

**DISTRICT COURT, PARK COUNTY, COLORADO**

300 Fourth Street  
Fairplay, Colorado 80440

**Plaintiffs:** ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation, KATHRYN WELLS, THE PAUL J. VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A, ROBERT W. PHELPS, and KEVIN O'CONNELL

v.

**Defendants:** VERA B. DUNWODY, DRAYTON D. DUNWODY, FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association, and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PARK, COLORADO

**Plaintiffs in Intervention:** PETER J. BRAUN and RENAE J. BRAUN

Frederick B. Skillern, #7983  
Nathan G. Osborn, #38951  
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Case Number: 2010cv65

Div: B

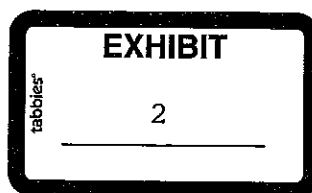
**AFFIDAVIT OF PAUL VASTOLA**

Paul Vastola, being first duly sworn under oath, states:

1. I am a Plaintiff in the above-captioned matter by way of being a representative of the Paul J. Vastola and Suzanne G. Nelson Living Trust, U/A. I am also the current President of the Elk Falls Property Owners' Association. I reside in the Elk Falls Subdivision at 33629 Berg Lane, Pine, Colorado 80470. I have knowledge of all facts contained in my affidavit.

2. A substantial majority of the Elk Falls Subdivision homeowners ("homeowners") support this litigation, and desire that the Elk Falls Property Owners' Association litigate this case on their behalf.

3. The Elk Falls Property Owners' Association has raised sufficient funds from the homeowners to finance this litigation, and numerous homeowners have assisted in prosecuting this case.



4. The Elk Falls Property Owners' Association brought this action on behalf of all the homeowners because a substantial majority of the homeowners wanted us to do so, Colorado law gave us that right, and it was increasingly cost effective and efficient to bring this action on behalf of all the homeowners, rather than joining all of the homeowners as Parties.

5. This action was only commenced after a Motion was made by a homeowner at the 2009 annual meeting to establish access to the Disputed Roads. This Motion was overwhelmingly approved by the homeowners. The Motion provided that the Elk Falls Property Owners' Association exhaust mediation/settlement negotiations with the Dunwodys before commencing litigation. The board of directors was then elected with that charge. After it became apparent that mediation/settlement efforts with the Dunwodys was fruitless, the Elk Falls Property Owners' Association filed this action on behalf of all the homeowners.

6. The Elk Falls Property Owners' Association has provided each homeowner, through various means, notice of this litigation and provides frequent case updates. I do not know of a homeowner who does not know about this litigation. The Elk Falls Property Owners' Association has also notified numerous homeowners about their right to join this lawsuit individually. The Elk Falls Property Owners' Association also conducts meetings where issues about the above-captioned matter are discussed. All homeowners receive notice of these meetings.

7. To the best of my knowledge, information, and belief, the homeowners who are not supportive of the Elk Falls Property Owners' Association litigating this case on their behalf, are not supportive because they do not want to pay for it, they are ambivalent towards the lawsuit, they are cooperative with the Dunwodys, and/or they do not consistently use the Disputed Roads. I personally know of only approximately 10 homeowners who do not support this litigation. I do not know of any homeowner who does not want access to the Disputed Roads.

8. Requiring that the Elk Falls Property Owners' Association join the 141 property owners who are not named as parties here would be unduly burdensome and excessively costly for the Elk Falls Property Owners' Association. A substantial majority of the homeowners who are not currently named in this lawsuit, do not wish to be named as Parties.

9. The statements made in Plaintiffs' Response to Defendants' Verified Motion to Join Indispensable Parties and Defendants' Supplemental Motion to Join Persons Needed for a Just Adjudication under C.R.C.P. 105 are true and accurate to the best of my knowledge.

10. The statements made in Plaintiffs' Motion for Reconsideration to Vacate the Indispensable Parties Order and Deny Defendants' Verified Motion to Join Indispensable Parties or Clarification of Indispensable Parties are true and accurate to the best of my knowledge.

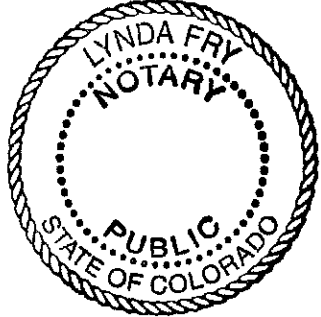
Paul Vastola  
Paul Vastola

STATE OF COLORADO )  
COUNTY OF Arapahoe ) ss.

Subscribed and sworn to before me this 8th day of October, 2010, by Paul Vastola.

My Commission Expires: \_\_\_\_\_

Lynda Fry  
Notary Public



My Commission Expires 04/27/2013