Memorandum

To: Board of Snohomish Cascade Homeowners Association

From: Fence Advisory Team

Date: 10/4/2014

Re: Legal Analysis of Three Fence Options

PURPOSE OF MEMO

On March 26, 2014, the Board of Snohomish Cascade Homeowners Association organized and charged the Fence Advisory Team to research, analyze and formulate the most viable and legal options available for replacement of the fence that borders Snohomish Cascade Drive. This memo is intended to describe three options and analyze their legality.

FENCE REPLACEMENT OPTIONS

The Fence Advisory Team has identified the following three fence replacement options:

1. The common fence is replaced using HOA funds, exclusively (the "HOA Pays Plan").

2. The common fence is replaced using a combination of HOA and homeowners' funds. On a cost-per-lineal-foot basis, all homeowners upon whose lot a portion of the common fence is located and homeowners whose lot is contiguous to HOA property upon which a portion of the common fence is located, shall pay 50% and the HOA shall pay 50% of the cost to replace said portion of that fence (the "50/50 Plan"). The HOA will supervise the construction of the fence. The homeowner shall be informed of a date by which his contribution is due. Failure to timely pay may result in penalties, collection efforts and/or a lien being recorded against the homeowner's lot.

3. The common fence is replaced solely by the homeowners upon whose lots a portion of the common fence is located and the homeowners whose lots are contiguous to HOA property upon which a portion of the common fence is located (the "Homeowner Pays Plan"). The HOA will supervise the construction of the fence. The homeowner shall be informed of a date by which payment is due. Failure to timely pay may result in penalties, collection efforts and/or a lien being recorded against the homeowner's lot.

FACTUAL BACKGROUND

Plat

The Falls, a 310 lot community, is located east of Mill Creek and immediately west of Glacier Peak High School in the Snohomish School District. Specifically, the plat lies on either side of Snohomish Cascade Drive, between 132nd Place SE on the north and Puget Park Drive on the south. Donald Leavitt developed the community in four phases beginning in 1988 with the recording of the plat of Snohomish-Cascade Division 1 (AFN 8803025002), a 98-lot plat, followed by Snohomish-Cascade Division 2 (AFN 8908025004), a 98-lot plat; Snohomish-Cascade Division 3 (AFN 8908095001), a 110-lot plat; and Snohomish-Cascade – Sector 1, Division 3A (AFN 9210125001), a 4-lot plat.

CCR

Following the recording of the first plat, Leavitt recorded a declaration of covenants, conditions and restrictions. The declaration, recorded June 7, 1988, encumbered Snohomish-Cascade Division 1 (AFN 8806070215). Later, an amendment to the declaration was recorded on August 31, 1988 (AFN 8808310161).

Following the recording of plat Division 2 and plat Division 3, Leavitt recorded, on August 16, 1989, a declaration titled First Amendment to the Snohomish Cascade Division II Declaration of Covenants, Conditions and Restrictions (AFN 8908160130).

On September 21, 1990, a declaration encumbering all three divisions was recorded (AFN 9009210392). It was ultimately superseded by Amended Declaration of Snohomish Cascade Divisions I, II & III Covenants Conditions and Restrictions, recorded October 25, 1990 (AFN 9010250531) (hereinafter "CCR"). It is this declaration that the homeowners and the homeowners association looks to as the controlling covenants for the plat.

A declaration of Covenants, Conditions, Restrictions and Maintenance Agreements for Snohomish Cascade Sector I, Division IIIA, encumbering the four-lot plat only was recorded on October 12, 1992, but these covenants speak only to the private road that services the four lots. A covenant contained in the plat (AFN 9210125001) binds the four lots in Division 3A to the terms and conditions of the CCR (AFN 9010250531).

HOA

CCR Article VI provides for the organization of a homeowners association. On January 1, 1989, Snohomish Cascade Homeowner's [sic] Association, a Washington nonprofit

corporation, was formed (hereafter "HOA"). It is active today. On its website, the corporation posts transcribed copies of its articles of incorporation and amended bylaws. The date of the bylaws' adoption is unknown.

History of Fence Repair

The right-of way known as Snohomish Cascade Drive (65th Avenue SE) serves as a gateway to The Falls. Its appearance and condition affects the look and reputation of the entire community. A fence which borders either side of the right-of-way (the "Fence") is an important component of that right-of-way, enhancing or diminishing the right-of-way's beauty and function, depending on the Fence's condition. The Fence is now more than 20 years old. In numerous places, it has fallen down due to rot and disrepair and has been temporarily propped up. Homeowners anxiously await a decision by the HOA as to when the Fence will be replaced and who will pay for it.

