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Document Title(s)

Findings of Fact and Conclusions of Law

Reference Number(s) of related documents:

Skagit County Case No. 23-2-00217-29

Additional Reference #'s on page ____

Grantor(s) (Last name, First name and Middle Initial)

Petitioners - Kent Haberly, et al

Additional grantors on page ____

Grantee(s) (Last name, First name and Middle Initial)

Respondent - Beacon Hill International Ministeries

Additional grantees on page ____

Legal Description: (abbreviated form: i.e. lot, block, plat or section township, range, quarter/quarter)

Lot 67 of the "Plat of EAGLEMONT Phase 1A"

Additional legal is on page **21**

Assessor's Property Tax Parcel/Account Number

P104336

Additional parcel #'s on page ___

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording process may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SKAGIT

KENT HABERLY and GRETCHEN HABERLY, HUSBAND AND WIFE, and GERALD BARON and LYNNE BARON, husband and wife, JERRY ANDERSON and PEGGY ANDERSON, husband and wife, and KARL KIRCHGASLER and LOUISE KIRCHGASLER, husband and wife,

Petitioners,

v.

BEACON HILL INTERNATIONAL MINISTERIES, an Arizona foreign non-profit corporation doing business in Washington,

Respondent.

Cause No. 23-2-00217-29

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: PETITIONERS ANDERSON & KIRSCHGASLER

THIS MATTER came before the undersigned judge for trial on Monday, January 22, 2024, through Wednesday, January 24, 2024. The Court, having heard the testimony of the witnesses and considered the exhibits admitted at trial, and the pleadings and files herein, does hereby enter the below findings of fact and conclusions of law relative to Petitioners Anderson and Kirshgasler.

FINDINGS OF FACT

1. All of the parties to this litigation own property within the Plat of Eaglemont Phase 1A recorded in Volume 15 of Plats, pages 130 through 146 of the records of Skagit County which is recorded with the Skagit County Auditor under File Number 9401250031 ("Plat").

2. Property Owners Jerry and Peggy Anderson are the record owners of Lot 44 purchasing this property in July 1995 by way of a statutory warranty deed recorded with the Skagit County Auditor under File Number 9507120042. ("Anderson Property").

3. Property Owners Gerald and Lynn Baron are the record owners of Lot 62 purchasing the property in April 2018 by way of a statutory warranty deed recorded with the Skagit County Auditor under File Number 201804030078 ("Baron Property").

4. Property Owners Kent and Gretchen Haberly are the record owners of Lot 2 purchasing the property in October 2017 by way of a statutory warranty deed recorded with the Skagit County Auditor under File Number 201710200060. ("Haberly Property").

5. Property Owners Karl and Louise Kirchgasler are the record owners of Lot 13 purchasing the property in May 1995 by way of a statutory warranty deed recorded with the Skagit County Auditor under File Number 9506010037 ("Kirchgasler Property").

6. BHIM is the record owner of Lots 67 and 68 and other property in the Plat of Eaglemont Phase 1A which is where the defunct Golf Course and club house are located by way of a statutory warranty deed recorded with the Skagit County Auditor under File Number 202205230074 ("Beacon Hill Property").

7. In the early 1990s, the record owner of all the properties identified herein was Sea-Van Investments Assoc. ("Sea-Van").

8. On May 27, 1992, the City of Mount Vernon, Washington ("City") adopted Resolution No. 332 entitled "A Resolution of the City of Mount Vernon, Washington, Adopting the Master Plan for the Proposed Development of the "SEA-VAN" Property in the City of Mount Vernon." ("Resolution No. 332").

9. On June 24, 1992, the City adopted Ordinance No. 2501 entitled "An Ordinance of the City of Mount Vernon, Washington, pursuant to Chapter 17.69 of the Mount Vernon Municipal Code, approving the Preliminary and Final Planned Unit Development of "Sea-Van, Phase I, Golf Course." ("Ordinance No. 2501").

10. In conjunction with Resolution No. 332 and Ordinance No. 2501, the City adopted a Master Plan for the BHIM Property ("Master Plan"). A portion of the Beacon Hill Property was limited to use as a public golf course under the Master Plan.

