitled court,
2 at the Island County Courthouse, in the town of
3 Coupeville, state of Washington.

4 The plaintiffs appeared through their
5 attorney, Criston C. Skinner;

6 The defendant Admiral's Cove Beach Club
7 appeared through its attorney, Christopher J. Nye;

8 The intervenor appeared through her
9 attorney, Jay Carlson.

10 WHEREUPON, the following proceedings were
11 had, to-wit:

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1 THE COURT: I'm prepared to issue my
2 decision in this case at this time. Plaintiff Robert
3 Wilbur and intervenor Susan Corliss have both brought
4 motions for summary judgment on their respective claims.
5 Technically, only Mr. Wilbur's motion is scheduled for
6 hearing today.

7 Mr. Wilbur requests a permanent injunction
8 enjoining and restraining the Admiral's Cove Beach Club
9 and its Board of Directors from taking any action to
10 demolish and decommission the Beach Club's swimming pool
11 complex and its related facilities for as long as the
12 stated purposes and object of the Beach Club's Articles
13 of Incorporation remain in effect.

14 He also seeks to enjoin the Beach Club and
15 its Board of Directors from imposing or collecting any
16 assessment for the purpose of demolishing and
17 decommissioning the pool and related facilities and to
18 require the defendants to properly operate and maintain
19 the pool and facilities in accordance with the law and
20 the Bylaws of the Beach Club, including approving and
21 implementing an annual budget that provides sufficient
22 funds for dues and assessments to maintain the pool and
23 related facilities.

24 He also seeks to enjoin the Beach Club and
25 its Board from taking any action contrary to the motion

1 passed on October 27, 2012, regarding the pool and to
2 have the Court make declarations supporting these
3 actions.

4 Ms. Corliss seeks dismissal of Mr. Wilbur's
5 complaint and the dissolving of the temporary
6 injunction, but, again, that motion is not technically
7 before the Court today.

8 The Beach Club and its Board of Directors
9 have essentially taken a neutral position with regard to
10 these matters but requests that the Court resolve the
11 issues so that it can move forward consistently with the
12 law.

13 These matters come before the Court pursuant
14 to a motion for summary judgment. Under Civil Rule
15 56(c), Mr. Wilbur, the plaintiff, bears the burden of
16 proving that there is no issue as to any material fact,
17 underscore the word material, and that they are entitled
18 to -- that he is entitled to judgment as a matter of
19 law.

20 While there are numerous facts that are in
21 dispute in this case, the Court has concluded that there
22 are no material facts in dispute. Rather, the Court is
23 presented with what are essentially legal issues to
24 resolve, and, therefore, the Court will proceed to
25 resolve these issues.

1 As background facts, the Court notes that
2 the owners of property within the Plat of Admiral's Cove
3 Divisions 1 through 7 are entitled to active memberships
4 in the nonprofit corporation known as the Admiral's Cove
5 Beach Club, which was formed in 1969. Both Mr. Wilbur
6 and Ms. Corliss are active members of the Beach Club.

7 The governing documents of the Beach Club
8 are its Articles of Incorporation, Bylaws, and
9 Restrictive Covenants. The Beach Club is governed by a
10 Board of Directors who are elected by the membership.

11 The first purpose of the Beach Club, as
12 listed in Article V of the Articles of Incorporation,
13 is, quote, "To construct, install, maintain and/or own
14 and operate athletic and recreational facilities of all
15 types and kinds for the benefits of the members."
16 Unquote.

17 In accordance with the purposes of the Beach
18 Club, Admiral's Cove, Inc., the developer of the
19 subdivision of Admiral's Cove, constructed an outdoor
20 pool and related facilities and this property was
21 conveyed to the Club in December of 1969.

22 Over the course of time, the pool and
23 related facilities have fallen into disrepair and
24 substantial sums of money would need to be expended in
25 order to bring the pool and related facilities into

1 compliance with current law, including the Americans
2 with Disabilities Act.

3 Given the cost of necessary repairs, the
4 members of the Club are in conflict as to whether the
5 pool and facilities should be repaired and restored or
6 whether they should be demolished.

7 The membership of the Club held its annual
8 meeting on October 27, 2012, and these issues were
9 discussed at length. A motion was passed whereby the
10 Pool Maintenance, Long Range Planning and Budget
11 Committees were to study the issues, quote, "under the
12 overall objective of having the pool open as soon as a
13 funding and construction schedule allow." Unquote.

14 There are differing accounts in the record
15 as to what occurred with regard to the matter of
16 compliance with the motion. In any event, some months
17 passed and ultimately the Board sent out a ballot to the
18 membership giving the members two options, repair and
19 refurbish the pool at a cost of \$650,000 or demolish it
20 at a cost of \$200,000. In a relatively close vote, the
21 membership voted to demolish the pool. This lawsuit was
22 filed thereafter seeking an injunction against
23 demolishing the pool and an order requiring the Board to
24 take the necessary action to repair and restore the pool
25 and related facilities.

