

**IN RE AN ARBITRATION IN THE STATE OF WASHINGTON
CLALLAM COUNTY**

JENNIFER ANDREWS,

VS.

ARBITRATOR'S DECISION

FOUR SEASONS PARK COMMUNITY CLUB

This matter was heard on May 14 & 22, 2026, pursuant to RCW 7.04A & FSCC's Amended Bylaws.

After considering the exhibits, witness testimony and argument of counsel, the Arbitrator makes the following:

FINDINGS OF FACT

1. Four Seasons Park Div. 3 was subdivided and platted in 1967. EX D1
2. The subdivision consists of 51 lots.
3. The Plat shows a 60' road easement along Alder Lane.
4. The Declaration of Restrictive Covenants does not address fences. AF #372578
5. Concurrently with creating this Subdivision, Olympic Associates, the owner of the subdivision, established the Four Seasons Community Club; a Homeowners Association designated to impose assessments, charges & liens on the lots in the subdivision. AF# 372860
6. Concurrently with creating this Subdivision, Olympic Associates conveyed a Utility Easement:

“in favor of such corporation ... supplying utility services thereto (unreadable) road area of said Plat for the installation, repair, maintenance and operation of utilities as shown on said Plat, all such utility easements to at all times remain clear of obstacles which might hinder the use thereof of installation, repair, maintenance or operation of the utilities involved...” AF#372577

7. A separate easement for a water pipeline was conveyed to Clallam County PUD#1. AF# 474027. The evidence did not show that the PUD is using this easement.

8. Concurrently with creating this Subdivision, Olympic Associates conveyed a Road Easement.

“... for the limited purpose of ingress and egress ... and the construction, maintenance and repair of said roads.” AF#418416
& Ex 14

9. Four Seasons Community Club (FSCC) established Bylaws; which have been amended in 1997, 2007 & 2009. I have been provided only with the 2009 Amended Bylaws. AF# 2009-1243289.

10. Article II of the Amended Bylaws states the objects and purposes of FSCC.

“Said Community Club shall be authorized to do whatever may be deemed to be necessary, conducive, incidental or advisable to accomplish and promote said objects and purposes... including, but not limited to:

- A) Constructing, improving and maintaining roads, streets ... at Four Seasons Park
- B) Providing, Maintaining and Installing water lines and mains ... and other utilities

11. Article IV of the Amended Bylaws addresses “DISCIPLINE OF MEMBERS”.

12. Section 5 of Article IV provides
“FINES FOR VIOLATION OF RULES

- 1) The Board shall, from time to time, adopt and may amend a schedule of monetary penalties for violations of these rules and regulations adopted by the board. Upon Adoption or amendment, the Board shall provide notice by all members, by mailing of the schedule to all members at the last known address of the member, or the

address indicated by the county tax records. The schedule shall be effective 10 days after the date of mailing by the Board.”

13. None of the rules listed in the amended bylaws address fences.

14. No regulations regarding fences have been adopted by the Board.

15. Article IV, Section 5 (2) – (5) provide:

“(2) In the event of the alleged violation of the rules and regulation, which allegation of the Board determines requires a hearing, the Board shall provide TEN (10) days written notice to the owner of a hearing before the board on the alleged violation, by mailing the notice to the member at the last known address of the member. or the address indicated by the county tax records.

(3) At the hearing, the Board shall consider all the evidence of the alleged violation, and the member shall be entitled to present evidence and testimony on his behalf.

(4) If the Board determines, based on the evidence before it, that a violation of the rules and regulations has occurred, then the Board may levy as a fine any amount up to the maximum fine for the particular violation allowed by the schedule of monetary fines. The decision of the Board shall be final. (emphasis added)

(5) Collection of Fines levied under this article may be enforced in accordance with the provisions of Article VIII of these Bylaws.”

16. Article XVI provides:

“RULES AND REGULATIONS

Rules and Regulations may be made and enforced by the Board of Trustees. Rules and regulations shall be in effect TEN (10) days after a mailed notification to all members. Rules and Regulations are subject to Article VI section 2 of the bylaws.”

17. Article VI (2) provides:

“POWERS AND LIMITATIONS

The Board of Trustees shall have the general management and control of the business and affairs of the Community Club and shall exercise any and all of the powers that may be exercised or performed by the Community Club under the law, Articles of Incorporation, and the bylaws. The Board of Trustees may make and enforce such rules

and regulations as the deem necessary, conducive, incidental or advisable to accomplish or promote the objects and purposes of the Community Club and the use of its property, assets and facilities; so long as said rules and regulations do not conflict with bylaws which shall be controlling..." (emphasis added)

This section also provides the members the power to revoke or modify rules and regulations adopted by the Board.