11. Paragraph 0.230 of Ordinance No. 2501 mandates that "The public shall be allowed reasonable use of the Golf Course."

12. The "PLAT OF EAGLEMONT PHASE 1A" was recorded on January 25, 1994 under AF # 940250031. The Plat depicted on its face the golf course surrounded by numbered building lots.

13. In addition to the Plat, and in a simultaneous recording with it, a Declaration of Covenants, Conditions and Restrictions Eaglemont Community Mount Vernon, Washington was recorded with Skagit County Auditor under File Number 9401250030 ("Declaration").

14. Recital B of the Declaration states:

Declarant intends to create on the Property the first of the residential community of Eaglemont with permanently maintained Common Areas for the benefit of the residents.

Recital C of the Declaration states:

Declarant intends that Eaglemont be a family-oriented rural community with emphasis on golf and outdoor recreation activities.

15. Paragraph 2.2(a) of the Declaration states:

> Development Plan. The Development Plan, illustrated on Exhibit B, is Declarant's intended design for the staged planned-unit development of Eaglemont as a planned residential community comprised of single-family and multi-family units. The Plan may be modified and amended, as provided in this Declaration, during the several years required to develop the community. It is currently the intention of Declarant to develop Eaglemont substantially in accordance with the Development Plan. The Development Plan is, however, conceptual in nature, and does not bind Declarant to add any of the properties which are shown on the Plan or to improve any portion of such properties.

16. Additionally, at Paragraph 2.2(b) the Declaration states:

> Declarant reserves the right to amend the Development Plan or to add to the Development Plan parcels adjacent to or located within Eaglemont. These rights shall be exercised by:
>
> (i) Giving notice of the proposed changes to the Association; and
>
> (ii) Securing the approval of the City as requires by applicable ordinances and laws.

17. Paragraph 11.4 of the Declaration provides:

> No Reserved Rights. Ownership of a Dwelling Unit or Lot in itself shall not create any rights of access, play or membership to any golf course constructed within the Property, and Declarant reserves the right to use said golf course and golf club as it may choose in its sole discretion including, but not limited to, the right to permit public play.

18. The Respondent Beacon Hill International Ministries does not own a "Lot" as defined in the Declaration. Lots 67 and 68 owned by Beacon Hill International Ministries comprise the Golf Course and clubhouse and are specifically excluded from the property governed by the Declaration of Covenants, Conditions and Restrictions.

19. Each of the Petitioners owns a "Lot" as defined by the Declaration.

20. In February 2000, the Declaration was amended to include the legal description of the property subject to it and a copy of the Master Plan by a document recorded under Skagit County Auditor's File Number 200002010099. This document specifically excluded the Beacon Hill Property from the Declaration.

21. In June 2010, Sea-Van and the City entered into a "Development Agreement Between the City of Mount Vernon and Sea-Van Establishing a Process to Implement and Amend the Eaglemont Master Plan." This document outlines how the Master Plan may be amended. This document is recorded under Skagit County Auditor's File Number 2010006020039.

22. Sea-Van developed the Eaglemont Golf Course on the Beacon Hill Property in the early 1990s ("Golf Course"). The Master Plan allowed a planned unit development to take place in multiple phases. The Master Plan has been amended several times since its adoption to permit slight changes to its phased in development. The general character of the Master Plan has remained the same in that it is a mix of a public golf course and residences.

23. Phase one involved the development of the Golf Course. Once the Golf Course was operational, Sea-Van implemented phase two, which involved the sale of lots within the Eaglemont golf community for residential purposes.

24. In the early 1990s, prior to development of the Golf Course, there was not a market for these properties in Skagit County, especially not at the price point asked for these lots. A lot within a planned golf course community can command a higher price than a regular neighborhood, with a value that would also increase if with a view of the course or of other especially scenic features, such as a pond.

25. Sea-Van developed a marketing plan in conjunction with James Scott, who was with Windemere. Mr. Scott was the exclusive real estate agent for Sea-Van in this community from its inception in the early 1990s through 2000. The marketing plan developed by them was in place and directed by Sea-Van at all times when Petitioners, the Andersons and Kirchgaslers, purchased their lots in 1995.