1 On motion of the plaintiffs, the Court
2 issued a temporary restraining order and later a
3 temporary injunction enjoining any efforts to demolish
4 and decommission the pool. The Court ruled that any
5 such action would be contrary to the motion passed on
6 October 27, 2017, and contrary to the provisions of the
7 governing documents of the Club.

8 Thereafter, at the annual election of the
9 Board of Directors of the Club, certain so-called
10 anti-pool Board members, that is, Board members who
11 either were in favor of or who were willing to acquiesce
12 in the demolition and decommissioning of the pool, were
13 voted out of office.

14 Other anti-pool Board members resigned.
15 Certain pro-pool Board members, that is, those who do
16 not believe it is proper to decommission the pool under
17 the club's current governing documents, were elected.
18 Thus, at present, pro-pool Board members comprise the
19 majority of the Board.

20 On October 25, 2014, a motion was passed at
21 the annual members' meeting which has been referred to
22 in the record as the Alternative Visions motion. It
23 reads, quote, "I move that the Board of Directors
24 appoint an ad hoc committee named Alternative Visions.
25 This ad hoc committee will evaluate an alternative

1 recreational use for the property on which the current
2 pool is located so that it will become an asset that is
3 a year-round indoor facility. The ad hoc committee will
4 compare the costs and benefits of an indoor recreational
5 and conference facility to the costs of operating and
6 refurbishing the pool in compliance with all state and
7 federal standards. The ad hoc committee will also
8 explore how revenue generated from an indoor
9 recreational facility could potentially be used to fund
10 a pool on an alternative site. This study shall be
11 presented to the membership no later than March 1,
12 2015." Unquote.

13 Ms. Corliss appears to be arguing that this
14 motion somehow supersedes the October 27, 2017, motion
15 or otherwise calls into question that motion and the
16 direction that the Board should take in this matter.
17 The Alternative Visions motion does not supersede the
18 October 27, 2012, motion. It does not repeal this
19 motion or contain anything which contradicts the
20 dictates of the motion.

21 The October 2012 motion required that the
22 members of three committees of the Beach Club complete
23 three tasks, quote, "under the overall objective of
24 having the pool open as soon as a funding and
25 construction schedule allow." Unquote.

1 The Alternative Visions motion required that
2 an ad hoc committee be appointed to evaluate alternative
3 recreational uses for the property on which the pool was
4 located and compare the costs and benefits of an indoor
5 recreational conference facility to the costs of
6 operating and refurbishing the pool, among other things.
7 It is, as the name implies, a motion which provides for
8 an alternative vision of what might ultimately happen
9 with regard to the pending disputes.

10 There is no reason why the requirements of
11 both motions cannot go forward. Of course, as I'll get
12 to here in due course, the ultimate decision or
13 decisions of the Board must comply with the club's
14 governing documents.

15 At the outset, the Court should address
16 certain procedural issues raised by Ms. Corliss. First,
17 the Court notes that part of the relief sought by
18 Mr. Wilbur is a series of declarations pursuant to the
19 Uniform Declaratory Judgments Act, Chapter 7.24 RCW.

20 Ms. Corliss argues that this declaratory
21 judgment action cannot proceed unless all 600 members or
22 so of the Beach Club are joined as parties. She points
23 to RCW 7.24.110, which provides in part, quote, "When
24 declaratory relief is sought, all persons shall be made
25 parties who have or claim any interest which would be

1 affected by the declaration, and no declaration shall
2 prejudice the rights of persons not parties to the
3 proceeding." Unquote.

4 The Court rejects the argument that all of
5 the members of the Beach Club must be joined as parties
6 in order for the plaintiffs' lawsuit to proceed. As the
7 court said in *State ex rel. Continental Casualty Company*
8 *v. Superior Court*, 33 Wn.2d 839, a 1949 case, where a
9 similar issue was raised, quote, "If a complete
10 determination can be had without the presence of other
11 parties, then the right to bring them in is addressed to
12 the sound discretion of the court." Unquote. That's a
13 quote from page 842 of the decision.

14 This principle has been reaffirmed in other
15 cases since that time, such as, *Williams v. Poulsbo*
16 *Rural Telephone Association*, 87 Wn.2d 636, a 1976 case,
17 and *Martire, M-A-R-T-I-R-E, Borjessan or Borjessan,*
18 *B-O-R-J-E-S-S-A-N*, 19 Wn. App. 556, a 1978 case. That
19 would be *Martire* or *Martire v. Borjessan*.

20 In the *Martire* case, the court stated that
21 the section of the Uniform Declaratory Judgments Act
22 regarding the joinder of parties, quote, "contemplates a
23 direct, rather than a collateral, interest in the issue
24 litigated." Unquote. That's from page 560 of the
25 *Martire* decision.

1 In the present case, Ms. Corliss has
2 intervened, and she is essentially representing the
3 position of certain members of the Club who are opposed
4 to Mr. Wilbur's position. She is represented by an
5 attorney who is vigorously litigating the issues in this
6 case. A complete determination of the issues in this
7 case can certainly be had without the presence of other
8 parties.