18. Article VI also provides for Arbitration of grievances brought by a member against Board actions/ inactions.

19. Jennifer Andrews owns lots 14 & 15 of Four Seasons Park, Div.3; and is a member of FSCC.

20. Her son, Brady Bedell, lives on Lot 14

21. Lot 15 is vacant.

22. Andrews' lots border Alder Lane.

23. Alder Lane is a paved roadway on a portion of the Road easement.

24. Andrews and the Beamishes, owners of lot 16, had a boundary line dispute in 2022; which Andrews won.

25. Due to this dispute, the boundary line between lots 15 & 16 was surveyed and staked in 2022.

26. In September 2022, Brady built a wooden fence on lot 15.

27. The fence is approximately 10' from the paved portion of Alder Lane. It is of the same style and is approximately the same distance from the paved portion of Alder Lane as pre-existing fences on lots 13 & 17

28. The pre-existing fence on lot 14 is further back from the paved road than the fences on lots 13, 15 & 17
29. The fence on lot 16 is approximately 2' from the paved road. Compared to the fences on lots 13, 14, 15 & 17, the Beamish fence is short and ornamental.
30. Construction of the fence, where it meets and follows the boundary line between lots 15 & 16 was delayed and obstructed by the Beamishes.
31. On September 29, 2022, Ms. Beamish called her friend, Theresa Lehman, to complain that the fence on lot 15 was being built inside the Road easement.
32. Lehman, was the President of the Board for FSCC.
33. She called Tom Cline; who was also on the Board; and chair of the Road Committee.
34. Cline told Brady that the fence he was building on lot 15 encroached on the Road Easement.
35. An argument ensued; and became a physical altercation.
36. Lehman called Law Enforcement and fellow board member, John "Duke" Mehlhaff.
37. CCSO arrested Brady and Tung "Tommy" Vo (owner of lot 17)
38. Brady was charged and pled guilty to Assault 4. The Judgement & Sentenced imposed 2 years' probation, no contact with Cline, no jail, no fine. Ex D3
39. After this incident, Brady finished the fence.
40. On 12/4/22, Ms. Lehman, as Board President, wrote to Ms. Andrews

"A fence was constructed at 111 Alder Lane which extends past the property line and on to the 4 Seasons Park Road Easement. This is a property violation and must be corrected. This easement violation was pointed out to the fence builder prior to it being built and was followed by an assault on a board member. It appears that the easement notification was ignored.

...

The HOA has the authority to take such action it deems proper and necessary to correct the violation.

The HOA Board would like to invite you to a hearing to present your side of the issue on December 17, 2022 at 12:00 pm at 725 S. Alder Lane¹. You can either appear in person or by written response. If the Board does not hear from you by this date, it is assumed that you have no compelling information to submit in defense of the violation. Because of the assault, the fence builder may not attend.

After the hearing the HOA Board will decide if a monthly fine or penalty is appropriate until the violation is corrected.

Once the violation is corrected, the HOA Board will need to be notified in writing so any fines or penalties can be discontinued.” (emphasis added)

41. Ms. Andrews responded on 12/9/22. Without quoting her entire letter, she complained:

- a. The notice of violation failed to cite the rule or regulation violated, nor how the rule was violated.
- b. She requested a copy of the road easement.
- c. She denied receiving a notice of easement violation and requested a copy
- d. She pointed out that, if her fence violates the road easement, she expects the Board to send the same notice to other lot owners, whose fences, landscaping or boulders are as close or closer to the paved road than her fence. She provided a map of the development, marking 25 of the 51 lots having similar or worse “violations.” Ex P17 – including several Board Members’.

42. Ms. Lehman did not respond to Ms. Andrews’ letter.

43. No evidence was introduced, showing a prior Notice of Violation to any lot owner for a fence encroaching the Road Easement.

¹ Ms. Lehman’s residence

44. The Board has not issued a Notice of Violation since 12/9/22 to any of the owners of lots in apparent violation of the road easement; except for 1 lot. The reasons why the board has taken no such action vary. They include:

a. The older fences are “Grandfathered”; with no citation to Bylaws, rule or regulation permitting or defining what constitutes a “grandfathered” fence.

b. The Board doesn’t police the development, looking for violations. It only acts on complaints (except, apparently, Ms. Andrews’ 12/9/22 complaint).

c. Because the road meanders within the easement, you can’t determine the boundaries of the easement by measuring from the center of the road. You need a survey stake that marks the lot boundaries. Except that there was a survey stake showing the Beamish lot boundary.

d. small, rotted fences, like the Beamish’s would be easy to remove.

45. The variety of these explanations lead me to conclude that the Board has no coherent policy for dealing with fences in the road easement; so, they make it up as they go, on an ad hoc basis.

46. The 1 lot that has received a subsequent Notice of violation was:

a. Davis: a contractor complained that the Davis fence actually interfered with the contractor’s equipment. Davis moved the fence. No fine was imposed

b. Rouche: asked for permission to build his fence in the easement. He was told that the Board has no authority to permit a violation of the road easement. Rouche is waiting to build his fence pending the ruling in this case. No Notice of violation was issued.

47. On or prior to 12/17/22, the Board realized that it had no schedule of penalties for building a fence in the road easement. So, they held a secret meeting, with no notice to members to decide on a monthly penalty. They decided that \$200/ month should coerce Ms. Andrews to move their fence. This decision has not been mailed to the members.