A recent boundary survey has shown that the Fence which borders the right-of-way weaves back and forth along the property line separating the right-of-way and homeowners' lots.

Based upon the available historical documents, it would appear the Fence was constructed almost entirely by the developer in conjunction with the development of the plats. The Fence borders both sides of the right-of-way, providing a backdrop for landscaping planted along the edges of the right-of-way and screening for owners whose backyards abut the right-of-way. Several landscaped islands are located in the middle of the right-of-way, with landscaping strips and the Fence running along the full length of the right-of-way on either side. The Fence is part of the developer's uniform landscaping design for the plat's main thoroughfare, Snohomish Cascade Drive, which bisects the development and provides access to all other roadways in the development.

From 1990 to 2009, responsibility for all maintenance and repair of the Fence was assumed solely by the developer or the HOA. There is an extensive written record of the HOA's Board of Directors planning and managing Fence projects, including painting the entire Fence (source: Falls Newsletter August 2000 Vol. IV No.3); replacing posts, boards, and entire hundred-plus foot sections of Fence (source: Falls Newsletter January 2003 Vol. VII No.1); and replacing common area Fence because of storm blow-over or other damage (source: SCHOA Board Meeting Minutes, April 12 2005). The record shows that sometimes these repairs were initiated at the request of individual homeowners when damage had occurred to the Fence where it bordered their property. Mostly though, these projects were initiated by the Board as part of a long-term maintenance plan supported by HOA funds budgeted for the Fence. The records tend to establish the Fence replacement, repair and maintenance was paid by the HOA, except when the Fence damage was clearly the fault of the individual homeowner.

Five years ago, in May of 2009, the first written record of a change in Board attitude toward the Fence emerged. For the first time, the Board began to discuss charging adjoining homeowners for Fence maintenance. "Common Fence – Share Costs with adjoining homeowner" described a main discussion item from the May 2009 HOA Meeting Agenda. The Board's announcement of an upcoming meeting bears the headline: "Problem: In the past, the Association as a whole has paid for repair of the common fence along Snohomish Cascade Dr. & Puget Park Dr. Given our financial situation, should the Association require homeowners along the common fence to pay for repairs to their portion of fence?" (Italics added).

The Board's motivation to change its position on the Fence can be inferred from a phrase used to announce the May 2009 board meeting: "Given our financial situation." In a February 2010 letter to homeowners, the Board referred to a "failed experiment with a 'professional' property manager" as a reason for being "$30,000 in the red." (source: February 2010 Letter to Homeowners SCHOA). The first written record of an estimate to replace the Fences is recorded in the September 2005 Board Minutes: "We currently have $42K in reserve funds. Fence replacement is estimated at over $100K." Beginning in 2009, records show the Board vacillated significantly concerning its perception of responsibility for the Fence. For example, in 2010, homeowners' dues were suddenly raised by 17 percent with the Board explaining that the increase, in part, was to pay for a new fence:

> "The fences will be replaced with a new, attractive, and stronger design. As a result of raising the annual maintenance assessment (homeowner's dues) earlier this year in anticipation of this project, we have collected half the money required to do so and expect the monies received from 2011 homeowner's dues to satisfy any remaining requirements." (Letter from Board to Homeowners, September 12, 2010.)

In contrast, in an August 2011 letter to homeowners, the Board stated:

> "In 2010, owners were asked to vote on whether the association should undertake and pay for repairs to the fencing bordering the common areas. The consensus of the owners was that, because this fencing benefits both the association and the owners of the adjacent lots, the association should cover half of the cost and the rest of the cost would be shared by lot owners with lots bordering the fence. This idea and the process adopted by the previous board works well as long as every owner pays their 50% share. The problem we face if any owner fails to pay…" (August 2011 Letter from Board to Homeowners).

After four years, the idea of a 50/50 split eventually gave way to a view by the Board that the HOA had no financial or other responsibility for fence replacement, reversing its "full-replacement" announcement made three years earlier. This Board attempted to justify its position by stating, "The fact that the fences are owned by the individual homeowners has been published and restated by past and present boards many times, as far back as 2009." (source: The Falls at Snohomish Cascade Letter from the SCHOA Board of Directors, July 23, 2013.).

Given the varying and inconsistent positions of the Board over the past five years regarding the Fence, the current Board has commissioned this analysis.

