

This document constitutes a ruling of the court and should be treated as such.

**Court:** CO Park County District Court 11th JD

**Judge:** Stephen Groome

**File & Serve  
Transaction ID:** 33726084

**Current Date:** Nov 29, 2010

**Case Number:** 2010CV65

**Case Name:** ELK FALLS PROPERTY OWNERS ASSOCIATION et al vs. DUNWODY, VERA B et al

**Court Authorizer**

**Comments:**

Per this Court's Order vacating its 9-29-10 Order, the Court has re-considered the Defendants' original motion. The Court further finds that any lot owner not wishing to be represented by the association may seek to intervene and be represented separately.

**/s/ Judge Stephen Groome**



**GRANTED  
WITH  
AMENDMENTS**

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

**Stephen Groome  
District Court Judge**

DATE OF ORDER INDICATED ON ATTACHMENT

**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  
MONTGOMERY LITTLE & SORAN, P.C.  
5445 DTC Parkway, Suite 800  
Greenwood Village, Colorado 80111  
Phone Number: (303) 773-8100  
Fax Number: (303) 220-0412  
E-mail: fskillern@montgomerylittle.com  
E-mail: nosborn@montgomerylittle.com

Case Number: 2010cv65

Div: B

**ORDER RE: MOTION FOR RECONSIDERATION TO VACATE THE  
INDISPENSABLE PARTIES ORDER AND DENY DEFENDANTS' VERIFIED MOTION  
TO JOIN INDISPENSABLE PARTIES OR CLARIFICATION OF INDISPENSABLE  
PARTIES ORDER**

THIS MATTER having come before the Court on Plaintiffs' Motion for Reconsideration to Vacate the Indispensable Parties Order and Deny Defendants' Verified Motion to Join Indispensable Parties Or Clarification of Indispensable Parties Order, and the Court having reviewed the same, makes the following findings:

(1) The Elk Falls Subdivision homeowners who are not named parties in this action are not indispensable parties because their rights are not injuriously affected, the Elk Falls Property Owners' Association can adequately represent them, there is no danger of inconsistent decisions or multiple lawsuits, and any final determination would not be inequitable to any homeowner. The Court further notes that there are no conflicting interests among the

homeowners because each wants access to the Disputed Roads, obtaining access benefits all the homeowners, and any final determination will not prejudice any individual homeowner's interest in the Disputed Roads.

(2) C.R.S. § 38-33.3-302(1)(d) applies here because the Elk Falls Subdivision is a common interest community under C.R.S. § 38-33.3-103, and the Colorado Common Interest Community Act applies C.R.S. § 38-33.3-302(1)(d) to the Elk Falls Property Owners' Association by way of C.R.S. § 38-33.3-117. C.R.S. § 38-33.3-302(1)(d) gives the Elk Falls Property Owners' Association standing in this action and the authority to adequately represent the interests of all Elk Falls Subdivision homeowners. The Court further notes that in addition to the authority provided by C.R.S. § 38-33.3-302(1)(d), all the Elk Falls Subdivision homeowners are also adequately represented here because (a) this action was only commenced after a majority approval by the homeowners, (b) the Elk Falls Property Owners' Association has made the homeowners aware of this action and keeps them updated accordingly, and (c) the Elk Falls Property Owners' Association conducts meetings where issues raised in this case can be discussed by the homeowners.

(3) Requiring that the Elk Falls Property Owners' Association join all of the unnamed Elk Falls Subdivision homeowners is unduly burdensome, costly, inefficient, and there are no countervailing benefits for doing so. Joining all the homeowners also violates public policy because it unduly chills the rights of litigants, and would render this case unmanageable and excessively cost prohibitive.

Accordingly, the Court hereby GRANTS Plaintiffs' Motion, and ORDERS that the Court's Order Granting Motion to Join Indispensible [sic] Parties be vacated, and that Defendants' Verified Motion to Join Indispensible [sic] Parties be denied.

DONE this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

By the Court:

---

District Court Judge