

TAB

THREE

**AMENDMENTS TO
DECLARATION**

AMENDMENT TO DECLARATION OF CONDOMINIUM

January 25 1994
Mary H. Brown
The undersigned, being the Declarant and all of the Unit Owners of Rock Lake Estates Condominium created by a Declaration of Condominium, and the Condominium Plat recorded in the Office of the Register of Deeds for Jefferson County, Wisconsin, in Volume 629 of Records beginning on Page 511, as Document Number 788236; and also signed by the President and Secretary of Rock Lake Estates Unit Owners Association, Inc., as authorized by the By-Laws of said Association, and by M & I Bank of Cambridge, the holder of a mortgage on a portion of the real estate described in the Declaration of Condominium hereinafter referred to, hereby amend the Declaration as follows:

1. There is added to the Declarations the approved pier plan as Exhibit "B" and the index shall be amended to show "R. Pier Plan".

2. Paragraph D, Item 1.b.(v) is revised to read as follows: "The cable television outlet to the Unit and the junction box serving it." The remainder of the paragraph is deleted.

~~3. Paragraph E, Common Elements, is revised to add a third Paragraph to read as follows: No permanent structure shall be place on the property located between Building "A" Phase I and the lake front which would interfere with the view to the South from the front of Building "A" Phase I to the lakeshore."~~ (Repealed & Recreated 02/04/1997)

4. The last sentence in paragraph H is revised to correct a spelling error in the word "Units" so that that sentence shall read as follows: "No such use may unreasonably interfere with the use and enjoyment of the Common Elements and their Units by other Unit Owners and there may be no storage of materials or conduct of any activity which increases the insurance rates on the Condominium."

5. The first sentence in paragraph I is revised to correct a spelling error in the word "McLay" so that that sentence shall read as follows: "Service of process on the Condominium or the Association may be received by DeLoris E. McLay, Box 27, County B West, Lake Mills, WI 53551." (Repealed 02-04-1997)

~~6. Paragraph P shall be revised to read as follows: "Until a date thirty (30) days after conveyance of fifteen (15) of Phase I Units to purchasers Declarant reserves the right to appoint and remove officers and directors of the Association and to exercise the powers and responsibilities of the Association subject to the provisions of the law. However, if Declarant shall not sell fifteen (15) of Phase I Units within three (3) years, Declarant's reservation of the right to appoint and remove officers and directors of the Association shall end. Until all Units have been sold to purchasers Declarant reserves the right to continue development work in accordance with the plans for the Condominium, conduct promotional and sales activities using unsold Units and the Common Elements, and de~~ (Repealed 02-04-1997)

-2-

all other acts she deems necessary in connection with the development and sale of Units in the Condominium so long as these do not violate the rights of the Unit Owners or their mortgagees or equivalent security holders or unreasonably interfere with the use and enjoyment of the Units and Common Elements. Declarant may make technical and corrective amendments to this Declaration and the Condominium Plat without consent of the Unit Owners or holders of security interests in the Units of the Condominium. No amendment to the Declaration affecting the status and rights of Declarant may be adopted without the written consent of Declarant.

7. The last sentence in paragraph Q is revised to correct a spelling error in the word "that" so that that sentence shall read as follows: "No amendment to this Declaration or the Condominium Plat is effective until an instrument containing the amendment and stating that the required consents or vote was obtained, signed on behalf of the Association by its president and secretary and duly acknowledged or authenticated is recorded in the office of the Register of Deeds for Jefferson County, Wisconsin."

Executed this 18th day of May, 1983.

ROCK LAKE ESTATES UNIT OWNERS
ASSOCIATION, INC.

This corporation does not
have a corporate seal.

By: W. E. Kiessling, Jr.
W. E. Kiessling, Jr., President

Attest: DeLoris E. McLay
DeLoris E. McLay, Secretary

DeLoris E. McLay
DeLoris E. McLay, Declarant

Richard Wheeler
Richard Wheeler

Colette Wheeler
Colette Wheeler

Melvin Cerull
Melvin Cerull

Jean Cerull
Jean Cerull

-3-

AUTHENTICATION

Signatures of W. E. Kiessling, Jr., DeLoris E. McLay, Richard
Wheeler, Colette Wheeler, Melvin Cerull and Jean Cerull
authenticated this 18th day of May, 1983.

T. J. Lesperande
Member State Bar of Wisconsin

CONSENT OF CORPORATE MORTGAGEE

The M & I Bank of Cambridge, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, mortgagee of a portion of the land described in the Declaration of Condominium herein referred to, does hereby consent to these amendments and does hereby consent to their adoption.

IN WITNESS WHEREOF, the said M & I Bank of Cambridge has caused these presents to be signed by Dwaine R. Sievers its President, and countersigned by Sheldon A. Schield, Vice President, at Cambridge, Wisconsin, and its corporate seal to be hereunto affixed this 18th day of May, 1983.

In the presence of:

M & I BANK OF CAMBRIDGE

By: Dwaine R. Sievers
Dwaine R. Sievers

Attest: Sheldon A. Schieldt
Sheldon A. Schieldt

STATE OF WISCONSIN)
) ss
JEFFERSON COUNTY)

Personally came before me this 18th day of May, 1983,
Dwaine R. Sievers, President and
Sheldon A. Schieldt, Vice President, of the
above named corporation, to me known to be the persons who executed
the foregoing instrument, and to me known to be such President
and Vice President of said corporation, and acknowledged to me that
they executed the foregoing instrument as such officers as the deed
of said corporation, by its authority.

Elizabeth Frey
Notary Public, Dane County, WI
My commission expires Feb. 10, 1985

This instrument drafted by
W. E. Kiessling, Jr., Attorney
Lake Mills, WI 53551



County of Jefferson ZONING AND ENVIRONMENTAL PROTECTION

COURTHOUSE
JEFFERSON, WISCONSIN 53549
TELEPHONE 414-04 - 2500

May 5, 1983

VOL 631 PAGE 428

Attorney William Kiessling
Kiessling & Lesperance, S. C.
140 E. Lake Street
Lake Mills, Wisconsin 53551

Dear Atty. Kiessling:

The DeLoris McLay Proposal No. 1 for boat slip construction is suitable. Any extension or expansion thereof must meet any future town of Lake Mills pier ordinance and NR 326 regulations, set forth in the Wisconsin Administrative Code.

Use of the piers is limited to the Rock Lake Estate condominium owners. Development is limited to 130 boat slips if the condominium project proceeds to its full extent. Additional pier construction must be to the east of Pier B, so designated on the Condominium Pier Plat.

Sincerely

Bruce Haukom
Zoning Administrator

BH:hs

Exhibit "B"

840



SCALE: 1" = 100'

THREE
5 UNIT BUILDING TYPE
BOX LIKE ESTATES ONLY
NO LAY REALTY LIKE MALLS

789490

STATE OF WISCONSIN
Jefferson County

Received for record this 20th day
May A. D. 19 83 at 8:00
o'clock A. M. and recorded Vol.
631 of Records, page 425.
James H. Bishop Register
Deputy

PROPOSED BOAT
(52)

L A

BOAT SLIP AGREEMENT

Agreement by and between DeLoris E. McLay, individually and as Declarant of Rock Lake Estates Condominium which condominium is dated March 21, 1983, and recorded March 25, 1983, in the Office of the Register of Deeds for Jefferson County, Wisconsin, in Volume 629 of Records, at Page 511, as Document No. 788236, and Rock Lake Estates Unit Owners Association, Inc., First Parties; and Richard Wheeler and Colette Wheeler, Second Parties.

WHEREAS, First Parties have agreed with Second Parties to give to Second Parties a right to use a boat slip in the common elements area of Rock Lake Estates Condominium located on the shore of Rock Lake, when the same shall be built, which boat slip shall be designated by the Rock Lake Unit Owners Association, Inc. and subject to all of the rules and regulations of said Association (inclusive of any charges or assessments) and of any governmental unit and which boat slip shall be considered to be appurtenant to and transferable with Unit 1, Building A, Phase I of the aforesaid Rock Lake Estates Condominium.

NOW, THEREFORE, it is agreed that Second Parties shall have a right to use a boat slip in the common elements area of Rock Lake Estates Condominium located on the shore of Rock Lake, when the same shall be built, which boat slip shall be designated by the Rock Lake Unit Owners Association, Inc. and which shall be subject to all of the rules and regulations of said Association (inclusive of any charges or assessments) and of any governmental unit and said boat slip shall be considered to be appurtenant to and transferrable with Unit 1, Building A, Phase I of the aforesaid Rock Lake Estates Condominium.

Dated this 19th day of May, 1983.

AUTHENTICATION

Signatures of DeLoris E. McLay, W. E. Kiessling, Jr., Richard Wheeler and Colette Wheeler authenticated this 19th day of May, 1983.

John A. Neupert
John A. Neupert
MEMBER STATE BAR OF WISCONSIN

ROCK LAKE ESTATES CONDOMINIUM

DeLoris E. McLay
DeLoris E. McLay,
Individually and as Declarant

ROCK LAKE ESTATES UNIT OWNERS ASSOCIATION, INC.