ANALYSIS: CAN THE HOA LEGALLY REPLACE THE "FENCE"?

HOA Cares for Areas Deemed Common

State law permits an HOA to care for common areas:

> "Unless otherwise provided in the governing documents, an association may: . . . (6) Regulate the use, maintenance, repair, replacement, and modification of common areas; (7) Cause additional improvements to be made as part of the common areas." (RCW 64.38.020(6)-(7)).

CCR Section 6.3 makes this right an obligation:

> "The Declarant shall convey to the Association, and the Association shall accept all of the Common Area as soon as the Association is able to operate and maintain the same in a manner appropriate to the needs and desires of the owners and in accordance with these Covenants . . . ."

What is Common Area? CCR Section 1.7 indicates, "'Common Area' shall mean and refer to all Tracts as designated on the plats of SNOHOMISH CASCADE DIVISION I, II & III reserved for the common use and enjoyment of the owners." The definition of "Common Area" in the Amended Bylaws, Article II, No. 3, contains a similar definition.[1] These sections, read by themselves, may lead one to conclude that only Tracts qualify as common area. However, to properly interpret these sections, they must be read in the context of the entire CCR and other governing documents. One should also consider the impact of applicable State law.

[1] "COMMON AREA" shall mean and refer to Division I - Tracts A and B, Division II - Tracts C, D, and F, and Division III - Tracts B, G, H, I, J and K, reserved for the common use and enjoyment of the owners." (Amended Bylaws of Snohomish Cascade Homeowners Association for Divisions I, II and III, Article II, 3)

State law defines common areas as follows:

> "'Common areas' means property owned, or otherwise maintained, repaired or administered by the association." (RCW 64.38.010(4)).

There is little question that the HOA has the right to use, and the duty to care for the parcels identified on the plat as Tracts. The HOA holds the fee interest in such Tracts. It is the owner of the Tracts and has the clear duty to care for them. See CCR Section 6.5, paragraph 2. [2]

But what of property that is not owned by the HOA? Can such property be common area and, thus, maintained by the HOA? The answer is found by examining relevant sections of the CCR and the plat, together with other relevant governing documents. All such documents should be read together to understand the developer's common scheme of development. No single word, sentence or section should be interpreted in isolation or removed from the context provided by the balance of the documents. Words should be given their regular effect. The language of the documents should be interpreted so as not to create an absurd result. Any interpretation should pass the common-sense test and comply with applicable State law.

> ***Snohomish-Cascade Drive Right of Way is Maintained by HOA Duty and is Therefore Common***

The developer recorded the plats of Snohomish-Cascade, Divisions 1-3 and 3A, each with the following covenant:

> "All landscaped areas in **public rights-of-way shall be maintained** by the developer and his successor(s) and may be reduced or eliminated if deemed necessary for or detrimental to County road purposes." (Plat of Snohomish Cascade, Division 1, page 3, 8803025002; plat of Snohomish-Cascade, Division 2, page 2, 8908025004; plat of Snohomish-Cascade, Division 3, page 3, 8908095001; plat of Snohomish Cascade-Sector 1, Division 3A, page 1, 9210125001.) (Emphasis added.)

The covenant obligated the developer to maintain the Snohomish Cascade Drive right-of-way until his duties were assumed by the HOA by Assignment, dated February 4, 1992 (AFN 9202040184). Now, this covenant obligates the HOA to care for the Snohomish Cascade Drive right-of-way, which it has done since 1992. The right-of-way is not a Tract, nor is it owned by the HOA, yet Leavitt assigned the duty to care for the

[2] CCR Section 6.5, paragraph 2, specifically obligates the HOA to maintain the open space, trail system, picnic areas, and waterfall, each of which are found in the various Tracts of the plat.

right-of-way to the HOA. Clearly, this was done because of the benefit brought to the development by a well-conceived, beautifully constructed and well-maintained entrance and access way to the development.

The CCR acknowledges the HOA's responsibility to maintain the ROW in Section 6.5 which states, "Declarant may . . . assign to the Association the obligation of the maintenance of . . . the County Right of Way which had previously been improved and landscaped by Declarant and the maintenance of the planter islands on 65th Avenue S.E. and any other landscaped portions of 65th Ave. S.E."

The legislature understood the need of a homeowners association to preserve and protect property it may not own when it adopted the definition of "Common Area" in the Homeowners Association Statute: "'Common areas' means property owned, or otherwise maintained, repaired or administered by the association." (RCW 64.38.010(4)). The phrase "otherwise maintained, repaired or administered" draws into the definition of Common Area, property which may not be owned by the HOA, but which is maintained, repaired or administered by the HOA.

