



# The Elite Insider

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## 2014 Elite Awards Nominees

It is that time again! We want you to share what you have accomplished this year and acknowledge the volunteers in your community.

Elite Management has the opportunity to work with so many exceptional communities. We believe that Board Members and communities should be awarded for all of their hard work and enthusiasm. There are three very special annual awards that will be presented at the upcoming Fall Festival on October 7th, 2014. The awards will be presented to the two communities that illustrate

outstanding community progress and to the individual who has shown remarkable volunteerism throughout the past year.

Board members are asked to complete our survey of questions nominating their Community or Volunteer for extraordinary performance, selflessness, and achievement. Please visit the following link in order to complete this survey:

Community of the Year Award Survey Link  
<https://www.surveymonkey.com/s/XTJRLGS>

Volunteer of the Year Award Survey Link  
<https://www.surveymonkey.com/s/XM8K6Y8>

**Please complete these surveys by:  
August 31st,  
2014.**



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Office Hours  
Mon.-Thurs. 8:30-5:30  
Friday 8:30-1:00

## Calendar of Events and Office Closings

### SEPTEMBER

September 1st- Labor Day All Offices Closed

### OCTOBER

October 7th- Fall Festival 2014 5:30pm- 8:00 pm

We have prepared another great event for our board members. We will send out more information in the next few weeks. Mark your Calendar!

### NOVEMBER

2015 Budget Approval- Finalize 2015 budgets by November 15. This will provide time for ordering coupons, setting annual meeting dates and communication with the homeowners. Lets work together to see if we can make this happen for 2015.

November 27th and 28th- Thanksgiving All Offices Closed

### DECEMBER

December 9th- Holiday Open House

December 24th, 25th and 26th- Christmas All Offices Closed

### JANUARY 2015

January 1st 2015- New Year's Day All Offices Closed

## *Declaration Amendments, Reasonableness & Original Intent: Wallach v. Linville Owners Association* By: Jim Slaughter



A case issued by the North Carolina Court of Appeals today suggests there are instances when an amendment to a Declaration (also known as Covenants, Conditions and Restrictions) has to pass an “original intent” test.

In *Wallach v. Linville Owners Association, Inc.* (<http://appellate.nccourts.org/opinions/?c=2&pdf=31251>), the original Declaration provided for reduced assessments for lots owned by builders. Several years later and after transition, the membership followed the amendment process to amend the Declaration to require equal assessments from all lots (and eliminating the reduced rate for builders). On appeal, the builders argued that such an amendment “contravenes the original intent of the Declaration.”

The Court of Appeals agreed, citing the well-known *Armstrong v. Ledges Homeowners Ass’n., Inc.* case that “a provision authorizing a homeowners’ association to amend a declaration of covenants does not permit amendments of unlimited scope; rather, every amendment must be reasonable in light of the contracting parties’ original intent.” Using this line of thought, the Wallach decision held that

“[t]he Association cannot now amend the Declaration to the detriment of the builders who purchased lots with the expectation that they would be afforded the benefits.” “Where the [amendment] disregards the purpose of the Declaration’s original provisions and completely eliminates the benefits to builders, we hold the amendment unreasonable, invalid, and unenforceable. Holding otherwise would permit homeowners’ associations to amend similar provisions whenever they acquire the requisite number of votes for approval, regardless of the original intent.”

We’ve always encouraged associations to act reasonably, including when the entire membership considers amendments to the Declaration. After all, the majority of even-numbered houses should not be allowed to amend the Declaration to require the fewer odd-numbered houses to pay all the assessments for the Association. That said, though, we’ve usually not seen the argument couched in terms of “changing original intent.” After all, amendments sometimes seem somewhat contrary to original intent (lack of smoking restrictions to

nonsmoking, rentals to no-rentals or vice versa, yard maintenance to no maintenance, etc.) due to changed circumstances and association membership. Would such amendments fail based on *Wallach* for “eliminating a benefit” and being contrary to the “contracting parties’ original intent”?

So, what’s the takeaway? Well, it’s hard to know for certain yet, as decisions get appealed and interpreted by other cases. However, the Wallach decision was a “published opinion” (versus an “unpublished opinion”), meaning that it has precedential value and can be cited by other parties to disputes. Based on that, if you are considering an amendment to your Declaration:

1. Be reasonable; and
2. Consider whether the amendment is so contrary to the original intent of the parties to the Declaration that it will not stand up to scrutiny under the *Wallach* decision.