By: W. E. Kiessling, Jr.
W. E. Kiessling, Jr., President

Attest: DeLoris E. McLay
DeLoris E. McLay, Secretary

This instrument drafted by

Return: W. E. Kiessling, Jr., Attorney
Lake Mills, WI 53551

Richard Wheeler
Richard Wheeler

STATE OF WISCONSIN } ss. 789497
Jefferson County }
Received for record this 20th day
of May A. D. 1983 at 8:00
o'clock A. M. and recorded Vol.
631 of Records, page 236.
Samuel A. Bignall Register
Deputy

Colette Wheeler
Colette Wheeler

2nd

AMENDMENT TO DECLARATION OF CONDOMINIUM

AMEND THE DECLARATION AS FOLLOWS:

K. INSURANCE

1. OMIT: (FIRST SENTENCE): THE ASSOCIATION SHALL MAINTAIN MULTI-PERIL PROPERTY INSURANCE AT FULL INSURABLE VALUE BASED ON REPLACEMENT COST ON THE ENTIRE CONDOMINIUM.

REPLACEMENT FOR THE ABOVE OMISSION WILL READ AS FOLLOWS:

1. FOR INSURANCE PURPOSES IRREGARDLESS OF THE DEFINITION OF A "UNIT" (DECLARATION OF CONDOMINIUM PAGE 1, SECTION D, DEFINITION NUMBER 1, "UNIT"):

A. THE ASSOCIATION SHALL BE RESPONSIBLE TO MAINTAIN FULL RECONSTRUCTION INSURANCE PROTECTION ON ALL THE BUILDINGS INCLUDED IN THE ASSOCIATION. THIS INCLUDES ALL FIXTURES, INSTALLATIONS, OR ADDITIONS COMPRISING A PART OF THE BUILDING WITHIN THE INDIVIDUAL CONDOMINIUM UNITS INITIALLY INSTALLED, OR REPLACEMENTS THEREOF, IN ACCORDANCE WITH THE ORIGINAL CONDOMINIUM PLANS AND SPECIFICATIONS. ALL DECKS SHALL BE CONSIDERED AS A PART OF THE ORIGINAL CONSTRUCTION AND INSURED BY THE ASSOCIATION.

B. THE INDIVIDUAL UNIT OWNER SHALL BE RESPONSIBLE TO INSURE ALL IMPROVEMENTS TO REAL PROPERTY WHICH HAVE BEEN ADDED TO OR UPGRADED FROM THE ORIGINAL CONSTRUCTION.

C. THIS IS TO INCLUDE FIRE AND EXTENDED COVERAGE AND ALL OTHER TYPES OF COVERAGE COMMONLY MAINTAINED ON SUCH PROJECTS. THE ASSOCIATION SHALL HOLD THIS INSURANCE IN ITS NAME FOR THE USE AND BENEFIT OF THE UNIT OWNERS AND OF THE MORTGAGEES OF THE UNITS, OR THEIR SUCCESSORS AND ASSIGNS, AS THEIR INTERESTS MAY APPEAR.

EXECUTED THIS 16th DAY OF November 1984

Drafted by: Jeff Kingsley & Mr. Bergerman

Jan S. Ahlby #4
 Sandra H. Riel #2
 F. J. Huel #1
 Melvin P. Cruik, Unit #3
 Edward J. Thompson Unit #5
 Pete Z. Beer #6

STATE OF WISCONSIN } 803538
 Jefferson County }
 Received for record this 7th day
 of December A. D. 19 84 at 9:00
 o'clock A. M. and recorded Vol.
654 of Records, page 214.
Frank A. Hill Register
 Deputy



ROCK LAKE ESTATES UNIT OWNERS
 ASSOCIATION, INC.

BY: W. C. Kuntz
 PRES.

DeLoris E. McLaughlin
 DECLARANT

STATE OF WISCONSIN
 Jefferson County Register of Deeds
 This is a full true and correct copy of the document
 filed/recorded in my office
January 25, 1985
Mary K. Schuster
 Deputy

THIRD AMENDMENT
TO
DECLARATION OF CONDOMINIUM
OF
ROCK LAKE ESTATES CONDOMINIUM

901987
State of Wisconsin } 19th day
Letters of Quantity } 93 at 3:15
Received by return file }
of March 19, 1993 }
of date P. M. at 3:11
833 of 629, 631 } Register.
Deputy

THIS THIRD AMENDMENT entered into this 19th day of March, 1993,
by DeLoris E. McLay (the "Declarant") WITNESSETH:

Declarant recorded a Declaration of Condominium of Rock Lake Estates, a Condominium, in the Office of the Register of Deeds for Jefferson County, Wisconsin on March 25, 1983, in Volume 629 of Records, Page 511, as Document No. 788236, (the original "Declaration"), which subjected certain property in the Township of Lake Mills, Jefferson County, Wisconsin to Chapter 703 of the Wisconsin Statutes, being the Condominium Ownership Act (the "Act"). The first amendment to the Declaration was recorded by Declarant on May 20, 1983, in the Jefferson County, Wisconsin Register of Deeds Office, in Volume 631 of Records, Page 425, as Document Number 789490 ("First Amendment"). The second amendment to the Declaration was recorded by Declarant on December 7, 1984, in the Jefferson County, Wisconsin Register of Deeds Office in Volume 654 of Records, page 214, as Document Number 803538 ("Second Amendment"). Together the original Declaration, the First Amendment, the Second Amendment, and this Third Amendment shall be referred to as the "Declaration".

In Article F of the original Declaration, Declarant reserved the right to subject additional residential property to development as condominiums and common areas in the amount of 26 buildings, identified in Article E as containing 5 or more units each, for a total of 130 units. Documents on file in the Jefferson County, Wisconsin Register of Deeds' office also identified the condominium as containing up to 26 buildings and 130 units. Article E of the original Declaration also identified that Phase I of the condominium project would consist of four buildings, and the attached Condominium Plat identified the location and floorplan of the first building and its five units. Article E also provided for certain Common Elements in the initial phase, and identified that more Common Elements shall be recorded upon future development.

From time to time, Declarant has used this reservation of rights to record in the Office of the Register of Deeds of Jefferson County, Wisconsin, amendments to the Condominium Plat, which have described the legal description of the property under each new phase or expansion area, designated the unit number and provided the floorplan if different from the original floorplans.

Pl 8 E 1/4 S E 1/4

Dec. 3-7-13. L M

Each new phase of the Condominium plat was subjected to the Act with the reservation on the Plat, and the guaranty in the disclosure documents, that the Declarant would dedicate the roadways shown on the plat to the Town as soon as they were blacktopped.

Declarant now wishes to exercise her rights under Article F of the original Declaration and complete the expansion of the Condominium to a total of 128 units and 24 buildings, as reserved to her in the original Declaration.

Declarant now intends to subject to the Declaration the Original Expansion Real Estate described on Exhibit A, and submit such Original Expansion Real Estate to the Condominium form of ownership and to the provisions of Chapter 703 of the Wisconsin Statutes, and to construct 18 additional buildings, containing together 103 residential units, together with further landscaped areas, walkways, driveways, fixtures, parking areas and other improvements (collectively, the "New Buildings") and to create new Units 27 through 129 (Note: there is no unit 13).

NOW, THEREFORE, Declarant, the fee owner of the Original Expansion Real Estate, pursuant to the provisions of Article F of the Declaration, by this Amendment hereby amends the Declaration as follows: by submitting the Original Expansion Real Estate, as defined herein, the New Buildings and improvements thereon or therein or to be built thereon or therein to the Act and the Declaration as though fully set forth therein, and hereby creates Units 27 through 129, of such Condominium, subject to taxes and assessments not yet due and payable, municipal and zoning ordinances, existing dedicated public roadways, recorded easements and restrictions, any other easements and/or rights in favor of gas, sanitary sewer, storm sewer, electric, telephone and water utilities, all other matters of record and the restrictions and conditions contained herein and in the Declaration, and the reservation of right to dedicate to the Town of Lake Mills the parcels identified as Future Road Parcels on Exhibits A-1 and A-2 and specifies that the provisions of this Declaration, as amended, shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners and occupants of all or any part of the Condominium. In addition:

Section 1. The definition of "Condominium" in, and Article C of the Declaration, is hereby amended by adding to the Condominium and to Exhibit A of the Declaration, the Original Expansion Real Estate, and the Units 27 through 129, described on the legal description, site map and survey on Exhibits A-1 and A-2, both attached hereto and incorporated herein, and the improvements constructed thereon or to be constructed thereon.

Section 2. As identified in Article G of the Declaration, each Unit Owner has an equal undivided interest in the Common Elements, so each Unit Owner shall henceforth have a 1/128th interest and vote, and a 1/128th liability for Common Expenses. The Original Expansion Real Estate is now included within the Common Elements, except as expressly noted herein. As used herein, the term "Unit owner" shall mean the owner of a Unit whether previously declared or declared herein.