9 Next, the Court should address Ms. Corliss's
10 argument that Mr. Wilbur has no property right in the
11 continued existence of the pool and therefore no legal
12 basis to bring this lawsuit. She points out that
13 Mr. Wilbur's deed to his Admiral's Cove property makes
14 no reference to the pool, unlike the deeds of certain
15 other members of the association.

16 She also argues that neither the Articles of
17 Incorporation nor the Restrictive Covenants of the
18 association make reference to the pool as opposed to
19 athletic and recreational facilities generally.

20 Mr. Wilbur has now stated that he is not
21 seeking relief because of the fact that deeds of some
22 property owners, but not himself, granted some owners
23 the right to use the pool and related facilities.
24 Rather, he is seeking relief based on applicable
25 provisions of the Articles of Incorporation and the

1 Bylaws of the Club.

2 It should be noted, however, that Mr. Wilbur
3 does claim a property interest and expectation in the
4 continued existence of the pool based in part on his
5 reliance upon the continued existence and operation of
6 the pool as part of the consideration received when he
7 purchased his property.

8 It is true, as Ms. Corliss states, that
9 Mr. Wilbur's deed does not mention the pool, nor do the
10 Articles of Incorporation or Restrictive Covenants make
11 any specific reference to the pool, per se. This begs
12 the question, however. Under well-established
13 principles of Washington law, the rights of members of a
14 nonprofit homeowners association are governed not just
15 by their deeds, the articles of incorporation, and
16 restrictive covenants, but also by the bylaws of the
17 association.

18 The case law in Washington makes it
19 abundantly clear that the articles of incorporation and
20 bylaws of a corporation are essentially contracts
21 between the members of the corporation. Thus, the
22 members have what are essentially contract rights to
23 ensure that the articles and bylaws are being
24 administered faithfully by the board of directors.

25 For example, in the case of *In re*

1 *Dissolution of Olympic National Agencies, Inc.*, 74 Wn.2d
2 1, a 1968 case, the court stated that, "The articles of
3 incorporation are a contract and govern, save as statute
4 may otherwise provide, the rights of the parties."

5 In *Save Columbia Credit Union Committee v.*
6 *Columbia Community Credit Union*, 134 Wn. App. 175, a
7 2006 case, the court stated that, in interpreting an
8 organization's bylaws, it applies contract law. The
9 case involved, in part, a dispute over the proper
10 interpretation of the bylaws of a credit union. There
11 was no question but that the plaintiff had standing to
12 litigate this issue.

13 In *Rodruck, R-O-D-R-U-C-K, v. Sand Point*
14 *Maintenance Commission*, 48 Wn.2d 565, a 1956 case, the
15 court made reference to the articles of incorporation
16 and bylaws as being, quote, "correlated documents."
17 Unquote.

18 Note also that in the present case the
19 Articles make several references to the Bylaws of the
20 Club. For example, in Article V, one of the, quote,
21 "purposes, objects, and powers proposed to be
22 transacted, promoted, executed and carried on by the
23 corporation," unquote, is, quote, "to do any and all
24 such acts and things as may be provided in the Bylaws
25 and in the manner herein provided for the

1 administration, advancement and protection of said
2 Admiral's Cove residential district." Unquote.

3 The Articles and Bylaws of the Beach Club
4 are clearly correlated documents and must be adhered to
5 by the Board of Directors. They confer contractual
6 rights on the part of the members of the Club, and if
7 they are violated, any member of the Club may bring a
8 lawsuit to compel compliance. Any other result would be
9 absurd.

10 For example, if Ms. Corliss's argument that
11 the Bylaws confer no legal rights on the part of the
12 club's members were correct, consider what would happen
13 if, for example, the Board decided, in violation of
14 Article XIV, to impose a special assessment without
15 seeking the required majority vote. No member could
16 challenge such an action by the Board in court. That
17 clearly would be wrong.

18 I also note that the term, quote, "governing
19 documents," unquote, has been defined in the Homeowners
20 Association Act and specifically RCW 64.38.010(10) as
21 meaning the articles of incorporation, bylaws, plat,
22 declaration of covenants, conditions and restrictions,
23 rules and regulations of the association, or other
24 written instrument by which the association has the
25 authority to exercise any of the powers provided for in

1 this chapter or to manage, maintain, or otherwise affect
2 the property under its jurisdiction." Unquote.

3 It is true, as I have ruled in a prior case
4 involving the Beach Club, that the Club is not a
5 homeowners association for purposes of the Homeowner
6 Associations Act. This is because of the fact that it
7 permits nonowners to be members of the corporation by
8 means of an associate membership. But the point is that
9 the Legislature has seen fit to legislate with regard to
10 homeowners associations generally and has clearly
11 recognized that the governing documents of such
12 associations include not only the articles of
13 incorporation and restrictive covenants of the
14 association, but also its bylaws and other instruments
15 governing the exercise of the powers of the association.