Because of the essential function it performs for the development, the HOA has maintained, repaired and administered the Snohomish Cascade Drive right-of-way for 22 years. In the opinion of the Team, it does so legally by virtue of the covenants in the plat and CCR which impose the duty. Furthermore, the right-of-way meets the definition of Common Area in the Homeowners Association Statute.

Because of Its Function, the Fence is Also Common

For approximately 20 years, from the early 1990's to 2009, the HOA maintained and repaired the Fence, just as it maintained the right-of-way, apparently considering the Fence to be an improvement in and, therefore, part of the right-of-way. Whether the Fence is actually located in the right-of-way or meanders onto contiguous private lots is of no consequence. None of the Fence is owned by the HOA. Because the right-of-way is dedicated to the public, fences constructed in the right-of-way cannot be owned by the HOA. Likewise, fences constructed on homeowners' lots cannot be owned by the HOA, but because the Fence functions as the border of the right-of-way, provides a visual backdrop for the right-of-way landscaping and provides screening for owners whose lots are contiguous to the right-of-way, the Fence was considered to be important to the uniform look and design of the right-of-way. Thus, the HOA maintained, repaired and administered the Fence for nearly 20 years. Like the right-of-way, the HOA cared for the Fence by virtue of the duty imposed by the covenant in the plats, the duties prescribed in the CCR and the authorization derived from the State law definition of Common areas found in RCW 64.38.010(4).

Section 6.3 of the CCR obligates the HOA to maintain the Common Area "in a manner appropriate to the needs and desires of the owners and in accordance with these Covenants." For 20 years, the Fence was attractively maintained and administered by the HOA, with no complaint from members of the Association. Such a history is strong evidence that homeowners considered the Fence to be of general benefit to the community. Moreover, they believed the HOA was acting in a manner "appropriate to the needs and desires of the owners and in accordance with these Covenants." The Board's change in attitude that occurred in 2009 came not as a result of a change in the needs and desires of the owners, but because the Board discovered it had been mismanaged and was deeply in debt.

Can HOA Funds be Used to Maintain the Fence?

The HOA spends its funds pursuant to the rights and duties established by the CCR, the plats and other governing documents and in accordance with applicable State law. CCR 7.3 addresses some of the limits associated with collecting and spending the HOA's annual assessments. It states: "The Association . . . shall use such funds only for the following purposes." The section then describes three different types of costs directly related to the Common Area -- maintenance, taxes, garbage and trash disposal. The section also identifies the cost of insurance to protect the Association, the cost of enforcing the CCR and the disposition of funds derived from the condemnation of the Common Area, should condemnation ever occur. In addition, the section authorizes the "[p]ayment of the cost of other services which the Declarant [now Association] deems to be of general benefit to owners of property within SNOHOMISH CASCADE DIVISIONS I, II & III, including, but not limited to, legal, secretarial and accounting services." (CCR 7.3 (6)).

Once again, if one were to apply the CCR definition of "Common Area" and consider nothing more, one might conclude the Association could not use its funds to pay for the right-of-way or the fence located therein. However, such an interpretation ignores the express obligation to maintain the right-of-way contained in the plat and CCR Section 6.5, which provide for maintenance of the right-of-way, as previously set forth. Based upon the HOA's historical maintenance of the right-of-way and fence, the duties imposed upon the HOA by the plat and CCR, and the direction provided by State law, including the State law definition of Common areas, it is most reasonable to conclude that the Fence is common and HOA funds may be used to maintain, repair and replace it. This position is further explained as follows:

1. The Fence is an integral part of the right-of-way and its landscaping because of its function. It provides a common benefit to the development which was recognized for some 20 years by the HOA in the form of maintenance, repairs, replacement of at least one 100-foot section and plans for replacement of the Fence in