Section 3. The Condominium Declaration and Plat as recorded are hereby expanded to include the floor plans of Units 26 through 129 as described in Exhibit C-1, attached hereto and incorporated herein by this reference.

Section 4. Declarant is presently the owner of 100% of the ownership interest in the Original Expansion Real Estate, and there is no mortgage on this property. By virtue of the provisions of Article F, and Article Q of the original Declaration, no consent of any other unit owners are needed to amend the Declaration to allow the Declarant to exercise the reservation of rights in Article F and herein.

Section 5. Future Road Parcels as defined on Exhibit A-1, and the existing dedicated Town Roads are specifically excluded from the Condominium, or in the alternative, are in the Condominium subject to the prior encumbrance of the obligation to dedicate them to the Town of Lake Mills.

Section 6. Except as otherwise stated herein, the provisions of the Declaration shall remain the same, and shall be deemed to extend to all Units as though each had been fully set forth therein at the time of recording the original Declaration.

Section 7. All Exhibits referenced herein are incorporated herein by this reference.

Section 8. The street addresses of all of the units that are built are shown on Exhibit B-1, attached hereto and incorporated herein by this reference.

Section 9. The Town will not accept a dedication of the Future Town Roads shown on Exhibit A-2 until they have been built and blacktopped, so Declarant hereby also grants to the unit owners of the Condominium a non-exclusive easement over the Future Road Parcels defined in Exhibit A-1 and A-2 until they become public roads, and expressly reserves for herself a non-exclusive easement over these Future Road

VOL 833 PAGE 314

Parcels for the benefit of adjoining property presently owned by Declarant, to the north and west of the Condominium, until the Future Road Parcels become public roads.

Executed at Brookfield, Wisconsin, as of the day and year set forth above.

Deloris E. McLay
Deloris E. McLay, Declarant

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
COUNTY OF Waukegan) SS.

Personally came before me this 14 day of August, 1993, the above-named person, Deloris E. McLay, Declarant, to me known to be the person who executed the foregoing instrument and acknowledge the same.

John M. McLay
Notary Public, State of Wisconsin
My Commission: Expires July 24, 1994

EXHIBIT A-1

LEGAL DESCRIPTION

The Original Expansion Real Estate shall be defined as the following:

All of the following legally described parcel which has not yet been included in Rock Lake Estates, a Condominium:

A part of the SE. 1/4 of the SE. fractional 1/4 of Section 3, T. 7 N., R. 13 E., Township of Lake Mills, Jefferson County, Wisconsin, described as follows: Beginning at a point which is South 18.10 chains (1194.6 feet) and east 31.50 chains (2079.00 feet from the center of said Section 3; thence South 13.40 chains (884.40 feet); thence S. 42° 00' E., 8.50 chains (561.00 feet) to Rock Lake; thence easterly along the lake to the east line of said Section 3; thence North along said Section line to the southwesterly right-of-way line of Interstate Highway '94"; thence N. 64° 51' W., 533.00 feet & N. 30° 57' 48" W., 116.62 feet along said southwesterly right-of-way line; thence Southerly approximately 765.00 feet to the point of beginning, excepting there from all enclosed right-of-way for C.T.H. "13" which includes 0.38 acres conveyed to Jefferson County for highway purposes by Warranty Deed recorded April 10, 1973 in vol. 487 Records, page 421, and also 0.083 acres conveyed to Jefferson County for highway purposes recorded January 11, 1929 in Volume 132 Deeds, page 571. Said parcel contains approximately 22 acres. Excluded there from the two family residence (approx. 30'x52') with attached two car garage in existence prior to any condominium development, and presently owned and occupied by DeLoris E. McLay with an upstairs rental unit.

Excepting there from, however, any portion of this parcel already dedicated as Town Roads, and any portion thereof shown on the Amended Condominium Plat and on Exhibit A-2 herein, as Future Town Road ("Future Road Parcels).

The Tax Key No. that includes this property is 07- 13-03-41

This instrument was drafted by Nancy Leary Haggerty of Michael, Best & Friedrich

Please return to:Nancy Leary Haggerty, Esq. Michael, Best & Friedrich
100 East Wisconsin Avenue, Suite 3300
Milwaukee, WI 53202

SURVEYOR'S CERTIFICATE

Heavy part of the Northeast 1/4 of the Southeastern 1/4 and part of the Southeastern 1/4 of the Southeastern 1/4 of Section 3, Town 7 North, Range 13 East, Town of Lake White, McFarlan County, Wisconsin. The parcel is more particularly described as follows:

[illegible]

Land parcel owner is 616,819 square feet or 14.2 acres

Surveys are oriented to the East Line of our Standard 1:1 of mid. sec. 3-7-13, measured to be 1 67' 55" 1/2 W. and is known as previous surveys.

The western paid heavily certifies that he is a Licensed Lead Surveyor authorized to practice his profession in California; that he has surveyed and mapped the real estate described and pointed out the items of the condominium plot. The said plot is a correct representation of the land surveyed and the condominium described, and that the condominiums and the location of each unit and common areas can be determined from the plot.

Over the 12th day of March, 1977

Matthew E. Morgan, 97 East Broadway, S-12-0
ASSOCIATE ASSOCIATES, PCC
111 Warren Street, Denver, CO, 80202



GRAPHIC SCALE

1003 - 1200

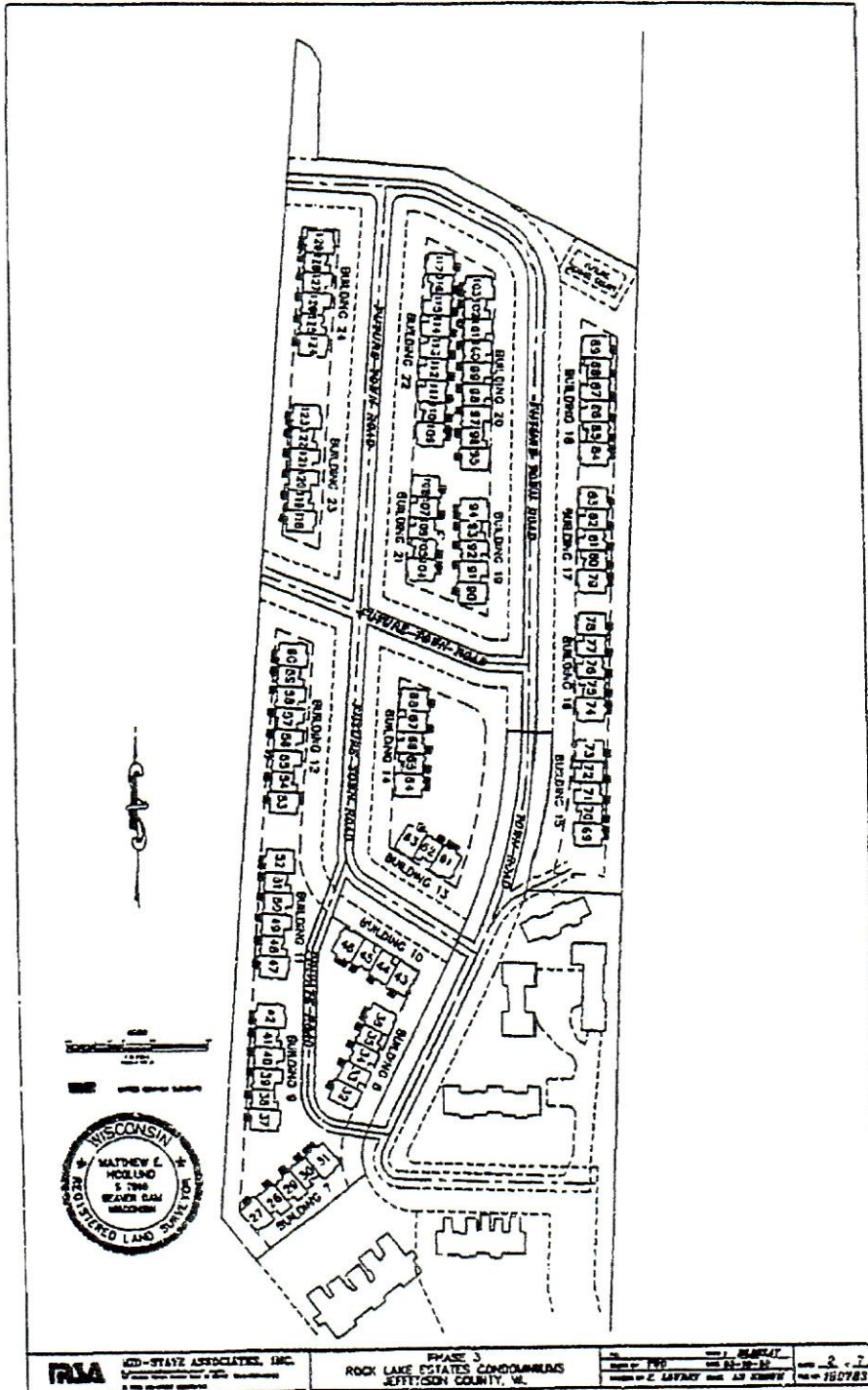
MSA

MID-STATE ASSOCIATES, LNC

PHASE J
ROCK LAKE ESTATES CONDOMINIUMS
JEFFERSON COUNTY, AL

[illegible]