16 And let's be clear that just because the
17 Beach Club is not a homeowners association for purposes
18 of the Homeowners Association Act, that doesn't mean
19 that the law pertaining to the enforceability of the
20 governing documents of a nonprofit corporation generally
21 does not apply to the Beach Club.

22 Finally, I note that there is a provision of
23 the Washington Nonprofit Corporation Act that
24 specifically confers standing on Mr. Wilbur. That is
25 RCW 24.03.040, which provides in part that in a

1 proceeding by a member of a nonprofit corporation
2 against the corporation to enjoin the doing or
3 continuation of unauthorized acts, the lack of capacity
4 or power of the corporation to do such acts may be
5 asserted. Mr. Wilbur is clearly making such claims in
6 the present case and he has the statutory as well as the
7 contractual right to do so. I find it unnecessary to
8 reach the issue of whether Mr. Wilbur also has some form
9 of property right to do so under the facts of this case.

10 The Court now turns to the substantive
11 issues presented. First, there is the issue of whether
12 the Board of Directors of the Beach Club violated the
13 terms of the October 27, 2012, motion by sending out the
14 ballots to the members which gave them the choice of
15 either repairing and refurbishing the pool at an
16 approximate cost of \$650,000 or demolishing and
17 decommissioning the pool at an approximate cause of
18 \$200,000.

19 In this regard, I first note that it is
20 axiomatic that the Board must adhere to motions that are
21 duly passed by the membership. I don't think anyone
22 seriously contends that if the membership passes a
23 motion that is consistent with the governing documents
24 and within the power of the Board to execute that the
25 Board can simply disregard and ignore the motion.

1 Rather, the dispute here appears to be whether the
2 Board's action was or was not consistent with the
3 motion.

4 One or more declarations submitted in
5 support of Mr. Wilbur's motion seem to suggest that the
6 minutes of the October 27, 2012, annual meeting did not
7 accurately reflect the action that was actually taken at
8 the meeting. However, the Court will assume that the
9 motion that was passed was in fact accurately reflected
10 in the minutes, the document which officially sets forth
11 the action taken.

12 The motion reads as follows, quote, "By
13 November 10, 2012, pool planning by members of the Pool
14 Maintenance, Long Range Planning and Budget Committees
15 will work with a nonresident facilitator and an
16 *ex officio* team member and may consult with legal
17 counsel as warranted. All legal counsel expenses and
18 other costs will require prior approval from the Board
19 of Directors. Under the overall objective of having the
20 pool open as soon as a funding and construction schedule
21 allow, the committees shall have three tasks to complete
22 by February 28, 2013, or sooner: '(1) To identify and
23 evaluate various options related to the pool's future,
24 including but not limited to needed equipment, a
25 permanent pool cover, and repairs to the pool and its

1 building, foundation, plumbing, and electrical system,
2 and to recommend the best cost and timing options. A
3 basic and simple plan to identify projects for
4 contractor bidding shall be developed to guide these
5 efforts. The plan shall also recommend an
6 implementation schedule for ADA compliance from both a
7 financial and legal standpoint.'

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

14 '(3) Upon completion of tasks 1 and 2, the
15 committees shall submit the findings to the Board and
16 subsequently work with the Board as appropriate.'"
17 Unquote.

18 It has been argued that it was permissible
19 to submit the option of demolishing the pool to the
20 membership because of the wording of the motion that the
21 committees were, quote, "To identify and evaluate
22 various options related to the pool's future," unquote,
23 but clearly this one phrase must be read in the context
24 of the motion as a whole. When this is done, it is
25 plain that demolishing the pool was not an option

1 contemplated by the motion.

2 Note that the first provision in the motion
3 that deals with what the committees were to do states as
4 follows, quote, "Under the overall objective of having
5 the pool open as soon as a funding and construction
6 schedule allow, the committee shall have three tasks to
7 complete by February 28, 2013, or sooner." Unquote.

8 These tasks were to identify and evaluate
9 various options related to the pool's future, including
10 but not limited to needed equipment, a permanent pool
11 cover, and repairs to the pool and related facilities.
12 The tasks also included developing a plan to identify
13 projects for contractor bidding and to comply with the
14 ADA. The tasks also included developing payment options
15 and to submit findings to the Board and subsequently
16 work with the Board as appropriate.

17 When read as a whole, the motion plainly did
18 not contemplate demolishing the pool. Note that the
19 language about the pool's future includes needed
20 equipment, a permanent pool cover, and repairs to the
21 pool and related facilities. There is no language that
22 could be construed as permitting the demolition of the
23 pool as an option to be considered.

24 This is made abundantly clear in the
25 language that states that the overall objective is

1 having the pool open as soon as the funding and
2 construction schedule allow.

3 Accordingly, I rule that the Board's action
4 to poll the membership about whether the pool should be
5 demolished was contrary to the October 27, 2012, motion.
6 It was therefore invalid.

