

CONCLUSIONS OF LAW

1. The parties have stipulated that the Arbitrator has equitable powers.
2. Though Article 2 of the Amended Bylaws authorizes FSCC to do whatever it deems necessary to further its purposes, basic rules of statutory construction require specific provisions prevailing over general provisions. In re *Marriage of Sagner*, 159 Wn. App. 741 (Div.1, 2011)
3. In this case, Article XVI specifies how the Board may pronounce rules and regulations.
4. Article IV, Section 5 (2) authorizes FSCC to fine for violations of rule adopted & promulgated pursuant to Article XVI
5. Article VI (2) limits the Boards powers “so long as said rules and regulations do not conflict with bylaws which shall be controlling...”
6. FSCC has not adopted a rule prohibiting construction of fences on the road right of way.
7. FSCC has not adopted a rule prohibiting construction of fences on its utilities right of way.
8. FSCC cannot enforce rules it has not adopted and promulgated.
9. FSCC cannot impose fines for violation of non- existent rules.
10. Common law does not prohibit construction of fences on HOA road right of ways, unless they may cause adverse possession of the right of way. *Littlefair v. Schulze*, 169 Wn. App. 659 (Div.2, 2012)

11. *Littlefair* was decided before the 2018 adoption of RCW 64.90, The Washington Uniform Common Interest Ownership Act.

12. RCW 64.90.705 provides:

"A unit owner or person claiming through a unit owner may not acquire title by adverse possession to, or an easement by prescription in, a common element in derogation of the title of another unit owner or the association."

13. Read together, RCW 64.90.705 & *Littlefair* do not prohibit construction of a fence that encroaches on the unimproved portion of a road right of way.

14. Even if FSCC had adopted a rule prohibiting fences that encroach on road & utility easements, it had not pronounced and published a fine schedule, as required by Article IV, Section V (1).

15. If FSCC wishes to adopt a policy regarding prohibition against constructing new fences in easement areas &/or enforcement of easements against existing fences, it may do so, by following its own bylaws. At the beginning of this hearing, I suggested using a trained facilitator, such as those at Kitsap DRC, to promote a civil and productive resolution of these issues. Nothing prevents them from still doing this.

16. The verbal communication between two Board Members and Brady on 9/29/22 did not constitute a Notice of Violation under Article IV, Section 5(2).

17. Mr. Lind's 2/24/24 letter to the Board, referring to utilities easement, did not constitute a Notice of Violation under Article IV, Section 5(2).

18. By fining Ms. Andrews for violation of a non-existent fence rule, based on a non-existent fine schedule, to the exclusion of all other lots with encroaching

fences, without a coherent policy for dealing with new vs old fences, FSCC unlawfully committed selective enforcement. *Mt. Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337 (1994)

19. RCW 64.90.685 authorizes an award of attorneys fees and costs in this matter.

ORDER

Based on the above Findings and Conclusions, I order:

1. FSCC 12/17/22 finding that Ms. Andrews violated a rule prohibiting construction of a Fence on the Road Easement is vacated, without prejudice.
2. FSCC's 12/17/22 order, requiring Ms. Andrews to move the fence on lot 15 to beyond the Road Easement is vacated, without prejudice.
3. FSCC's 12/17/22 imposition of fines against Ms. Andrews, is vacated, without prejudice.⁵
4. Ms. Andrews shall be awarded her attorneys fees and costs. For Clarity, each side should pay the arbitrator their half of the Arbitrator's fees. Ms. Andrews' attorney should submit a fee declaration and cost bill, including their share of the Arbitrator's fees, within 2 weeks. FSCC's attorney may submit objections within 1 week of receiving Mr. Jones' fee dec and cost bill. Unless either side requests oral argument, I'll issue my award based on submissions.

Dated: 5/26,26

⁵ I say "without prejudice" because this order does not preclude FSCC from adopting a rule regarding construction or maintaining a fence in the Road &/or Utilities Easements, and a fine schedule, pursuant to the procedures set out in the bylaws – and then consistently enforcing the new rules.

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IN RE AN ARBITRATION IN THE STATE OF WASHINGTON CLALLAM COUNTY

JENNIFER ANDREWS,

vs.

FOUR SEASONS PARK COMMUNITY CLUB, a Washington non-profit corporation.

ATTORNEY'S FEES AND COSTS AWARD TO JENNIFER ANDREWS

ATTORNEY'S FEES AND COSTS AWARD

The Arbitrator having determined that Jennifer Andrews is the prevailing party and being otherwise fully advised, hereby awards Jennifer Andrews her reasonable attorneys' fees and costs concerning her pursuit/defense of claims regarding the fence on her property only, as follows:

- | | | |
|--------------|--------------------------------|--------------|
| 1. | Attorney's Fees Award: | \$26,960.27; |
| 2. | Taxable Costs Award: | \$0; |
| 3. | Arbitration Fees and Expenses: | \$2,325 |
| TOTAL AWARD: | | \$29,285.27. |

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DATED this 17th day of June, 2026

Steve Olsen

STEVE OLSEN
Arbitrator