EXHIBIT A-2



VOL 833 PAGE 318

EXHIBIT B-1

<u>Unit No.</u>	<u>Address</u>	<u>Interest in Common Elements</u>
1	W8115 Canterbury Lane, No. 1	1/128th
2	W8115 Canterbury Lane, No. 2	1/128th
3	W8115 Canterbury Lane, No. 3	1/128th
4	W8115 Canterbury Lane, No. 4	1/128th
5	W8115 Canterbury Lane, No. 5	1/128th
6	W8116 Canterbury Lane, No. 6	1/128th
7	W8116 Canterbury Lane, No. 7	1/128th
8	W8116 Canterbury Lane, No. 8	1/128th
9	W8116 Canterbury Lane, No. 9	1/128th
10	W8116 Canterbury Lane, No. 10	1/128th
11	W8116 Canterbury Lane, No. 11	1/128th
12	W8116 Canterbury Lane, No. 12	1/128th
14	N6968 DeLoris Lane, No. 14	1/128th
15	N6968 DeLoris Lane, No. 15	1/128th
16	N6967 DeLoris Lane, No. 16	1/128th
17	N6967 DeLoris Lane, No. 17	1/128th
18	N6969 DeLoris Lane, No. 18	1/128th
19	N6969 DeLoris Lane, No. 19	1/128th
20	N6969 DeLoris Lane, No. 20	1/128th
21	N6969 DeLoris Lane, No. 21	1/128th
22	W8129 Manchester Lane, No. 22	1/128th
23	W8129 Manchester Lane, No. 23	1/128th
24	W8129 Manchester Lane, No. 24	1/128th
25	W8129 Manchester Lane, No. 25	1/128th
26	W8129 Manchester Lane, No. 26	1/128th

Each of the remaining units will be issued a street address by the Town of Lake Mills as a building permit is issued.

VCL 895-390

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

JEFFERSON COUNTY

ROCK LAKE ESTATES UNIT OWNERS
ASSOCIATION, INC.,

Plaintiff,

ABRIDGMENT OF JUDGMENT

-vs-

TOWNSHIP OF LAKE MILLS,

Case #93-CV-59

Defendant,

-and-

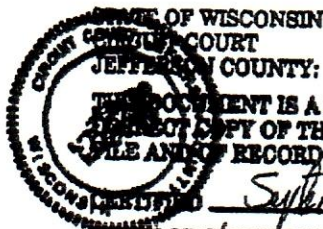
DeLORIS E. McLAY,

Defendant and
Third-Party Plaintiff,

-vs-

CAROLYN R. FARRELL, et al.,

Third-Party Defendants.



CLERK OF CIRCUIT COURT

BY

The undersigned Deputy Clerk of this Court certifies that, among other things, the Declaratory Judgment in this matter provides:

1. The declaration of condominium was recorded in the office of the Register of Deeds for Jefferson County, Wisconsin, on March 25, 1983, in Volume 629, Page 511, Document No. 788236, Jefferson County Records.

2. The legal description of the property that is the subject of this action and the condominium declaration is described as follows:

Commencing at the E.1/4 corner of Section 3-7-13; thence along the east line of the S.E.1/4 of said Section 3-7-13, S.02°30'00"W., 2241.52 feet; thence S.73°42'34"W., 67.23 feet; thence N.16°06'20"W., 113.46 feet; thence N.02°30'00"E., 106.93 feet; thence S.86°56'00"W., 190.97 feet to the S.W. corner of Certified Survey Map No. 1903 recorded in Volume 6, Page 123 of Certified Survey Maps for Jefferson County, and the point of beginning also being a point of curvature; thence along the arc of a curve to the right having a radius of 78.57 feet and a chord which bears N.34°53'05"W., 112.30 feet to a point of tangency; thence N.22°27'28"E., 283.85 feet to a point of curvature; thence along the arc of a curve to the left having a radius of 728.56 feet and a chord which bears N.09°58'44"E., 314.85 feet to the point of tangency; thence S.87°30'00"E., 66.00 feet to a point of curvature;

thence along the arc of a curve to the right having a radius of 794.56 feet and a chord which bears S.09°58'44"W., 343.38 feet to the point of tangency; thence S.22°27'28"W., 283.85 feet to a point of curvature; thence along the arc of the curve to the left having a radius of 12.57 feet and a chord which bears S.35°19'06"E., 21.26 feet to the point of tangency; thence S.02°04'00"E., 66.00 feet to the point of beginning.

3. The Rock Lake Estates Condominium is not an expanding condominium.

4. The Rock Lake Estates Condominium Declaration may only be amended with the consent of 75% of the unit owners.

5. DeLoris McLay has no easement over the Rock Lake Estates Condominium to any lands adjacent to the condominium. As a unit owner, DeLoris McLay has an undivided interest in the common elements of the condominium, and she may use them in like manner as any unit owner. DeLoris McLay has no superior right of use. DeLoris McLay retains no implied reservation of easement.


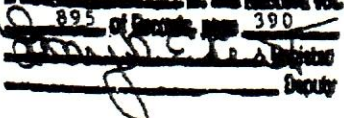
6. The entire Rock Lake Estates Condominium not dedicated to units is common elements owned in common by the unit owners.

7. The recording of the Third Amendment to the Declaration of the Rock Lake Estates Condominium was ineffective to amend the Declaration. The Third Amendment to the Declaration is void.

8. The road dedication of September 19, 1991, recorded in Volume 9 of Certified Surveys, Pages 122 and 123, Document No. 877657, Jefferson County Records, is void because defendant McLay failed to file a notice of the pendency of application required by §840.11 Wis. Stats.; because such dedication effected an amendment of the condominium plat without the required consent of the unit owners; and because such a road dedication is a conveyance of condominium common elements requiring all unit owners and their security interest holders to join in such conveyance.

Dated this 20th day of September, 1994.

BY THE COURT:


 Deputy Clerk of Courts
 STATE OF WISCONSIN }
 Jefferson County } 929946
 Received for record this 20th day
 of September 1994 at 2:05
 P. M. and recorded Vol.
 895 of Records, page 390

 Deputy

This document was drafted
 by John H. Short

Return to John H. Short

FILED

JUN 15 1995

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 15, 1995

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-2488

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ROCK LAKE ESTATES UNIT OWNERS ASSOCIATION, INC.,

Plaintiff-Respondent,

v.

TOWNSHIP OF LAKE MILLS,

Defendant,

DELORIS E. MCLAY,

Defendant-Third Party Plaintiff-Appellant,

**CAROLYN R. FARRELL-CAMPBELL, JOHN E. CAMPBELL,
WILLIAM R. AVERY, PATRICIA M. AVERY,
WAYNE E. ELLIOTT, DELORES C. ELLIOTT,
HAROLD HEITZ, MARGARET HEITZ,
EDWARD J. THOMPSON, JUNE M. THOMPSON,
PETER H. BOER, JANICE M. BOER,
MARTIN G. LIRA,
ROBERT D. NELSON, LOIS P. NELSON,
EUGENE LAURITZEN, MARY LAURITZEN,
LEROY E. SOBANIA, BONNIE J. SOBANIA,
JOHN A. MCINNIS, JACQUALIN SCHENCK,
MARY ANN I. SPANGLER,
CLIFFORD R. ROACH, JOAN R. ROACH,
RUTH M. BERTHOLD, JEAN E. SWANSON,**

MARCELO A. PEINADO, JUDITH L. PEINADO,
LAURA M. SCHROEDER, ROY T. LACEY,
JAMES G. GATES, GEORGIANA GATES,
FIRST AMERICAN BANK & TRUST CO., AS CO-TRUSTEE
OF THE BAUMANN MANAGEMENT TRUST,
EDWARD J. DOBBRATZ, JANET E. DOBBRATZ,
ALFRED W. MARSHALL, GERALDINE M. MARSHALL,
EMIL PATRICK, DAWN A. LIRA,

Third-Party Defendants.

APPEAL from a judgment of the circuit court for Jefferson County:
JACQUELINE R. ERWIN, Judge. *Affirmed.*

Before Eich., C.J., Gartzke, P.J., and Sundby, J.

EICH, C.J. This appeal involves a dispute between the Rock Lake Estates condominium owners' association and one of its members, DeLoris McLay, who is also the condominium's developer. The association commenced the action when, several years after creating the condominium, McLay attempted to expand it. The trial court granted the association's motion for summary judgment declaring McLay's actions illegal under the Condominium Ownership Act, ch. 703, STATS., and the original condominium declaration, and McLay appeals.