7 It appears that the work of the committees
8 in question, and ultimately the Board, improperly
9 morphed from developing plans to repair the pool and
10 keep it open to the inclusion of an option to
11 decommission the pool. Likewise, the Board's action to
12 authorize an assessment to demolish the pool was
13 invalid. And, as I explained previously, the
14 Alternative Visions motion is not inconsistent with the
15 October 27, 2012, motion. It expands the options which
16 must be studied, but it does not contradict the
17 requirements of the October 2012 motion.

18 Of course, it is obvious that what the
19 membership authorizes or requires by means of one vote
20 can be withdrawn or invalidated by a subsequent motion.
21 Therefore, the Court must address the issue of whether
22 the Board has any authority to demolish and decommission
23 the pool and related facilities under its general
24 authority.

25 Ms. Corliss points to the language in

1 Article V of the Articles of Incorporation stating that
2 the Board's powers include the power, quote, "To sell,
3 convey, mortgage, pledge, lease, exchange, transfer and
4 otherwise dispose of all or any part of the property and
5 assets." Unquote. But, again, under well-established
6 principles of law, the Court must construe the Articles
7 as a whole and must not consider one provision in
8 isolation.

9 As previously noted, the Court applies
10 contract law in this connection. The touchstone of
11 contract interpretation is the parties' intent, and as
12 stated in 25 *Washington Practice*, Contract Law and
13 Practice, Section 5.3, quote, "Thus, the intent of the
14 parties to a contract is to be determined by examining
15 the objective manifestations of that intent, including
16 both written agreements and the context within which
17 those agreements were executed. The intent of the
18 parties may be discovered from the actual language of
19 the agreement, as well as from the contract as a whole,
20 looking at the subject matter and the objective of the
21 contract, all the circumstance surrounding the making of
22 the contract, the subsequent acts and conduct of the
23 parties to the contract, and the reasonableness of
24 respective interpretations advocated by the parties."
25 Unquote.

1 In applying these rules in the present case,
2 it is obvious that the power to convey or dispose of
3 property set forth in the Articles is a general power,
4 not a power that can be exercised under any
5 circumstances. The Articles must also be construed
6 consistently with the Bylaws and the other governing
7 documents, which, as I noted previously, are correlated
8 documents.

9 So let us turn our attention, then, to the
10 language of the Articles and Bylaws, the context in
11 which they were promulgated, and all of the relevant
12 circumstances.

13 The record in this case reflects the fact
14 that the pool and related facilities were contemplated
15 from the very outset of the Admiral's Cove subdivision.
16 The Articles and Bylaws were both passed in 1969, the
17 year in which the nonprofit corporation, Admiral's Cove
18 Beach Club, was established. The pool was built and
19 conveyed to the Club in that same year. It was plainly
20 an important amenity that enhanced the value of the lots
21 within the subdivision.

22 As I noted in my oral decision granting the
23 temporary injunction in this case, the Bylaws of the
24 Club presupposed the existence of the pool and include
25 several provisions that make specific reference to the

1 pool. Such references appear in Article III, Section 6;
2 Article X, Sections 3 and 4; and Article XII, Sections
3 2, 3, 4, and 5. In addition, Article VIII addresses the
4 powers and duties of the Board of Directors. Underscore
5 the word duties. Among these duties are the following,
6 quote, "To cause the properties and facilities owned by
7 the Club to be maintained and operated in accordance
8 with the appropriate County, State, and Federal laws and
9 regulations, the Articles of Incorporation, and these
10 Bylaws." That's Section 2.

11 Quote, "To adopt rules and regulations for
12 use, operation, and care of Club facilities, not
13 inconsistent with law, the Articles of Incorporation, or
14 these Bylaws, as they deem best." Unquote. That's
15 Section 4.

16 Article XII expressly creates and authorizes
17 a Pool Operations and Safety Committee and a Pool
18 Maintenance and Improvement Committee in Sections 2 and
19 3. The Pool Operations and Safety Committee is charged
20 with the responsibility to set policies for operation of
21 the club swimming pool, and the Pool Maintenance and
22 Improvement Committee is charged with the following
23 responsibilities, quote, "The Pool Maintenance and
24 Improvement Committee shall be responsible to the Board
25 of Directors for maintenance of the club's swimming pool

1 and the operating machinery, the buildings housing the
2 pool equipment, rest rooms, office and fence enclosing
3 the pool complex, pool supplies, heating, lighting,
4 et cetera. They shall obtain estimates as necessary for
5 accomplishing such maintenance and make recommendations
6 to the Board of Directors to enable the Board to approve
7 work and solicit bids. They shall consider and propose"
8 -- "purpose" is the word used here. Strike that. Let
9 me start that sentence over.

10 "They shall consider and propose to the
11 Board of Directors, as they see fit, improvements in the
12 pool complex, such as heating methods, pool solar
13 covers, et cetera. They shall consult freely with all
14 committees on all matters of mutual consideration, in
15 the best interests of the Club." Unquote.