26. The Golf Course was used as an enticing factor for development. The marketing plan developed between James Scott and Sea-Van was to bring in potential purchasers to show them the golf course and sell the idea of living on the course. The target audience included golfers or people who liked the idea of living on a golf course.

27. Part of the marketing plan involved providing potential buyers course access with golf carts and sometimes free rounds of golf. Similar marketing plans were also used after Mr. Scott and Windemere stopped serving Sea-Van in 2000. At that point, an in-house Coldwell Banker brokerage took over working directly with Sea-Van. None of the Petitioners, including the dismissed Petitioners Baron and Haberly, worked with the Coldwell Banker listing agents or viewed their marketing materials.

28. The marketing plan relevant to this case as used by Mr. Scott on behalf of Sea-Van also involved offering golf memberships to prospective buyers. The certificate of membership given to the Andersons upon purchase of their property was typical of what was offered during phase two of the plan when Petitioners Anderson and Kirchgasler purchased their lots.

29. Petitioners Jerry and Peggy Anderson were looking to retire specifically in a golf community and explored Eaglemont as a possibility in 1995. They were given a cart to drive around the Golf Course. They talked to people about the course and perceived it to be an

outstanding golf course. Their builder worked with James Hung, the owner of Sea-Van, from a Sea-Van office inside a small clubhouse. Mr. Hung gave the Andersons free rounds of golf and he use of the cart to look at the course. Mr. Hung represented to Jerry Anderson that the nvestors were committed to the course as a multi-generational investment.

30. During negotiations, a membership to the Golf Course was given to the Andersons as an enticement to buy a lot without further negotiating the price downward. The first year of this membership involved unlimited play, use of a golf cart, and no green fees. The membership would have cost $15,000.

31. In subsequent years, beginning in the spring of 1996 until the Golf Course closed in March/April 2020, the Andersons received a discount on an annual membership due to this addendum to the purchase and sale agreement. The existence of the Golf Course was of primary importance to the Andersons in purchasing a lot and building a home there. They closed on May 4, 1995.

32. Karl and Louise Kirchgasler purchased their property on May 19, 1995. Like the Andersons, they sought a home within a community where a golf course would create a common bond since they were avid golfers. They were also given a cart to tour the Golf Course and were provided a complimentary round of golf. They bought from Sea-Van through Windermere and built a custom home on their lot. James Hung indicated to the Kirchgaslers that he had the resources to support the course and that it was a long-term investment for his family and investors. Mr. Hung had a house on the course. The course and community infrastructure was impressive to the Kirchgaslers and seemed to support these statements.

33. Mr. Kirchgasler testified that he saw a 3D 5x5 foot model of the Golf Course and development during price negotiations and was impressed. The Kirchgaslers purchased their

property in May 1995 and were given a lifetime membership to the Golf Course as part of the purchase and sale agreement, which conveyed significant discounts on green fees. The discounts conveyed to them continued to be honored after the Beacon Hill Property, including the Golf Course, was sold to Eaglemont Operating Partners USA, LLC in 2017. They paid the same amount each year for their membership.

34. The Golf Course opened before Petitioners Anderson and Kirchgasler purchased their properties between 1993 and early 1995. The Golf Course eventually closed in March/April 2020 and has not re-opened. In 2011 a new clubhouse was completed, which included a fitness center, banquet facilities, and a real estate office ("Clubhouse"). The Golf Course has always been an 18-hole course.

35. Prior to its closure in March/April 2020, Sea-Van sold the Beacon Hill Property (including the Golf Course) to a separate and entirely different entity (from the original developer Sea-Van) operating the course under the name of Fancy Wood International. This new entity was called Eaglemont Operating Partners USA, LLC. This sale took place in May 2017.

36. After that sale, and in 2017, the new course owners hired Troy Russell to rehabilitate the course. The course had been neglected significantly over the past five to six years prior to that time and required much effort to return it to a good condition. Mr. Russell developed and began implementing a five-year plan to improve course conditions. His goal was that an improved course would attract more golfers, with the increased rounds of golf resulting in a profitable course. The course was not profitable during the years of Mr. Russell's employment there from 2017 until March of 2020. The rounds played increased each year as conditions improved, but the course still operated at a loss.