48. There was no evidence whether Board Members were given 48 hr notice of this secret meeting; as required by Article VI(3) of the bylaws. There were no minutes of this meeting.

49. Ms. Andrews did not attend the 12/17/22 hearing.

50. The Board Members were not provided a copy of Ms. Andrews 12/9/22 letter. However, Mr. Mehlhaff read it to the board.

51. On 12/17/22, Ms. Lehman wrote to Ms. Andrews:

“Thank you for your written response, dated December 9, 2022. This letter was entered into the HOA hearing decision process in lieu of your personal appearance on December 17, 2022.

...

On this plat the road right of way easement is 30’ of each side of the road center line for a total 60’ across.² This roadway right of way easement is bounded by the lots property lines located on either side of the easement. There is no vacant land between the roadway easement and the property line on which to build a fence.

² This statement by the Board refutes Mr. Mehlhaff’s testimony and excuse for non- enforcement of other encroaching fences reflected in Finding 44(c) above.

...

We have not measured the distance the fence extends onto the easement as a caution to our safety due to the pending assault case. You can easily measure the distance yourself, but whether the encroachment is 1 foot or 10 feet it is still an encroachment violation.

The easy way to understand this easement is that all of the property withing your lot boundary belongs to you the owner. Any land outside your lot boundary belongs to 4 Seasons Park HOA Road Right of Way Easement.³

The Board has considered all the available evidence and determined your fence placement is on the HOA Road Right of Way Easement and is a violation. The fence will need to be moved back to be within your lot property line.

The HOA Board has agreed to give you to March 1, 2023 to move the fence. If the fence is still on the easement after that date a fine of \$200/month will be assessed to the property.” (emphasis added) EX P12

52. Ms. Andrews wrote to Ms. Lehman on January 16, 2023:

She noted:

A. She doesn’t know who the current board members were; because the results of the last board election have not been announced.

B. The argument on 9/29/22 did not constitute a Notice of Violation under Article XI of the bylaws.

C. Her complaint about other lots fences also encroaching the road easement, including Mr. Cline’s fence, was ignored.

D. If she has to move her fence, so should everybody else.

E. It is the Board’s job to prove a violation, not the lot owner’s.

F. Cline’s participation in this matter, while he is also in violation, constitutes breach of his fiduciary duty.

G. Finding only her fence to be in violation constitutes selective enforcement & breached the board’s duty to enforce the governing documents consistently.

H. Enforcing the road right of way easement encroachment on every lot that has an encroaching fence affect the memers’ rights to common property. The Bylaws say that the board should seek a legal opinion before such an interpretation or action

I. Abandonment of Covenant

J. She requests Arbitration

EX P16

³ This is a misstatement of basic easement law

It does not appear that the board responded to this letter.

53. On 11/30/23, Ms. Andrews wrote to each board member and the members, repeating her positions. Ex P20

54. On 12/3/24, Ms. Lehman responded with a letter stating the Board was seeking advice from its lawyer. Ex P22

55. On 2/20/24, Matt Lind issued his legal opinion to the Board. Mr. Lind advised the Board that it had acted properly, Ex P26 This letter was the first indication that the Andrews fence may also be encroaching on the utilities easement.

56. On 2/27/24, Ms. Andrews wrote that Lind's letter failed to realize that the utility easement does not apply to lot 15.⁴ Ex P27

57. On 9/5/24, Ms. Lehman wrote to Ms. Andrews, stating that accumulated fines total \$2,200; and threatened filing a lien.

58. In the spring of 2026, FSCC attempted to determine the location of its main water line on Lot 15. It used a professional douser. However, her location of the main water line was incorrect, due to overhead power lines.

59. FSCC's regular water system maintenance company found the main water line by digging on lot 13.

⁴ I think she's incorrect. I think she was referring to the PUD's water easement rather than the HOA's utility easement

60. The HOA's current water chairman, Marc Sencola, testified that the main water line is flexible; and curves around the road at a constant distance from the pavement. He does not believe that the fence on lot 15 hinders the maintenance of the main water line.

61. Mr. Mehlhaff, who is the road chairman, disagrees with the water chairman.

He saw the pipe under lot 13. It is rigid. He also estimated the direction of the pipe, give or take a few degrees. He believes the rigid pipe would require an angle joint where the road curves; which would mean that the mainline pipe goes under the lot 15 fence. His estimate of the location of the main water line is not definitive; but it is more probable than Mr. Sencola's,

62. Though the water system is almost 60 years old; and may be at the end of its useful life, FSCC has no current plans, nor money to replace the main line.

63. Though there have been water leaks, none have occurred on lot 15.

64. FSCC has produced no evidence that the Lot 15 fence damages the water main line.

65. Though FSCC regularly re-paves its roads. There was no evidence that it plans to widen Alder Lane.

66. To date, FSCC has not issued to Ms. Andrews a notice that her fence on lot 15 encroaches on the HOA's utility easement.

67. To date, Ms. Andrews has not moved her fence on Lot 15.

68. Since complaining about Ms. Andrews' fence, the Beamishes have moved away.

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.

Steve Olsen
Arbitrator