16 It is also clear that the Articles of
17 Incorporation contemplate the construction and ongoing
18 maintenance of the pool, though they do not mention the
19 pool by name. The first purpose, object, and power of
20 the corporation is, quote, "To construct, install,
21 maintain, and/or own and operate athletic and
22 recreational facilities of all types and kinds for the
23 benefit of the members." Unquote.

24 Another purpose is, quote, "To levy
25 assessments against owners of property in the Admiral's

1 Cove development and/or members of this club on a
2 pro rata basis for the maintenance and upkeep of this
3 corporation's properties and enforce collection of the
4 same." Unquote.

5 It is important to note once again that the
6 pool was being constructed in 1969, the same year that
7 the Articles were promulgated, and the pool was conveyed
8 to the Beach Club later that same year.

9 In consideration of the applicable
10 provisions of the Articles and Bylaws, the context in
11 which they were promulgated, the circumstances
12 surrounding their promulgation, and the other rules for
13 their interpretation, the Court concludes that the
14 general power to dispose of property as set forth in the
15 Bylaws does not provide authority to the Board to
16 dispose of the pool.

17 Perhaps an analogy would be helpful in this
18 regard. Suppose the governing documents of a homeowners
19 association have a boilerplate provision giving the
20 board of directors the general authority to convey and
21 dispose of the property of the association, much like
22 the provisions set forth in the Beach Club's Articles of
23 Incorporation. Suppose further that the association
24 owns the property over which certain private roads are
25 located and the bylaws of the association require the

1 board to take appropriate action to repair and maintain
2 the roads. This is a fairly common scenario. Would the
3 board have the authority under these circumstances to
4 proceed to convey the roads under its general authority?
5 Obviously not.

6 While the Beach Club apparently does not own
7 the roads within the Admiral's Cove development, and I
8 presume that they are county roads, the principle is the
9 same as it relates to the pool. The pool and related
10 facilities of the Beach Club are an integral part of the
11 Club as set forth in the Bylaws, and the Board does not
12 have the authority to dispose of these facilities under
13 the governing documents of the Club as they are
14 presently constituted.

15 In applying the same reasoning, the
16 conclusion is inescapable that the Board has an
17 affirmative duty to maintain and operate the pool, and
18 the Court so rules. The Board does not have the
19 authority to demolish and decommission the pool under
20 the governing documents as presently constituted.

21 I am mindful of the fact that the record
22 contains a lot of evidence about the advanced state of
23 disrepair of the pool and high cost of repairing and
24 refurbishing the pool, and so forth. Directors of
25 corporations have fiduciary duties to the members to

1 carry out their duties as prescribed by the governing
2 documents. It seems obvious that past boards have
3 failed to carry out their duties to properly maintain
4 and operate the pool and related facilities and have
5 allowed it to fall into disrepair.

6 It seems equally obvious that, because of
7 these failures, the cost to repair the pool and bring it
8 to up to code is probably much greater than it would
9 have been had it been properly maintained in the past.

10 There is evidence about other options which
11 the Club could pursue instead of the pool. The parties
12 quibble back and forth about exactly what has happened
13 over the course of time. There is the *ad hominem*
14 argument that the Court should leave it to the members
15 to vote as to what they want to do and essentially
16 disregard the provisions of the governing documents.
17 But all of this begs the question. This is a court of
18 law. The Court's duty is to construe the governing
19 documents under the applicable principles of law. The
20 Court is not empowered to throw up its hands and
21 disregard the law, even if that means that various
22 members of the Club are unhappy about it.

23 That brings the Court to the issue of the
24 appropriate remedy to be applied in this case.
25 Mr. Wilbur seeks many different forms of relief, as set

1 forth on pages 1 through 5 of his amended motion for
2 summary judgment. He seeks a permanent injunction
3 enjoining the Club and its Board of Directors from
4 demolishing and decommissioning the pool and all related
5 facilities and enjoining the Club and the Board of
6 Directors from imposing any assessment for the purpose
7 of decommissioning the pool. He further seeks a
8 mandatory injunction requiring the Club and Board to
9 properly operate and maintain the pool and facilities in
10 the way set forth in the motion.

11 He further seeks to enjoin the Club and the
12 Board from taking any action contrary to the October 27,
13 2012, motion. He further seeks declarations supporting
14 this relief and guiding the Board as to how it can
15 lawfully proceed in the future with regard to these
16 issues.

17 Mr. Wilbur acknowledges that certain of the
18 injunctions that he is seeking should only remain in
19 effect for as long as the stated purposes for the
20 formation of the Beach Club as set forth in the Articles
21 of Incorporation remain in effect.

22 In ruling on these requests, the Court is
23 guided by the principles governing injunctions and
24 declaratory relief. In order to grant an injunction,
25 the Court must determine that the moving party has

1 established, (1) that he or she has a clear legal or
2 equitable right; (2) that he or she has a well-grounded
3 fear of imminent invasion of that right by the one
4 against whom the injunction is sought; and (3) that the
5 acts complained of are either resulting in or will
6 result in actual and substantial injury.