its entirety. The Fence meets the State law definition of Common areas because it is property which is not owned, but "otherwise maintained, repaired or administered by the association." (RCW 64.38.010(4)). It is significant that the Declarant, when addressing the transfer of maintenance responsibility to the HOA, describes the right-of-way as "the County Right of Way which had previously been improved and landscaped by Declarant." One of the improvements the developer made to the right-of-way was the Fence. *See* CCR Section 6.5, paragraph 2. CCR Section 7.3(1) authorizes the HOA to use its funds for "maintaining the Common Area designed to serve the general benefit of such Owners." In common usage, "maintain" means to keep in existence or continuance; preserve; to keep in due condition, operation, or force; to keep in a specified state, position, etc.[3] Understanding that wooden fences, even with the best maintenance and repair, have a finite life, it is clear that maintaining a wooden fence includes replacing that fence when its useful life has expired. Allowing a wooden fence constructed in the right-of-way to decay and fall to the ground is a clear breach of the duty to maintain the right-of-way area. Moreover, the process of maintaining and repairing improvements for their useful life and thereafter replacing those improvements is specifically contemplated by State law. RCW 64.38.065 authorizes an HOA to perform a reserve study and establish a reserve budget: "An association is encouraged to establish a reserve account with a financial institution **to fund major maintenance, repair, and replacement of common elements** . . . ."[4] (Emphasis added.) Thus, if the Fence is common, which it appears to be, the HOA may use its funds under CCR 7.3(1) to maintain, repair, and replace the common fence which borders the Snohomish Cascade Drive right-of-way.

2. Leavitt built the Fence to border the right-of-way. Because it provides a visual backdrop for the landscaping and screening for the owners whose lots abut the right-of-way, the Fence provides a valuable function in the developer's unified landscaping plan. The Fence is an important part of the right-of-way. Even if the Fence is not Common Area, CCR Section 7.3(6) appears to provide the Association with the discretion to use its funds to pay costs not directly related to the Common Area by "[p]ay[ing] . . . the cost of other services which the Declarant deems to be of general benefit to the owners of property . . . ." It should be noted that this section contains the following language: "including, but not limited to, legal, secretarial and accounting services." While such language does not preclude paying for replacement of the Fence, it does create some uncertainty as to types of costs that might be excluded, if any. However, if one concludes that "legal, secretarial and accounting services" narrows or limits the spending rights of the Association, one must also consider the broadening effect of the general powers provision of the bylaws. Bylaws, Article VI, 1E empowers the board to employ an "independent contractor, or such other person as deemed necessary, and to prescribe their duties and fix their compensation." A fence contractor

[3] See Random House Webster, College Dictionary. Random House New York, 2001.
[4] RCW 64.38.065 (1).

or individual hired to maintain, repair or replace the Fence would certainly qualify as such an "independent contractor" or "other person."

Interestingly, when Leavitt imposed upon the HOA the obligation to maintain the right-of-way, he intended that the HOA use its funds to satisfy the obligation. This is evident in CCR Section 6.5, paragraph 3, where Leavitt assigned the duty to maintain the right-of-way to the HOA, but reserved the right to claw back that duty if the HOA did not adequately perform. Section 6.5 provides that if Leavitt takes back the duty, he does so with the right to be reimbursed from HOA funds the costs he incurred to maintain the right-of-way. Common sense dictates that if Leavitt had the right to be reimbursed his maintenance costs from HOA funds, the HOA has the right, in the first place, to spend those funds for right-of-way maintenance.

In CCR Section 6.6, Leavitt confers upon the HOA very broad powers to promote the general benefit of the owners. Section 6.6(c) provides:

> "The Association shall have, exercise and perform all of the following powers, duties and obligations: . . . (c) any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to these Covenants or otherwise promoting the general benefit of the Owners within SNOHOMISH CASCADE DIVISION I, II, & III."

Subsection c would seem to give the HOA powers to carry out the functions of the Association (1) pursuant to the CCR or (2) ***otherwise promoting the general benefit*** of the Owners. Thus, the HOA, upon determining that maintenance of the right-of-way and replacement of the fence promoted the general benefit of the owners, would have the right to look outside of the CCR to accomplish this objective. It seems clear from fence history that the owners consider maintenance, repair and replacement of the fence to be promoting their general benefit. Therefore, the HOA would have the right to replace the fence under CCR 6.6(c), independent of other limitations in the CCR.