37. Prior to its closure in the spring of 2020, the Golf Course was in financial distress. The numbers presented at trial were a net loss of $562,000 in 2017, over $1 million in 2018, and over $900,000 in 2019. These were the result of combined losses from the golf and restaurant operations. The green fees had not increased in over 25 years of its operation from the early 1990s to its closure in 2020.

38. The Golf Course closed in the spring of 2020 and has not opened since. It was put up for sale and was eventually purchased by Beacon Hill on May 23, 2022. Stephen Frostick and Troy Russell testified that the golf course could be profitable if properly managed.

39. The property at issue, owned at the time of trial by Beacon Hill, was marketed by the Golf and Land Group of Madison Marquette. The marketing materials depict the property as a golf course. The marketing materials do not include information about the relationship of the Golf Course to the community.

40. Financing for the purchase of Beacon Hill Property by Beacon Hill was provided by Capital Preservation LLC, which is affiliated with the Romano Group. On July 3, 2023, Capital Preservation demanded payment in full of its note of almost $3,000,000.00. It initiated nonjudicial foreclosure with a sale scheduled for January 26, 2024.

41. The existence of this lawsuit, which was initiated in February 2023, has likely impaired Beacon Hill's ability to engage in a sale of the property.

42. Currently, the Golf Course and the Clubhouse are not in use for any purpose. The outward appearance of the land is of a golf course; however, the Golf Course has not been maintained as a golf course in approximately four years and is in deteriorating condition. The greens were testified to as being in rough shape. The Golf Course appeared to not have been irrigated or tended to beyond some occasional mowing, which is far less than the turf

management required to maintain a golf course. The Golf Course cannot be used for golf play without maintenance and functional greens.

43. There was some testimony about the course being overgrown. The photos at trial show the property to not be in great shape, but that it continues to look substantially like a Golf Course. It does not appear to have a lot of activity on the Golf Course, but what has been presented to the court has the outward appearance of a golf course despite not being as well-groomed as a maintained course. Beacon Hill has conducted no significant maintenance of the golf course other than some mowing of the fairways since acquiring the property. There has been no maintenance of the greens.

44. The Clubhouse required substantial work due to extensive vandalism and other damage: many windows are broken, doors are broken, and some walls are down to their studs with exposed pipes. Some damage to the Clubhouse predated vandalism in November 2023. The prior damage involved mold that required remediation work that was estimated to cost $260,000. There is also an estimate from July 2022 of over one million dollars to about a million and a half to demolish and rebuild the structure. Until such work has been conducted, the Clubhouse is not functional.

45. In order to improve the current condition of the course itself, it would require at least one full month of work to peel off the top layer and reseed it. Estimated expenses were testified to at the trial which include: $22,000 a month for equipment leases; $20,000 for seed; $20,000 for fertilizer; $100,000 for two months of labor to perform the work, and; $5,000 for two months of fuel. Additionally, the irrigation system has not been operated for at least four years and is of unknown condition. Whether repairs would be needed on the irrigation system is an unknown question at this time. All of the work would need to take place in early spring or

early fall for that to have at least six months to grow and harden off before putting traffic on the course. The estimated opening cost just to render the course itself in playable condition is at least $800,000.

46. Some of the homeowners, including Kent Haberly, Gerald Baron, Michael Begley, and Deborah Wheeler, reached out to Romano Capital on December 20, 2022 with concerns about Beacon Hill's lack of maintenance of the course, unpaid taxes, liens and its general state of disrepair. They encouraged Romano to foreclose and stated that they saw continued decline on the Beacon Hill Property. That decline continued after the call.

47. What is known is that at the time of trial, there were unpaid real estate taxes of approximately $123,000, a $9,000 sewer lien, and a contested $7,500 lien recorded by Baker View Group for appraisal services. As mentioned, significant vandalism was committed in the Clubhouse in November 2023. Windows were broken, doors shattered, a fire was burned in the patio area. And until approximately a week ago, there was no security or any sort of enclosure around the clubhouse. At this point in time there is security and a fence, which appears to have been constructed as a result of a letter from the City about the Clubhouse posing an attractive nuisance.