7 Among the numerous cases holding this is
8 *Washington Federation of State Employees, Council 28,*
9 *AFL-CIO v. State*, 99 Wn.2d 878, a 1983 case.

10 The moving party must also demonstrate that
11 he or she has no adequate remedy at law. Among the many
12 cases holding this is *Tyler Pipe Industries, Inc. v.*
13 *Washington State Department of Revenue*, 96 Wn.2d 785, a
14 1982 case.

15 In order to grant declaratory relief under
16 the Uniform Declaratory Judgments Act, Chapter 7.24 RCW,
17 there must be a true justiciable controversy; that is,
18 (1) an actual, present, and existing dispute, or the
19 mature seeds of one, as distinguished from a possible or
20 hypothetical disagreement; (2) between parties having
21 genuine and opposing interests; (3) which involves
22 interests that must be direct and substantial, rather
23 than potential, theoretical, abstract or academic, and
24 (4) a judicial determination of which will be final and
25 conclusive.

1 Among the many cases standing for this
2 proposition is *First United Methodist Church of Seattle*
3 *v. Hearing Examiner for Seattle Landmarks Preservation*
4 *Board*, 129 Wn.2d 238, a 1986 case.

5 With these rules in mind, the Court will
6 analyze the issues with regard to the relief sought by
7 Mr. Wilbur in this case.

8 First, as I have ruled, Mr. Wilbur is
9 entitled to a declaration that under the existing
10 governing documents of the Beach Club the Beach Club and
11 its Board of Directors have a duty to repair and
12 continue operating and maintaining the swimming pool and
13 related facilities in accordance with applicable
14 federal, state, and local laws unless the governing
15 documents of the Club are amended to remove this duty.

16 Furthermore, the Beach Club and its Board of
17 Directors have a duty to take action consistent with the
18 governing documents of the Beach Club to budget for and
19 raise funds to repair and continue operating and
20 maintaining the pool and related facilities unless the
21 governing documents of the Club are amended to remove
22 the duty to operate and maintain the pool.

23 Note that I said "unless the governing
24 documents of the Club are amended to remove these
25 duties." The governing documents of the Club provide

1 mechanisms for amendments. In view of the strong
2 feelings that exist regarding these issues, it seems
3 likely that there will be efforts to amend the Articles
4 of Incorporation and/or the Bylaws to remove the duty to
5 operate and maintain the pool and related facilities.
6 If these efforts are successful, the Club and its Board
7 will no longer have a duty to do these things. Unless
8 that happens, however, they do have such duties. I can
9 imagine that this may give rise to practical problems,
10 but that is the way it is.

11 Mr. Wilbur is also entitled to a declaration
12 that the Beach Club and its Board of Directors must
13 adhere to the requirements of the October 27, 2012,
14 motion, as I have described it in this decision, unless
15 this motion is repealed or amended to remove the duties
16 which are presently embodied in this motion.

17 Mr. Wilbur is also entitled to a declaration
18 that the special assessments approved by the members of
19 the Club to decommission the pool, which assessment vote
20 was imposed by the Board on or about August 14, 2013,
21 was invalid because it was contrary to the October 27,
22 2012, motion and the governing documents of the Club.
23 Under the record of the present case, the requirements
24 of the Uniform Declaratory Judgments Act are clearly met
25 with regard to these declarations.

1 I'll note in passing that if the
2 recommendations of the Alternative Visions Committee are
3 to proceed with any alternative that includes demolition
4 of the pool, then before any such action could be
5 carried out appropriate amendments to the Club's
6 governing documents would have to be effectuated.

7 Mr. Wilbur also seeks a declaration that no
8 action can be taken to change the Club's purpose as set
9 forth in the Articles of Incorporation or its object as
10 described in the Bylaws without a two-thirds majority
11 vote of the membership as provided in Article VII of the
12 Articles and Article XVI, Section 1 of the Bylaws.

13 It is not necessary for the Court to enter
14 declarations that merely parrot the language of the
15 Articles and/or the Bylaws. The applicable provisions
16 here are Article VII of the Articles, which provide that
17 they may only be altered by the two-thirds vote of the
18 membership. Article XVI, Section 1 of the Bylaws sets
19 forth the methodology for amending the Bylaws. This
20 section of the Bylaws also states that those sections of
21 the Bylaws which are governed by the Articles of
22 Incorporation may not be amended except as provided in
23 the Articles themselves or applicable law. The Articles
24 and the Bylaws say what they say and they are binding on
25 the membership.

1 The record in this case has not been
2 sufficiently developed for the Court to enter any
3 declaratory rulings which go beyond the actual wording
4 of these documents. The Court is making its
5 declarations in this case with the principle of judicial
6 restraint squarely in mind.

7 Ms. Corliss expresses the understandable
8 concern that in some respects Mr. Wilbur seems to be
9 asking the Court to take over the affairs of the Club.
10 In this regard, it goes without saying, for example,
11 that the Court cannot direct the members to vote a
12 particular way on any special assessment that might be
13 sought to raise money to repair the pool. The means of
14 raising money is limited to the means set out in the
15 Bylaws.

