

Association Businesses: Can an Association operate a business to support the community?

An Association may operate a retail or service business, such as a general store, athletic club or boat marina to serve the community so long as the Governing Documents grant the Association authority to do so and all requirements for operation of the business set forth in the Governing Documents are complied with. Moreover, an Association may generally impose assessments for any common expenses arising from the business operation.

In a case involving an owner's challenge to an assessment for common expenses arising from the lease and operation of a commercial boat marina by an Association, the Washington Court of Appeals held that the assessment was valid because (1) the Association's Governing Documents granted it authority to operate a community marina; (2) the Governing Documents granted the Association authority to make assessments for marina-related common expenses; and (3) the Association had complied with all relevant provisions on owner approval prior to opening the marina.¹

In ruling on the matter, the court made clear that Washington courts will apply the so-called "context rule" of contract interpretation in determining whether an Association's Governing Documents grant it authority to operate a business. This means that courts will consider extrinsic evidence, such as the circumstances leading to the execution of the documents, the subsequent conduct of the parties, and the reasonableness of the parties' respective interpretations, in addition to the express language of the documents.

¹ *Roats v. Blakely Island Maint. Comm'n, Inc.*, 169 Wn. App. 263 (2012) (This case involved a lawsuit by homeowners alleging that an HOA's assessments for common expenses were unauthorized. The owners lived in a residential subdivision located on Blakely Island, WA that was governed by an HOA. The HOA owned and maintained property separate from the residential lots, including an airport landing strip, tennis courts, all non-private roads designated on the plat, a fire station, a water treatment system, the right to draw water from nearby Horseshoe Lake, two parks, a recycling center, and a beach access lot.

In 2005, the Association began contemplating leasing and operating the privately owned Blakely Island Marina when the marina's owner announced that it would cease operating certain marina facilities and offered to lease those facilities to the Association. The marina consisted of a dock, fuel dispensers for cars and boats, and a general store. These were the only amenities of their kind on the island.

The Association sought to gauge its members' interest in operating the marina, so it created a special committee and surveyed its membership. In November 2005, the Association held a special meeting to determine whether to lease the marina facilities and create a subsidiary to oversee related operations. At the meeting, a majority of the membership approved a motion to authorize the Board to negotiate a lease of the marina. Thereafter, the Board negotiated the lease, which entitled the Association to operate the marina facilities "in support of the Blakely community."

In early 2009, the Association mailed an annual assessment to its members. The assessment included the 2008 marina-related expenses, estimated to be \$1,123.70 per lot. The plaintiffs refused to pay the portion of their assessment related to marina expenses. When the Association threatened to file a lien against the plaintiffs' property based on the unpaid assessment, they brought suit alleging the Association had no authority to lease and operate the marina and levy related expenses. Interpreting the Association's Governing Documents, the Court of Appeals disagreed.).