

### **BREWIN CASE**

The SCOV handed down its Brewin decision on August 17, 2018. Mr. Brewin made a Motion to the SCOV to reargue the case. This motion was denied October 9<sup>th</sup>.

On Feb 5<sup>th</sup>, a judgement order in favor of AHPOA was issued consistent with the Supreme court ruling. AHPOA was awarded assessed fees, interest as charged, and court costs.

In conclusion, **this case is now settled law and will set legal precedent for future cases in AHPOA regarding assessed fees.** The SCOV decision has clarified AHPOA's ability to set reasonable fees to cover expenses. This includes the allocation of overhead and all other expenses, including our legal fees, which are a necessary long-term investment in the financial well-being of the community, and confirmed that the fees could be derived from the road network as a whole.

### **SKEA (SARITA KHAN ET AL) CASE**

In 2011 SKEA filed a Complaint with the Courts stating that AHPOA is not a Common Interest Community (CIC), and SKEA contested fee structure as per example:

*¶ 56 Plaintiffs [SKEA] are not obligated to pay special assessments, surplus accumulation, picnics, annual meeting costs, insurance, road expansion or improvements, or any other expenses of AHPOA not specified in their deeds.*

There was a ruling in 2013 by Judge Pearson that AHPOA was a CIC for the chalet lots and that the "Large Lots" were not part of the AHPOA community.

In another ruling in 2015, Judge Rainville found that AHPOA was a CIC, but that the most recent Bylaws and Declaration were adopted in a procedurally defective manner.

In an appeal to the SCOV, a Sept. 2016 decision held that AHPOA was not a CIC, thus reversing the lower court decisions and making the bylaws and rules that had been in place since 2002 and amended in 2011 ineffective. As a result, we returned to the prior bylaws of 1996.



We are now in court with the SKEA litigants to determine what is the reasonable fee to be charged to each of the AHPOA non-member litigants for their chalets and for three of the litigants, the fee for their "Large Lots", which are not part of AHPOA, but have access to our common road system.

The Vermont Superior Court Judge Robert Mello issued a ruling granting our AHPOA's MSJ (Motion for Summary Judgement). The ruling also denied the Plaintiff's cross motions for summary judgement.

AHPOA was awarded in excess of \$108K from the four SKEA litigants.

The ruling pointed out that familiarity is assumed with the recent SCOV (Supreme Court of Vermont) Brewin decision and other prior case decisions in AHPOA's history.

It built on the Brewin decision and also determined the fee structure for the Large Lots, which have have been granted common access to AHPOA's road network.

### **DEPTULA CASE**

AHPOA is engaged in a lawsuit with Mr. Deptula for unpaid assessed fees, and a number of counterclaims.

On Dec 3<sup>rd</sup> 2018, AHPOA filed a Motion for Summary Judgement on all counts. Our argument references the Brewin SCOV decision of August 17<sup>th</sup> 2018, which found AHPOA's fees reasonable.

Mr. Deptua has been granted multiple extensions by Judge Carlson, to provide his Opposition response to AHPOA's MSJ, which is now due on Feb 18, 2019.