

HOSS & WILSON-HOSS, LLP

Richard T. Hoss
Robert D. Wilson-Hoss

Attorneys at Law
236 West Birch Street
Shelton, Washington 98584

(360) 426-2999
Fax (360) 426-6715
rob@hctc.com

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Bert Lewis, President, Board of Directors
Foxhall Community Association
4629 Foxhall Dr NE
Olympia WA 98516

Re: Maintenance of Private Roads

Dear Bert:

I am writing to respond to your request for advice regarding the process for maintaining private roads within Foxhall. The operative Covenant section reads,

Tracts D, E, F and G, Foxhall, Division II are private roads, owned by Foxhall Community Association for the purpose of providing ingress and egress and utilities to Tracts 35 through 77 of Foxhall, Division II and the maintenance thereof shall be the responsibility of the Foxhall Community Association and all repairs and maintenance thereof shall be provided for at the expense of the Foxhall Community Association and funded by assessments against owners of Foxhall, Division II, Lots 35 through 77. Foxhall, Division I, Lots 1 through 33 and Foxhall, Division II, Lots 34, 78, 79, 80 and 81 shall not be subject to assessments for road maintenance purposes.

Tract D is now a County road. Therefore, the owners of Lots in Division II that abut private roads are limited to those who do not abut Tract D. The obvious conclusion is that owners in Division II that no longer abut a private road should not be responsible for payment of the maintenance expenses for those roads, any more than any other Foxhall owner abutting a public road should have to pay for the private roads.

The Covenant provision connects payment for private road maintenance to frontage on private roads. When a contract, in this case a Covenant, is no longer of any use because of intervening events (the change of Tract D to a County road), so

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that the basic assumptions of the original contract no longer apply, then the people directly involved, in this case the owners abutting Tract D, are no longer obligated under the contract (to pay the road maintenance costs).

This is especially true where, as here, the document has a severability clause: "Invalidation of any of these covenants... shall in no way affect any of the other provisions which shall remain in full force and effect." So, the invalidation of the part of the Covenant that applies to Tract D means that the rest of that Covenant still applies. This means that owners abutting E, F, and G (I think this means owners of Lots 35-39 and 68-77; I know you will check that carefully) remain responsible for payment for maintenance of the private roads they use for access.

Please let me know if you have any other questions about this matter.

Sincerely,

Robert D. Wilson-Hoss

RWH/mih