48. The Court is aware of at least one potential buyer who apparently has significant resources and has made offers on and developed other similar properties: Steven Frostick, an agent of White-Leisure. He's made offers on the Beacon Hill Property in the past, including in 2022 at the time that it was ultimately sold to Beacon Hill. Mr. Frostick made another offer to the CFO of Romano in October 2023 in the amount of $2,000,000.00 after he learned of the pending foreclosure of the Golf Course. He plans to participate in the foreclosure sale with plans to develop the Beacon Hill Property as a golf course.

49. On November 22, 2022, the City issued a Pre-Application Meeting Summary directed to M2 Architects as agents for Beacon Hill in response to inquiries to the City about what could be done with the Beacon Hill Property. No application is pending with the City related to changing the use of the Beacon Hill Property. All of the parties agree that the Beacon Hill Property is currently designated as a golf course, and that any change in that use would require a change of the Master Plan through the City.

50. The Eaglemont homeowner's association, which is not directly involved in this suit, had some conversations with Beacon Hill Ministries through Mr. Tim Langenberg, its Executive Director, about the possibility of running an active course on the Beacon Hill Property. Mr. Langenberg had repeatedly voiced concerns about the financial viability of running a golf course on the Beacon Hill Property, given the prior financial state of the Golf Course, as well as the amount of investment that would be required to get the property back up and running. He had expressed some openness to having a golf course, but voiced concerns about its financial viability.

51. A potential receiver, Mr. Kevin Hanchet, testified to what he would do if he was appointed, which would involve assessing what needs to be done to the Beacon Hill Property and then either selling it or improving it and then selling it. His fees would be $8,000 a month, and it would take at least seven months. And then there would be a sliding scale fee along the lines of a commission/disposition fee, which would be approximately three percent of the sale price. Although Mr. Hanchet opined that this could be a financially sustainable course and viable, he had not reviewed the profit and loss statements provided from the Golf Course when it had been in operation.

52. The Petitioners claim neither any interest in Beacon Hill as a corporate entity nor that Beacon Hill has any monetary obligation to them outside of this action.

53. In their Amended Petition for Appointment of Receiver and for Damages and Equitable Relief, Petitioners asserted a claim of breach contract damages based on Resolution No. 332, Ordinance No. 2501, the Declaration, and the Development Agreement.

54. Additionally, Petitioners asserted that the recorded documents and the marketing plan implemented by Sea-Van created an equitable servitude based on estoppel in the Beacon Hill Property to their benefit. Petitioners asserted that there were no other available or adequate remedies to the appointment of a receiver.

55. Based on these allegations, the Petitioners sought the appointment of a receiver to take control of the Beacon Hill Property and reopen the Golf Course under RCW 7.60.

56. The above findings were based on what was known to the court at the time trial concluded and were entered orally on January 25, 2024. It has subsequently been represented that Beacon Hill no longer owns the property following a sale on March 1, 2024. The findings and conclusions are being entered according to the status of the case as it was known immediately following conclusion of trial.

57. Additionally, Petitioners represent that the foreclosure sale originally scheduled to take place on January 26, 2024 was postponed. This possibility was known to the court and referenced in the oral ruling on January 25, 2024.

CONCLUSIONS OF LAW

1. Petitioners Anderson and Kirchgasler have standing to bring this action.

2. Petitioners Anderson and Kirchgasler's claims for an equitable servitude based on the Declaration, Resolution 332 and/or Ordinance No. 2501 are dismissed with prejudice, as these documents do not create any rights in the Beacon Hill Property for the benefit of the Andersons or the Kirchgaslers. All Petitioners concede that these written documents alone do not create a servitude. These documents would put any buyer on notice that there could be an issue with the neighborhood if the property was not operating as a golf course, but the documents in and of themselves do not constitute the servitude. This is why Petitioners Baron and Haberly have been dismissed.

3. Petitioners Anderson and Kirchgasler claim that Sea-Van's marketing statements, representations, and conduct in the 1990s, along with written documents, created an implied servitude. Petitioners claim that because of this equitable servitude, they have shown a probable right or interest in the Golf Course property that would entitle them to an appointment of a receiver over the Beacon Hill Property under RCW 7.60.