The issues are whether the trial court erred as a matter of law in determining: (1) that McLay failed to qualify Rock Lake Estates as an "expanding

condominium" within the meaning of § 703.26, STATS.,¹ so as to allow its expansion; (2) that McLay's attempted dedication of a roadway over condominium lands to gain access to an adjacent parcel of property was void; and (3) that McLay had failed to establish her entitlement to an easement for access to her property. All are questions of law, involving either the interpretation of contract provisions or the interpretation and application of statutory and case law to the facts. As a result, our review is de novo. *Dippel v. Wisconsin Patients Compensation Fund*, 161 Wis.2d 854, 858, 468 N.W.2d 789, 791 (Ct. App. 1991). We affirm the judgment.

The basic facts are not in dispute.² In 1983, McLay created the condominium³ on a parcel of land she owned in Jefferson County by subjecting the property to a condominium declaration under ch. 703, STATS. A condominium is created by filing a declaration with the register of deeds in the county in which the land is located. Section 703.07(1), STATS. Pursuant to § 703.09(1), STATS., the declaration is to contain, among other things, a description of the condominium lands

¹ As will be discussed in greater detail below, § 703.26, STATS., allows a developer to designate in the original declaration that the condominium may be expanded in the future, subject to several conditions set forth in the statute.

² Where, as here, both parties move for summary judgment, we generally consider the facts to be stipulated, leaving only questions of law for resolution. *Lucas v. Godfrey*, 161 Wis.2d 51, 57, 467 N.W.2d 180, 183 (Ct. App. 1991).

³ A "condominium" is not a building or structure but a form of property ownership. The term is defined in § 703.02(4), STATS., as "property subject to a condominium declaration established under this chapter."

showing the intended units and common areas, together with other specified information about the project and the rights and interests of persons purchasing the units. A declaration may be amended only upon the written consent of at least two-thirds of the unit owners (or such greater percentage as may be stated in the declaration). Section 703.09(2).

Of particular import in this case is § 703.26, STATS., which governs expansion of condominiums. If a developer wishes to expand the condominium beyond its initial size at some time in the future, he or she may include in the condominium declaration a reservation of expansion rights for a period not to exceed ten years. Section 703.26(2)(d). In order for the project to be considered an "expanding condominium" under the statute, the declaration must, among other things, state the maximum number of units that may be added in the future and include a general outline of the land, buildings and common areas that may be added. Sections 703.26(2)(b) and (c).

The condominium declaration filed by McLay in 1983 described the condominium as beginning with an initial "phase" consisting of four buildings. One, labeled "Building A," was to contain five units, and each unit in the building was described in detail. This portion of the declaration also stated: "Additional buildings shall contain five ... or more units." An attachment to the declaration contained floor

plans for Building A, as well as descriptions of the condominium's common areas. A provision in the declaration entitled "Phased Development; Easements; Reservations" stated that McLay "shall from time to time subject additional residential property (approximately 23.5 acres) to development as condominiums and common areas (in the amount of 26 buildings)."⁴

In May 1983, McLay and the then-unit owners signed an amendment to the declaration adding a plan for the construction of piers on the property, limited by the county zoning administrator to "130 boat slips if the condominium project proceeds to its full extent." In December 1984, McLay and the owners filed a second amendment, limited to matters of property insurance.

In July and October 1987, McLay filed a plat amendment showing an area of "Expandable Condominium Lands" and an overall "Site Development Map" outlining plans for future buildings and public roadways within the lands and describing the original declaration as "the property in which the condominium is located." The documents were filed by McLay alone, without the unit owners' signatures. Then, in September 1991, McLay dedicated a roadway within these lands

⁴ McLay claims that, despite the fact that the legal description of the property subject to the 1983 condominium declaration included the entire parcel she owned, she intended to include only a portion of her land in the declaration, using that portion for the construction of four units and reserving the remainder for future development of the additional units. As will be seen below, we conclude that she has failed to establish her claim that the legal description in the declaration should be disregarded as a "scrivener's error."

to the Town of Lake Mills in order to provide access to a parcel of property adjacent to the condominium area.

Finally, on March 19, 1993, again without the approval of the unit owners, McLay filed a purported "third amendment" to the declaration stating her intention to expand the condominium to a total of 128 units in twenty-four buildings. She also filed a legal description which she claimed to represent the "original expansion real estate."

The condominium owners' association then brought this action seeking a declaration that the project was not an "expanding condominium" within the meaning of § 703.26, STATS., that McLay's attempted road dedication was invalid and that she was not entitled to an easement over condominium lands to reach her adjacent property. The trial court agreed and granted the association's motion for summary judgment.

I. Is the Project an "Expanding Condominium"?

McLay acknowledges that her initial declaration instruments "do not strictly conform to the requirements of [§ 703.26, STATS.]." She argues, however, that her "substantial conformity" to the statutory requirements should be sufficient to establish the project as an "expanding condominium." Failing that, she contends that

the third amendment to the condominium declaration meets all the criteria of § 703.26. We disagree in both instances.

A. Substantial Compliance with § 703.26, STATS.

McLay begins her "substantial compliance" argument by referring us to § 703.30(2), STATS., which provides as follows:

The provisions of any condominium instruments and bylaws filed under this chapter shall be liberally construed to facilitate the creation and operation of the condominium. So long as the condominium instruments and bylaws substantially conform with the requirements of this chapter, no variance from the requirements shall affect the condominium status of the property in question nor the title of any unit owner to his or her unit, votes and percentage interests in the common elements and in common expenses and common surpluses.

First, as the association points out--and as the trial court ruled--the statute, on its face, deals with variances from the statutory requirements relating to "the condominium status of the property" and the title of unit owners. Its direction that the statutes be liberally interpreted is geared toward "facilitat[ing] the creation and operation of the condominium." We agree with the association that the issues raised by McLay relate to the project's status as an "expandable condominium" and affect neither its status or operation as a condominium nor the unit owners' title.

Nor do we think McLay's reliance on an Oregon case, *Dickey v. Barnes*, 519 P.2d 1252 (Or. 1974), warrants the result she seeks here. She points to language in *Dickey* indicating that a failure to strictly follow the Oregon statutory procedures for forming a condominium was not fatal to the project's condominium status, because to hold otherwise would result in "defeating the original intention of the parties" *Id.* at 1254. That is, of course, the effect of § 703.30(2), STATS., and nothing in McLay's reference to *Dickey* indicates that the court there was concerned with anything other than the condominium status of the project, or that the case involved any question of an "expandable condominium" (assuming Oregon has such a statute). Even considering McLay's "substantial compliance" argument point by point, it fails.

As noted above, McLay's original condominium declaration described the project as encompassing her entire lands. She asks us to "disregard" that description as a mere "scrivener's error" and to construe (or reform) the declaration to reflect only a portion of that property. She does not point us to any portion of the record for evidence to substantiate her "scrivener's error" assertion, however.⁵ Instead, she asks us to infer a drafting lapse from the following premise, which she constructs in her brief: if the declaration covered all the land, then all land not specifically assigned to the described living units would be owned in common, and

⁵ As a general rule, we do not consider arguments based on factual assertions that are unsupported by references to the record. *Dieck v. Unified Sch. Dist.*, 157 Wis.2d 134, 148 n.9, 458 N.W.2d 565, 571 (Ct. App. 1990), *aff'd*, 165 Wis.2d 458, 477 N.W.2d 613 (1991).

that would conflict with other portions of the declaration specifically designating common areas and contemplating the addition of more such land in the future.

From that premise, McLay argues that "the scrivener's error in the legal description should be disregarded as a matter of law." We disagree. As the association points out, the declaration's definition of "common elements" as all land not comprising the living units is consistent with § 703.02(2), STATS.,⁶ and the conflicting description restricting the common elements area is not consistent with the statute. Section 703.30(4), STATS., states, "If there is any conflict between any provisions of any condominium instruments ... and any provisions of this chapter, the provisions of this chapter shall control." Even so, we do not see the inconsistency⁷ McLay points to as warranting the result she urges on this appeal.

Pointing to a statement in § 703.30(5), STATS., that "[c]ondominium instruments shall be construed together," which McLay states requires us to take a "holistic view" of the documents, she argues that other documents filed after the 1983 declaration compel us to construe the declaration as establishing an "expandable condominium" despite its failure to comply with the requirements of § 703.26, STATS.

⁶ Section 703.02(2), STATS., defines "common elements" as "all of a condominium except its units."

⁷ As noted above, the original declaration indicated McLay's intention to create a twenty-six-building condominium development on 23.5 acres of "additional residential property." And while McLay does not specifically argue the point, we believe that this provision, considered in conjunction with the declaration's description of the condominium as comprising McLay's entire parcel, may reasonably be read to refer to the development of property other than—or "in addition to"—that described in the declaration.