16 Article VIII, Section 7 provides that the
17 Board can prescribe dues and assessments that members
18 are required to pay, but any increase of ten percent or
19 more over the prior year's dues must be approved by
20 majority vote of the members present at the annual
21 meeting.

22 Section 9 of Article VIII provides that the
23 Board cannot incur any unusual expense in an amount over
24 \$4,000 without authorization by a majority of the
25 members present at an annual meeting or any other

1 regular business meeting or at a special meeting called
2 for that purpose.

3 Special assessments proposed by the Board or
4 by members must be presented to the membership at least
5 30 days prior to a meeting called in accordance with
6 Article IV of the Bylaws and requires approval by a
7 majority vote as required by Article V, Sections 2 or 4
8 of the Bylaws.

9 The Court in no way intends to suggest that
10 it can make any changes in the Bylaws or other governing
11 documents by court order, whether expressly or
12 impliedly, or in any way override votes made by the
13 membership consistent with the governing documents of
14 the Club or override properly passed actions of the
15 Board or the membership.

16 Note that I said votes that are consistent
17 with the governing documents and properly passed
18 actions. Any such votes and actions must, as I have
19 said, be made consistent with the governing documents of
20 the Club.

21 Thus, as I have ruled, any vote by the
22 membership to decommission the pool would be invalid as
23 contrary to the governing documents of the Club unless
24 the governing documents were changed to allow this to
25 happen.

1 On the other hand, there would appear to be
2 nothing to prevent the membership from voting down any
3 motion to pass assessments to repair and refurbish the
4 pool. In that scenario, anti-pool forces might be able
5 to achieve through the back door what they cannot
6 achieve through the front door, as it were.

7 Turning to the issue of whether the
8 injunctive relief sought by the plaintiff should be
9 entered, the Court declines to enter any such injunctive
10 relief. This is because of one simple fact, the Board
11 of Directors of the Club is now controlled by pro-pool
12 directors. The Club has taken no position on the merits
13 of the legal arguments of either the plaintiff or the
14 intervenor. The Court has no reason to believe that the
15 Board will not follow the declarations made by this
16 court and take action in accordance with these
17 declarations.

18 That being the case, Mr. Wilbur has not
19 proven that he has a well-grounded fear of imminent
20 invasion of his rights by the Board. Therefore, he has
21 not met his burden of proof with regard to the
22 injunctive relief that he is seeking.

23 For much the same reason, the Court does not
24 find it appropriate to retain continuing jurisdiction
25 over this case. The Court has made its decision and

1 there's no reason to believe that it will not be
2 followed. Theoretically, if the Board were to take
3 action contrary to the Court's rulings, Mr. Wilbur would
4 have appropriate legal remedies at his disposal.

5 In summary, Mr. Wilbur's motion for summary
6 judgment is granted in part and denied in part as set
7 forth in this decision. As I indicated, the declaratory
8 rulings I have made are the appropriate form of relief
9 to be granted in this case.

10 Though Ms. Corliss's motion was not noted
11 for hearing today, it is obvious that the Court's
12 rulings are dispositive of her motion, which is without
13 merit, except for the fact that the temporary injunction
14 will be dissolved. I leave it to counsel to deal with
15 the procedural aspects of disposing of Ms. Corliss's
16 motion.

17 I might add that I would have made these
18 rulings that I have made today even if I had not
19 stricken Ms. Corliss's supplemental brief and the
20 unsworn attachments thereto in the record -- stricken
21 those from the record.

22 It appears that Ms. Corliss may not have
23 actually filed a pleading setting forth the claim or
24 defense for which intervention is sought as required by
25 CR 24. It is, therefore, questionable whether she has

1 any standing to proceed at this point, but assuming for
2 the sake of argument, and without deciding that
3 Ms. Corliss's motion is somehow before the Court, at
4 least impliedly it would be denied.

5 So that essentially completes the Court's
6 decision. I will entertain the necessary summary
7 judgment consistent with this decision. As counsel I'm
8 sure are aware, it is not necessary for the Court to
9 make formal findings of fact and conclusions of law in
10 connection with a motion for summary judgment, but the
11 Court's role is simply to enter the judgment itself as
12 outlined in this decision. Be sure to include all of
13 the documents that have been submitted in support of and
14 in opposition to the motion as part of the formal
15 judgment that will be presented. That completes my
16 decision, ladies and gentlemen. We'll be adjourned at
17 this time.

18 MR. CARLSON: Thank you very much, Your
19 Honor.

20 (Whereupon, the proceedings in this matter
21 were concluded for the day.)

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I, JEANNE M. WELLS, do hereby certify that the foregoing verbatim report of the Court's oral ruling was taken by me and completed on Friday, March 27, 2015, and thereafter, transcribed by me by means of computer-aided transcription;

That I am not a relative, employee, attorney, or counsel of any such party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith retaining the original and emailing one copy to Christopher J. Nye.

Jeanne M. Wells, RPR
CCR #: 2298

April 1, 2015