## *Why a Fee Increase?*

It isn’t news most homeowners want to hear: that assessments might be increased. But sometimes a fee increase is the best way to keep the association in good financial health -- and, sometimes, increases are unavoidable. Here are some of the reactions homeowners typically have when they hear that their fees are about to increase, followed by the related rationales for an increase.

1. “*I can’t afford the increase.*” When you live in an association, you need to be willing to share the costs, as described in the governing documents to which you

agreed in escrow. Keep in mind that if the association does not maintain its property, real-estate values can decline.

2. “*I probably won’t be living here in 15 years when the streets need repaving. Why should I have to pay now?*” Senior citizens, as well as young people living in condos they consider to be starter homes, often pose this question. The problem with this “short-timer” logic is that these people are themselves benefiting from the use of the streets, pool, and other common assets paid for by members who lived there be-

fore. Members should pay for the incremental use of these items each year they live there.

3. “*Why don’t we just have a special assessment for a specific project?*” It can be difficult to collect money when you suddenly have a large expense. It’s better to collect it gradually, so the funds are there when you need them. Also, a special assessment unfairly penalizes homeowners who happen to live in the association at the time.



## *Three Things Your Board and Residents Should Know About Trees*

**"Proceed cautiously before cutting down a tree or pruning large**

There is no question that properly maintained trees are an asset to a home and community. Generally speaking, the board's primary responsibility is trees that are located in common areas; however, the association may have language in the covenants or landscape policy that adds additional responsibilities. Without proper communication and explanation, board actions in regards to trees can be misunderstood.

### **Keep surrounding properties in mind.**

One of the most common issues occurs when one neighbor's trees adversely affect another neighbor's property. After a few years, the initial plant selection and location can result in tree roots damaging fences and branches overhanging property lines. Trees that mature and bear fruit or nuts can become a major problem when mowers send these projectiles into nearby cars. Variations in board responsibility and state law mean these issues must be dealt with on a case-by-case basis. It's important to understand how your state views these issues and develop an association position that reflects the law. Though, try to refrain from becoming involved in neighbor-to-neighbor issues.

### **Don't forget about common areas.**

Another major issue can arise when large tree roots on a resident's property damage common-area sidewalks. Common areas such as sidewalks can become cracked,

creating a hazard and potential liability for the association. Mature tree growth can also obscure security cameras and lighting along pathways and steps. Most of the time, these situations can be easily avoided with some preventative maintenance and scheduled inspections.

### **Stay ahead of tree health issues.**

The effects of these trees go beyond possible property damage. There are more than 20 common tree diseases that contribute to health issues and death among most trees in the United States. Many of these tree diseases can spread from one tree to another and consequently throughout a neighborhood or city. This means diseases easily travel from a common area tree to a homeowner's yard and vice versa.

Property owners sometimes attempt to solve tree problems internally, but boards and residents alike should proceed cautiously before cutting down a tree or pruning large limbs. Besides the obvious liability of damage and injury, local ordinances can include restrictions resulting in fines. Since most associations do not happen to have an ISA certified arborist on the board or living in the community, here are some recommendations for keeping green assets safe in common areas and on properties.

1. Review the covenants for any language regarding trees and landscaping. Are there any additional

association policies or resolutions? Should the association consider adopting a landscape policy?

2. The board may want to consider and budget for an annual consultation by an ISA certified arborist. A certified arborist can advise on tree selection, placement, disease control, nuisance issues, trimming and removal. He or she will also be familiar with local ordinances and ecology, have established safety procedures and necessary insurance
3. Finally, the board should communicate with residents regarding tree and landscape policies. Advise residents if architectural review and approval is required for certain tree and landscape actions. Keep residents informed of tree/plant diseases and recommended remedies. Remind residents of '811 Call Before You Dig' requirements. Keep residents informed of planned trimming and removal in common areas.

As an association board, you have a responsibility to protect and enhance the common areas of the community. As a resident, you want to be considerate of the impact of your trees on your neighbor, and protect the investment in trees that enhance your property's value.