The first document to which she refers is the May 18, 1983, amendment to the declaration, which incorporates a letter from the county zoning administrator referring to future "extension or expansion" of the boat slips and limiting the number of boat slips "if the condominium project proceeds to its full extent." As we have noted above, to constitute an "expandable condominium," a declaration must, among other things, "describe each parcel of property" and "show the maximum number of units" that may be added to the condominium, state the percentage interests in common areas and voting rights that will accompany the new units and include a plat showing the "outlines of the land, buildings, and common elements of new property that may be added" Section 703.26(2)(a)-(c), STATS. We agree with the association and the trial court that whether McLay contemplated additional boat slips--even as many as 130--at the time of the declaration has little, if anything, to do with the requirements of the statute.

McLay also claims that "amendments" she filed in 1987 "identify the existing development, the boundary of the common elements, the area of 'expandable lands,' and the location of future buildings," all in compliance with § 703.26, STATS. These purported amendments, however, were signed and filed by McLay alone and thus violate the mandate of § 703.09(2), STATS., that amendments to condominium declarations require the written consent of at least two-thirds of the unit owners in order to be effective. Moreover, it appears that at least fourteen units had been sold at the time these documents were filed, and the association argues--persuasively, we think--that even if subsequent purchasers may be considered to have had notice of

some claim on McLay's part to a right to expand the project, the prior owners had no such notice; notice to unit owners is, of course, one of the primary purposes of the statute.⁸

Finally, McLay contends that because some of the unit owners stated in their depositions that they had either been told or understood that more units were to be built on the existing lands, they "knew or should have known that they were getting an expandable condominium when they purchased their units." We do not see the fact that some owners may have held such beliefs as justification--either by itself or in connection with McLay's other claims--for rewriting the condominium declaration to comply with the several specific requirements of § 703.26, STATS. We agree with the trial court's observation that, while some of the requirements of the statute may be "technical" in nature and thus not call for strict enforcement, "many requirements provide prospective purchasers with information so that they may understand the [nature of] the property for which they are bargaining." After outlining the declaration's failure to comply with the specific provisions of § 703.26 discussed

⁸ The same may be said for McLay's contention that because "documents currently on file with the Jefferson County Land Surveyor's office identify the property [she owned], the extent of the current condominium development and the boundaries of the condominium common areas," we must consider all unit owners to be "charged with notice of the existence of these documents" when they purchased the units and thus "they took title with knowledge that this was an expandable condominium."

That is the extent of the argument. McLay does not indicate in her brief when these documents were filed, or even what they are. She does not indicate whether they were in the chain of title of unit properties, and under § 706.09, STATS., documents not in the chain of title do not constitute constructive notice of their contents to subsequent purchasers.

above, the trial court rejected McLay's argument that the failures were "[u]nsubstantial," concluding: "Unfortunately, the omissions are very substantial and do not put a buyer on notice that he or she is purchasing one of 128 to 130 prospective units and that ... ratio of common elements."

We reject McLay's argument that she "substantially complied" with the requirements of the statute.

B. The Third Amendment to the Declaration

McLay argues that we should nonetheless determine that her project is an "expandable condominium" under § 703.26, STATS., because her third amendment to the declaration meets all requirements of the statute. The association concedes that the amendment, filed only days short of ten years after the filing of the original declaration, contains provisions that comply with most, if not all, of the requirements of § 703.26. It points out, however, that even if McLay were to be permitted to wait ten years to attempt to retroactively amend or "correct" a declaration, the amendment is a nullity because it was not approved by the unit owners, as required by both § 703.09(2), STATS., and the original declaration itself.⁹

McLay concedes the absence of the required signatures; she argues, however, that the amendment was merely "technical and corrective" and thus

⁹ As we have noted above, both § 703.09(2), STATS., and the declaration permit amendments only upon the written consent of at least two-thirds of all unit owners, and it is conceded that this was not done with respect to McLay's third amendment.

permitted by another section of the declaration that permits the developer to "make technical and corrective amendments to this Declaration ... without consent of the Unit Owners"

The association suggests that a provision in a declaration permitting *any* amendments without complying with the requirements of § 703.09(2), STATS., must itself be considered a nullity in light of the plain requirement of the statute. We need not decide that point, however, because we again agree with the trial court's determination that

the substantial nature of the amendments attempted in the third amendment to the declaration defy any definition of "technical" or "corrective." Spelling errors are corre[ctive]; increasing the number of units four-fold is not "corrective." It may be a technical amendment to add a surveyor's certificate to a plat, but it is not a technical amendment to create a plat.

Finally, McLay points out that earlier amendments to the declaration adding new units to the original four were not signed by the unit owners. She contends that if we are to hold that those amendments were also invalid for lack of existing owners' signatures, the purchasers of units added in the intervening years would not own the units--a result she claims is both "inequitable and absurd."

The trial court rejected the argument, stating: "Finally, [McLay] warns that the entire condominium will unravel if the court requires consent to the third amendment. This court addresses the issues before it, will not speculate, and does

not believe it 'must invalidate ... every other amendment to the Condominium Plat that was filed previously.'"

Like the trial court, we consider only issues that are before us,¹⁰ and there is no challenge to the validity of any of those prior amendments on this appeal. McLay has not persuaded us that the trial court erred in concluding that she had failed to establish Rock Lake Estates as an "expanding condominium" within the meaning of § 703.26, STATS.¹¹

II. The Roadway Dedication

In September 1991, McLay recorded a certified survey purporting to dedicate an extension of Canterbury Lane, the only public road in the condominium, as a town road. The trial court held that McLay's failure to comply with the notice provisions of § 840.11, STATS., 1991-92, is fatal to the attempted dedication. The statute provides in pertinent part as follows:

¹⁰ McLay accuses the trial court of "side-stepping" the issue, but neither that court nor this one has a duty to consider issues other than those presented to it. See *Waushara County v. Graf*, 166 Wis.2d 442, 453, 480 N.W.2d 16, 20, cert. denied, 113 S. Ct. 269 (1992).

¹¹ Because we have determined that McLay's purported third amendment to the declaration was ineffective, we need not consider her challenge to the trial court's ruling that § 703.26(2)(d), STATS., which states that a right to expand a condominium "may be reserved in the declaration for a period not exceeding 10 years," allows her ten years from the filing of the declaration to reserve a right to expand, as opposed to ten years to complete the expansion. We note, however, that her argument contradicts the plain language of the statute, which, as the trial court ruled, "allows a declarant to reserve expansion for a period of time [but] does not allow the developer a 10-year right to reserve the right to expand." Under the statute, the right to expand a condominium, *if properly reserved in the declaration*, expires ten years after the declaration is recorded.

Every person who makes an application ... for laying out ... or extending any street ... shall ... file a notice of the pendency of such application, containing his [or her] name and a brief statement of the object thereof and a map and description of the land to be affected thereby Neglect to comply with these provisions shall render all proceedings based upon such application void

McLay argues that the statute is inapplicable to her attempted dedication. She claims it applies only to dedications by municipalities, not to private citizens. The trial court rejected the argument, as do we.

The statute makes no reference to municipalities; it applies, as it plainly reads, to "[e]very person" wishing to lay out or extend a street. And the fact that a predecessor statute enacted 114 years ago was described as "AN ACT to provide for the recording of lands taken for streets ... by city or village corporations," Laws of 1881, ch. 319, § 1, does not, as McLay argues, establish that the present statute is so limited.¹²

Nor are we persuaded by McLay's argument that because § 840.11, STATS., 1991-92, is only cross-referenced in §§ 66.296(6) and 66.297(1), STATS., the requirements of § 840.11 are limited to proceedings under those statutes, which deal

¹² Indeed, the law to which McLay refers, Laws of 1881, ch. 319, § 1, directed city and village clerks to transmit copies of all resolutions condemning lands for street or highway purposes to the register of deeds in the county in which the lands were located. The law before us, as indicated, requires "every person" desiring to lay out or extend a road to file a notice of the application and a description of the affected property with the register of deeds. McLay's argument attempts to apply the "legislative history" of an apple to an orange.

with discontinuance of streets and alleys and "public grounds" by municipalities. She offers no authority for the proposition that a "cross-reference," which the Legislative Reference Bureau intends simply to "make[] it possible to identify additional statutory provisions related to statutes already found by other means," *see* Cross-References, Wisconsin Statutes, 1991-92 at 5156, should determine the interpretation of acts of the Wisconsin Legislature.

Finally, McLay contends that if the notice requirements of § 840.11, STATS., 1991-92, are applied to her attempted street dedication, the provisions of ch. 236, STATS., permitting dedication of streets by certified survey maps¹³ would be "trumped," or "rendered superfluous," by § 840.11. We do not see how. We see no conflict or inconsistency in the two statutes. Where, as provided in § 236.34(1)(e), STATS., all owners of any interest in the affected land consent to the dedication and join in the conveyance, the notice requirements of § 840.11 are inapplicable. Where, as occurred here, the dedication is attempted by only one of several owners, the requirements apply.