4. The Petitioners rely on *Riverview Cmty. Grp. v. Spencer & Livingston,* 181 Wn.2d 888, 337 P.3d 1076 (2014) for their claim of an implied equitable servitude. *Riverview* did not create new law. It used existing cases to support moving a case past the summary judgment stage to a fact-finding hearing, which would be the trial. This is what took place in the instant case. A trial was conducted to determine whether there were, in fact, statements or inducements beyond the face of the documents that would create an equitable servitude.

5. One of the cases that was cited within *Riverview* and discussed extensively was *Johnson v. Mt. Baker Park Presbyterian Church,* 113 Wash. 458, 194 P. 536 (1920). This decision was relied on quite heavily by the Supreme Court in the *Riverview* case with respect to what a court would consider in looking at these kinds of principles. In the *Johnson* case, a

church had bought property in a residential development. While its recorded documents were silent about requirements for the property to be residential, the vast majority of the other properties within that neighborhood included such language. The property owners within the neighborhood brought suit to stop the church from building a church, instead of a residence, on its property. The court noted that because the church had complete notice of the restrictive use plan, it was enjoined from constructing the church. The *Johnson* court concluded that the existence of a servitude can halt something from taking place. This is also the legal theory behind the *Riverview* case, which is still good law, and was the basis for the instant case moving forward to trial. Here, Petitioners essentially requested that there were representations that the Golf Course would remain there in perpetuity, or at least for a more extensive period of time than what took place here, and are moving to compel the property owners to continue operating the property as a course.

6. At page 896 of the *Riverview* decision, the Washington Supreme Court stated, "[w]e find that an equitable servitude and injunctive relief are available under *Johnson* and leave for another day whether §2.10 of the *Restatement* correctly articulates the law in Washington state." Thus, as of the date of these findings and conclusions, Section 2.10 of the Restatement (Third) of Property regarding "Servitudes Created by Estoppel" is not the law in Washington State.

7. The legal theories here, as with the cited cases, are based in equity.

8. In this case, relative to Petitioners Anderson and Kirchgasler, there were inducements from Sea-Van in the early 1990s, particularly when there were very few lots, to purchase their lots because the community would be centered around an operational golf course. Because Petitioners Anderson and Kirchgasler both purchased their lots when there were almost

to homes in this development, the Golf Course was very much the focus of their purchase. Additionally, they purchased their lots at a higher price than what would not have been a normal going rate for Skagit County in the early 1990s. As a result, the court concludes that Petitioners Anderson and Kirchgasler did rely upon Sea-Van's inducements with respect to the Golf Course and the residential community, in that the Golf Course was a significant investment and a multi-generational opportunity.

9. This case, however, is distinguishable from the cited cases in that the representations about the Golf Course's ongoing operations were not clearly defined in terms of a timeframe. There was never a representation that the Golf Course would run in perpetuity. The Golf Course was discussed in 1995 as being a multi-generational opportunity, for a course that remained active for 25 years after that statement. However there was not a specific period of time, like in the cases cited by Petitioners, for it to remain in operation.

10. Here, the Petitioners are attempting not just to stop Beacon Hill from using its property in any other manner than that of a golf course under the Master Plan, but also to compel Beacon Hill to open the property and operate it as an 18-hole golf course. The *Riverview* case also involved a golf course and an association within a golf course community was initiated when the owner of the golf course there began a process of redeveloping property designated as a golf course on the plat for new residential lots within the golf course property.

11. Nothing in the record suggests that Beacon Hill is engaging in any effort to change the approved land use of the Beacon Hill Property through an amendment to the Master Plan as envisioned by the Development Agreement. The court concludes that there is not a change in the use of the property just because the course is no longer operational.

12. The main issue is whether this case is ripe for these legal theories to be asserted. Here, Beacon Hill has not attempted an action from which it should be enjoined. It is not attempting to change the land use under the City's municipal code or other applicable law and there are just two Petitioner couples, Anderson and Kirchgasler, making this request. And the resources that appear to be needed in order for the course to be functioning are so significant those equitable principles seem very much outweighed by the fact that there is such a significant investment required. Moreover, much of the deterioration appears to have taken place prior to Beacon Hill closing on the property, particularly with respect to the clubhouse and at least two years of lack of maintenance of the greens before Beacon Hill even took over its property.