RCW 64.38.020 of the Homeowners' Association Statute identifies the specific powers granted to an HOA under the law -- powers such as the right to adopt and amend bylaws, rules and regulations; adopt budgets; litigate; contract; regulate and improve the common areas; grant easements over the common area; etc. Preceding the list of powers is the following language: "Unless otherwise provided in the governing documents, an association may. . . ." The words "unless otherwise provided" can be used to argue that the statutory definition of Common areas is not applicable to the interpretation of these CCR, because Leavitt ***did*** "otherwise provide" a definition of Common Area in CCR Section 1.7 and Bylaws, Article II, 3, and that those definitions should supersede the State law definition of Common areas (RCW 64.38.010(4)). While this argument may have superficial appeal, it fails to acknowledge three important

points: (1) that the definitions of Common Area contained in the CCR and Bylaws are in direct conflict with multiple provisions of the governing documents (i.e. the plat covenant obligating the HOA to care for the right-of-way and CCR Section 6.5 that specifically refers to the HOA's obligation to maintain the Snohomish Cascade Drive right-of-way); (2) that Leavitt's own conduct – his installation and maintenance of the landscaping and construction, maintenance, repair and replacement of the Fence in the right-of-way – was inconsistent with the definition of Common Area he included in the CCR and Bylaws, but entirely consistent with the State law definition of Common areas; and (3) that the CCR and Bylaws' definition of Common Area leads to a result that is inconsistent with the declarant's development plan and right-of-way landscape plan. It is rather plain that the CCR and Bylaw's definition of Common Area fails to address significant parcels of the property that Leavitt intended to be common. It makes sense that a declarant, in the proper circumstances, might write terms into his CCR and Bylaws that would supersede the State law, because such terms would promote and enhance the declarant's overall design and plan for his development. However, in this case, the declarant's definitions of Common Area, standing alone, appear to contradict and confuse the overarching objectives of the declarant otherwise embodied in the CCR. Believing the legislature would not adopt a statute that permits such a strained result, the Team believes CCR Section 1.7 and Bylaws, Article II, 3, which define Common Area as Tracts only, should not supersede, but should be interpreted in context with the other sections of the plat, the CCR and the State law definition of Common areas. If so analyzed, Common Area will include the right-of-way and Fence.

It should be presumed that Leavitt did not intend to record plat covenants and CCR that conflict with each other. We do not know if he was aware of the conflict created by the CCR and Bylaws definition of Common Area. However, we do know, by the steps he took to maintain the Fence and by the expectation of maintenance he transferred to the HOA, that he clearly endorsed the HOA's obligation to maintain the right-of-way, including building and maintaining the fence, and intended that the HOA be able to use its funds to pay for the same. Leavitt appears to have operated on a definition of Common Area that was much like the current State law.

Requiring the Homeowner to Pay Full or Part Cost of Fence Replacement Is Not Permitted

The CCR permit the HOA to levy assessments upon lot owners to maintain the Common Area.[5] At the same time, the CCR appear to require that assessments be equal in amount for all owners and that assessments be levied uniformly. Mandating that an owner replace a portion of the common fence in excess of the annual assessment or share the cost of replacement with the HOA, constitutes an assessment by the HOA. CCR Section 6.5, last paragraph, controls the allocation of HOA assessments when new

[5] See CCR Section 6.3, supra.

plat divisions are added and placed under control of the CCR. The number of new lots is added to the number of existing lots, and the ***assessment*** is spread ***equally*** among all lots:

> "[T]he costs of the maintenance of the open spaces, common area, etc. shall be ***divided equally between the total number of lots*** that are included and governed by conditions of these covenants and restrictions." (Emphasis added.)

CCR Section 7.4 builds upon the concept of an equal assessment by requiring the HOA, when it adjusts an assessment to the owners, to do so uniformly:

> "[T]he annual maintenance assessment provided for by Section 7.2 may be increased or decreased on a ***uniform basis*** and in such amount as is approved in writing at a meeting of the Association members . . . ." (Emphasis added.)

CCR Sections 6.5 and 7.4 both require the HOA's assessment to be equal among the owners and increased or decreased only on a uniform basis. Requiring an owner whose lot is contiguous to the common fence to share with the HOA any portion of the fence replacement cost in excess of his annual assessment constitutes an added assessment and subjects such owners to an additional assessment that owners whose lots are not contiguous with the common fence would not bear, in violation of both CCR sections.

Thus, without an amendment to the CCR which permits cost sharing when replacing the common fence, neither Option 2 nor Option 3 can be implemented legally.

> ***Can the HOA Replace a Fence Located on Private Property, Without the Owner's Consent?***

While certain boundary adjustment doctrines may apply to adjust the surveyed boundary between the right-of-way and private property to a line established by the Fence, the Fence Advisory Team believes it is prudent to obtain from each property owner on whose private property the fence may be constructed a recorded easement to construct and maintain the fence or an unrecorded temporary consent to construct a new fence. The best practice may be to obtain an easement or consent from every owner whose lot is contiguous to the Snohomish Cascade Drive right-of-way.