The condominium unit owners neither joined in nor consented to McLay's purported street dedication. Even if the dedication had been discussed with

¹³ Section 236.34(1)(e), STATS., specifically provides, among other things, that a certified survey map may be used for dedication of streets and other public areas "when owners' certificates and mortgagees' certificates [as provided in § 236.21(2)(a)], STATS., have been executed"

owners in prior years, as McLay asserts, and even if the president of the owners' association indicated agreement with the dedication sometime prior to its occurrence, in the meantime approximately one-third of the units had changed hands. As a result, said the court, "the conveyance by Ms. McLay was without consent of all unit owners"

Finally, McLay argues that the association either waived its right to object to the 1991 dedication extending the road over condominium common areas or should be estopped from so objecting, because it failed to either vote on or object to the dedication of the first segment of the road in 1986. She claims that she relied on the association's "prior conduct" in neither voting on the 1986 dedication nor objecting to it, and that to allow the association to object to the 1991 dedication would be detrimental to her interests because she needs the new portion of the road to reach her adjacent property.

She cites no authority for the proposition, other than to refer us to pattern jury instructions indicating that an estoppel will arise when one party's action or inaction induces reliance by another to his or her detriment, and defining waiver as the knowing relinquishment of a known right. WIS J I--CIVIL 3057 and 3074 (1993). But absent some arguable connection between the bare facts just referred to and general descriptions of waiver and estoppel gleaned from the jury instructions, we come to an impasse. The argument is undeveloped, and we decline to consider it. *See Fritz v. McGrath*, 146 Wis.2d 681, 686, 431 N.W.2d 751, 753 (Ct. App.

1988) (appellate court does not consider arguments "broadly stated but never specifically argued").

McLay has not persuaded us that the trial court erred in granting summary judgment to the association on this issue.

III. McLay's Easement Claim

McLay argues that even if her roadway dedication claim should fail, she should be granted an easement over the lands comprising the attempted dedication in order to gain access to her adjacent property. She claims that she reserved such an easement in the original condominium and, alternatively, that she has acquired either a "constructive easement" or an "easement by necessity" over the land.

She bases her first argument on a paragraph in the declaration entitled "Phased Development; Easements; Reservations," which provides in part as follows:

The declarant ... reserve[s] all rights to an existing two-story residence ... lying southwesterly of building "A", together with the right to use DeLoris Lane and Canterbury Lane ... as presently laid out. Upon removal of said residence ... said land and rights-of-way will revert to declarant to develop into another building site or common areas of the [condominium]....

Here, too, her argument is largely undeveloped: she states only that this language "is discretionary and provides for an effective easement no matter what determination the Court makes with respect to whether or not [the project was an]

expandable condominium ... from the beginning." And she says simply that "[b]ecause the trial court failed to properly construe these provisions ... its decision should be reversed and this Court should find that ... McLay properly reserved an easement ... to access her adjacent property." As before, the general nature of the argument makes it difficult to assess.

The association claims, and the trial court ruled, that the language we have quoted above did no more than establish an easement to McLay's residence while it existed, and, upon the removal of the residence, it allowed her to develop another building or common area on the site. We see no other reasonable reading of the paragraph. It does not reserve an easement or interest over condominium lands for any purpose other than access to the then-existing building. Plainly, it does not reserve use of that land as a "bridge" to create still other rights-of-way for McLay's use.¹⁴

McLay bases her claim that she has a "constructive easement" over the subject lands on the provisions of § 706.09(2)(a), STATS. The statute generally describes situations where a purchaser of land may take the property free from any

¹⁴ McLay also refers to language in the declaration stating that "[u]ntil all units have been sold ... Declarant reserves the right to continue development work ... using ... Common Elements, and do all other acts it deems necessary in connection with the development and sale of Units in the Condominium" All this language does, however, is reserve to McLay the right to continue development work on the condominium for the stated period. She does not indicate how it creates an easement to adjacent lands, either expressly or by implication.

adverse or inconsistent claim of which he or she lacks notice; "notice" is defined in subsection (2)(a) as follows:

(2) A purchaser has notice of a prior outstanding claim or interest, within the meaning of this section wherever, at the time such purchaser's interest arises in law or equity:

(a) Such purchaser has affirmative notice ... of the existence of such prior outstanding claim, including notice, actual or constructive, arising from use or occupancy of the real estate by any person at the time such purchaser's interest therein arises ... but no constructive notice shall be deemed to arise from use or occupancy unless due and diligent inquiry of persons using or occupying such real estate would, under the circumstances, reasonably have disclosed such prior outstanding interest; nor unless such use or occupancy is actual, visible, open and notorious

McLay claims that because, over time, she has "openly and notoriously" used and improved the "roadway," all unit owners "should be charged with notice of the existence of this portion of the road and of [its] various uses."

Section 706.09, STATS., however, does not create interests in land. By its plain terms, it deals only with the circumstances in which a purchaser of land will be held to notice of adverse interests. Interests in land arising or created through adverse possession, or "adverse use," are governed by § 893.28, STATS., which provides, among other things, that "[c]ontinuous adverse use of rights in real estate of another for at least 20 years ... establishes the prescriptive right to continue the use." Thus, even though McLay may have used the "right-of-way since 1983," as

she claims, she has not established any claim to an easement by prescriptive or adverse use under § 893.28.

An easement "by necessity" is not the same as a prescriptive easement. It is something less, and it is found to exist in cases where an owner sells a "landlocked" parcel to another. In such a situation, the law will recognize a "way of necessity" in the grantee over the land retained by the grantor. *Ludke v. Egan*, 87 Wis.2d 221, 229-30, 274 N.W.2d 641, 645 (1979). McLay is not the grantee of the adjacent property she claims is landlocked; she is the grantor. If in fact her adjacent property is landlocked, the situation resulted not from any grant of the property to her but by her own act in conveying away her highway access. As the trial court noted: "The conveyances which resulted in landlocking ... were made by Ms. McLay." She has not established her entitlement to a "way of necessity."¹⁵

By the Court.—Judgment affirmed.

Recommended for publication in the official reports.

¹⁵ Finally, McLay contends that because the association's board of directors told her in 1989 and 1990 that she could dedicate property for the continuation of the existing roadway, the unit owners not only have "validated the 1991 dedication" but have "given [her] an easement over that road." She asserts that § 703.15(3)(b)5, STATS., gives condominium associations the power to "[g]rant easements through or over the common elements" of the condominium and that "[n]either the trial court, nor the Association, ha[s] a persuasive answer to [her] argument that the Association granted her an easement when it instructed her to dedicate the continuation of Canterbury Lane as a township road."

Without more, these two generally stated and unamplified assertions do not persuade us that the condominium unit owners, either individually or through their association, granted McLay an easement. Indeed, it has long been recognized that an easement is an interest in land subject to the statute of frauds, *Negus v. Madison Gas & Elec. Co.*, 112 Wis.2d 52, 58, 331 N.W.2d 658, 662 (Ct. App. 1983), and McLay's argument does not point to any evidence in the record of a written document granting her an easement over condominium lands.

968998

Document Number

AMENDMENT TO
CONDOMINIUM
DECLARATION

Document Title

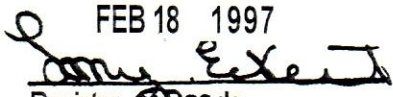
VOL 980 page 768

ROCK LAKE ESTATES UNIT OWNERS ASSOCIATION

RECEIVED FOR RECORD

At 8:00 o'clock A M

FEB 18 1997


Register of Deeds
Jefferson County, WI

Recording Area

Name and Return Address

John H. Short
P.O. Box 338
Fort Atkinson, WI 53538-0338

Legal Description: The legal description of the property on which the condominium is located is as follows:

A part of the SE. 1/4 of the SE. fractional 1/4 of Section 3, T. 7 N., R. 13 E., Township of Lake Mills, Jefferson County, Wisconsin, described as follows: Beginning at a point which is South 18.10 chains (1194.6 feet) and east 31.50 chains (2079.00 feet from the center of said Section 3; thence South 13.40 chains (884.40 feet); thence S. 42° 00' E., 8.50 chains (561.00 feet) to Rock Lake; thence easterly along the lake to the east line of said Section 3; thence North along said Section line to the southwesterly right-of-way line of Interstate Highway "94"; thence N. 64° 51' W., 533.00 feet & N. 30° 57' 48" W., 116.62 feet along said southwesterly right-of-way line; thence Southerly approximately 765.00 feet to the point of beginning, excepting there from all enclosed right-of-way for C.T.H. "B" which includes 0.38 acres conveyed to Jefferson County for highway purposes by Warranty Deed recorded April 10, 1973 in Vol. 487 Records, page 421, and also 0.083 acres conveyed to Jefferson County for highway purposes recorded January 11, 1929 in Volume 132 Deeds, page 571. Said parcel contains approximately 22 acres. Excluded there from the two-family residence (approx. 30'x52') with attached two car garage in existence prior to any condominium development, and presently owned and occupied by DeLoris E. McLay with an upstairs rental unit.