13. RCW 7.60 indicates that a receiver may be appointed by the court only if the court determines that the appointment of a receiver is reasonably necessary, and that other available remedies either are not available or are inadequate.

14. A foreclosure sale was scheduled for Friday, January 26, 2024. The Court recognizes that there is some skepticism about whether the foreclosure sale will go forward, but the Petitioners themselves brought forth a potential buyer through the testimony of Mr. Stephen Frostick, an interested buyer for that foreclosure sale in their presentation of the case. The presence of the intervenor Capital Preservation in this matter indicates that they are taking the potential foreclosure of the Beacon Hill Property seriously.

15. The Court concludes another remedy, through foreclosure sale, is available apart from appointing a receiver. That remedy is adequate.

16. It's clear here that a legal process would need to be undertaken if there would be any sort of change in the land use. Such process would require a change of the Master Plan, which would need to go through the City under its municipal code and the Development

Agreement. Such process would likely involve more input from the residents that are connected with the Golf Course.

17. Here, the remedy being sought is not to enjoin a new use, but to appoint a receiver to compel the course to be re-developed and re-opened. This is an extreme remedy, particularly when there is this other available remedy that could be exercised at the January 26, 2024 foreclosure sale, or at the very least that the process would begin on that date. The request for the establishment of a receivership is denied.

18. For a finding of an equitable servitude, the court would need to balance the equities and have an action that was ripe for such a ruling.

19. Regarding the equities, at this point there are just two households (the Andersons and the Kirchgaslers) of a large development who request an extremely significant amount of capital to be invested by Beacon Hill for the course to be operating, and they are not asking that Beacon Hill be enjoined from doing anything.

20. The court concludes that Petitioners have a potential right to the Beacon Hill property in that they are holders of a servient benefit of an undetermined timeframe with respect to the existence of a golf course. However, the equities from what they are requesting Beacon Hill to engage in do not balance out to compel Beacon Hill to render the Golf Course fully operational. For only two households to compel such a significant investment of resources to render the course operational when the inducements to purchase were made over 25 years ago for the course to operate for an undetermined period of time would not be equitable.

21. Had Beacon Hill attempted to do something that is out of character with a golf course, an argument for equitable servitude may be ripe for ruling. However, that is not the case given the current state of the property.

22. The court concludes at this point that Petitioners' request for the court's finding of an implied equitable servitude is premature. The court denies Petitioners' request for a conclusion of an equitable servitude given the potential inequities of such a ruling and the lack of an action to enjoin. Petitioners' request that the court rule that there is an implied equitable servitude requiring operation of the Golf Course is denied.

DATED this this 22nd day of March, 2024.

Judge Laura Riquelme

For APN/Parcel ID(s): P104336 / 4821-000-067-0006

Lot 67 of the "Plat of EAGLEMONT Phase 1A" as per plat recorded in Volume 15 of Plats, Pages 130-146, inclusive, records of Skagit County, Washington;

EXCEPT those portions of Lot 67 as described on the seven following described documents:

Auditor's File No. 9704300139
Auditor's File No. 9710090071
Auditor's File No. 9810080045
Auditor's File No. 200303280232
Auditor's File No. 200711060074, being a re-recording of Auditor's File No. 200601110039
Auditor's File No. 201612200006
Auditor's File No. 201612200007

TOGETHER WITH those portions of Lot 68 and Tract 202 of said plat boundary adjusted thereto as described on the four following described documents:
Auditor's File No. 9810080044
Auditor's File No. 200303280230
Auditor's File No. 201612200004
Auditor's File No. 201612200005

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities over, across and under a portion of said plat as described on said 201611200005;

ALSO TOGETHER WITH that portion of Section 26, Township 34 North, Range 4 East, W.M. as described on document recorded as Auditor's File No. 201612200004;

ALSO TOGETHER WITH that portion of Lot 132, "Plat of Eaglemont, Phase 1B, Division 3" as per plat recorded October 25, 2004 as Auditor's File No. 200410250250, records of Skagit County, as described on document recorded as Auditor's File No. 200504220127;

TOGETHER WITH a non-exclusive "Access Easement for Utilities" over and across a portion of said Lot 132 as described on said 200504220127.

Situated in Skagit County, Washington.