Parcel Identification Number (PIN)

07-13-03-44-001
07-13-03-44-002
07-13-03-44-003
07-13-03-44-004
07-13-03-44-005
07-13-03-44-006
07-13-03-44-007
07-13-03-44-008
07-13-03-44-009
07-13-03-44-010
07-13-03-44-011
07-13-03-44-012
07-13-03-44-014
07-13-03-44-015
07-13-03-44-016
07-13-03-44-017
07-13-03-44-018
07-13-03-44-019
07-13-03-44-020
07-13-03-44-021
07-13-03-44-022
07-13-03-44-023
07-13-03-44-024
07-13-03-44-025
07-13-03-44-026

¹AMENDMENT TO CONDOMINIUM DECLARATION

ROCK LAKES ESTATES UNIT OWNERS ASSOCIATION

The Declaration of Condominium of Rock Lake Estates recorded March 25, 1983, in Volume 629, Page 511, Jefferson County Records; and amended January 25, 1984, which amendment was recorded in Volume 631, Page 425, Jefferson County Records; and further amended November 16, 1984, which amendment was recorded December 7, 1984, in Volume 654 of Records, Page 214, Jefferson County Records; is further amended as follows:

1. **Section D, Paragraph 1.b. (ix)** is created to read:

"A boat slip once purchased from the Association belongs to that unit. Only one boat slip is allowed per unit. A unit's boat slip can be rented or sold only to another Association unit owner who does not already own a boat slip. Renting, leasing or sale of a boat slip to a non-unit owner is forbidden."

2. **Section E** is repealed and recreated to read as follows:

"The condominium consists of 25 units contained in six buildings as shown on the Condominium Plat as amended. The Third Amendment to Declaration of Condominium of Rock Lake Estates Condominium; the amendments to the condominium plats annexed thereto; Map No. 14 filed July 30, 1987, as Document No. 832971 Jefferson County Records; and Site Development Map No. 15 filed October 22, 1987, as Document No. 835397 Jefferson County Records are not valid amendments to the Condominium Declaration or the Condominium Plat."

3. **Section E--Common Elements** is repealed.

4. **Section F--Phased Development; Easements; Reservations** is repealed.

5. **Section G, Paragraph 3** is repealed and recreated to read:

"Any purchaser acquiring a unit by foreclosure of a lien which has priority over a lien to secure payment of unpaid common assessments, is not liable for the common expenses assessed and secured by such inferior lien prior to such purchaser's acquisition of title to the unit by foreclosure. Any such unpaid common expenses shall be deemed to be common expenses collectable proportionally from all unit owners."

6. **Section I** is repealed and recreated to read:

"Service of process on the condominium or the Association in the cases provided by Chapter 703 Wis. Stats. shall be

¹ Noted and Accepted at Annual Mtg. 11/09/1996

received by John H. Short, 79 North Main Street, P.O. Box 338, Fort Atkinson, WI 53538-0338. The Association may designate a successor to such person by amending the declaration or amending its Articles of Incorporation at the option of the Association."

7. Section P, Paragraph 1 is repealed.

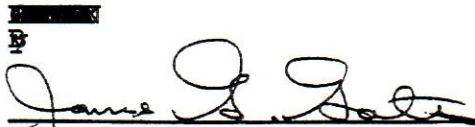
8. Section D, Paragraph 4 is repealed and recreated to read:

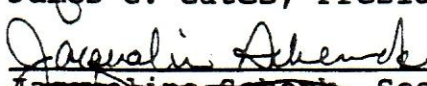
"Management of the condominium is vested in the Board of Directors of the Condominium Association."

CERTIFICATION

The undersigned president and the undersigned secretary of the Rock Lake Estates Unit Owners Association hereby certify that the foregoing Amendment to Declaration of Condominium was adopted by a resolution at the annual meeting of the unit owners held on November 9, 1996, in the City of Lake Mills. An affirmative vote of 75% of the unit owners (19 of 25 unit owners) was required to effectively adopt the resolution. The vote in favor of the resolution amending the condominium declaration was 23 votes in favor, 0 votes opposed and 1 vote abstaining.


Dated at Lake Mills, Wisconsin, this 4th day of February, 1997.


James G. Gates, President


~~Jacqueline Schenk~~, Secretary
JACQUALIN SCHENCK

STATE OF WISCONSIN)
) ss.
JEFFERSON COUNTY)

Personally before me on this, the 4th day of February, 1997, came James G. Gates and Jacqueline Schenk, to me known to be such persons and further known to me as the president and secretary of the Rock Lake Estates Unit Owners Association. Such persons executed the foregoing instrument and acknowledged the same.


Notary Public, State of Wisconsin
Commission expires 04-19-98

This instrument was drafted
by John H. Short

1266970

AMENDMENT TO CONDOMINIUM
DECLARATION

Document Number

000090

ROCK LAKE ESTATES UNIT OWNERS ASSOCIATION

(see attached)

Parcel Identification Numbers:

018-0713-0344-001
018-0713-0344-002
018-0713-0344-003
018-0713-0344-004
018-0713-0344-005
018-0713-0344-006
018-0713-0344-007
018-0713-0344-008
018-0713-0344-009
018-0713-0344-010
018-0713-0344-011
018-0713-0344-012
018-0713-0344-014
018-0713-0344-015
018-0713-0344-016
018-0713-0344-017
018-0713-0344-018
018-0713-0344-019
018-0713-0344-020
018-0713-0344-021
018-0713-0344-022
018-0713-0344-023
018-0713-0344-024
018-0713-0344-025
018-0713-0344-026

RECEIVED FOR RECORD
at 9:45 o'clock A M

OCT - 8 2009

REGISTER OF DEEDS
JEFFERSON COUNTY, WI

Recording Area

Name and Return Address

Attorney John H. Short
Vance, Wilcox & Short, S.C.
P.O. Box 338
Fort Atkinson, WI 53538

Parcel Identification Number (PIN)

The legal description of the property on which the condominium is located is as follows:

A part of the SE 1/4 of the SE fractional 1/4 of Section 3, T7N, R13E, Township of Lake Mills, Jefferson County, Wisconsin, described as follows: Beginning at a point which is South 18.10 chains (1194.6 feet) and east 31.50 chains (2079.00 feet) from the center of said Section 3; thence South 13.40 chains (884.40 feet); thence S. 42°00' E., 8.50 chains (561.00 feet) to Rock Lake; thence easterly along the lake to the east line of said Section 3; thence North along said Section line to the southwesterly right-of-way line of Interstate Highway 94; thence N. 64°51' W., 533.00 feet and N. 30°57'48" W., 116.62 feet along said southwesterly right-of-way line; thence Southerly approximately 765.00 feet to the point of beginning, excepting therefrom all enclosed right-of-way for CTH B which includes 0.38 acres conveyed to Jefferson County for highway purposes by Warranty Deed recorded April 10, 1973, in Vol. 487 Records, page 421, and also 0.083 acres conveyed to Jefferson County for highway purposes recorded January 11, 1929, in Volume 132 Deeds, Page 571. Said parcel contains approximately 22 acres. Excluded therefrom the two-family residence (approx. 30'x52') with attached two car garage in existence prior to any condominium development, and presently owned and occupied by DeLoris F. McLeay with an upstairs rental unit.

**AMENDMENT TO CONDOMINIUM DECLARATION
ROCK LAKE ESTATES UNIT OWNERS ASSOCIATION**

The Declaration of Condominium of Rock Lake Estates recorded March 25, 1983, in Volume 629, Page 511, Jefferson County Records, and as subsequently amended, shall be and hereby is further amended as follows:

The common elements of the condominium are subject to an Electric Transmission Line Easement recorded with the Register of Deeds for Jefferson County, Wisconsin, on April 6, 2009, as Document No. 1255936.

The Condominium Plat shall be and hereby is amended to incorporate by reference the "Easement Description Map (Exhibit B)" included in the Electric Transmission Line Easement as set forth above.

Certification

The undersigned President and the undersigned Secretary of the Rock Lake Estates Unit Owners Association hereby certify that the foregoing Amendment to Condominium Declaration was adopted by a resolution at a special meeting of the Unit Owners Association held on March 24, 2009, in the City of Lake Mills. An affirmative vote of 100% of the unit owners was required to effectively adopt the resolution. The vote in favor of the resolution amending the Condominium Declaration and the Condominium Plat was 25 votes in favor, zero votes opposed.

Dated at Lake Mills, Wisconsin, this 7 day of October, 2009.

ROCK LAKE ESTATES UNIT OWNERS ASSOCIATION

By: Jacquelin Schenck
Jacqualin Schenck, President

Delores Elliott
Delores Elliott, Secretary

STATE OF WISCONSIN)
) ss.
JEFFERSON COUNTY)

Personally before me on this, the 7 day of October, 2009, came Jacquelin Schenck and Delores Elliott, to me known to be such persons and further known to me as the President and Secretary of the Rock Lake Unit Owners Association. Such persons executed the foregoing instrument and acknowledged the same.

Georgiana Gates
Georgiana Gates
Notary Public, State of Wisconsin
My commission expires 3-20-2011

This instrument was drafted by
John H. Short.