

| | |
|---|---|
| DISTRICT COURT, PARK COUNTY COLORADO 300 – 4 th Street Fairplay, Colorado 80440 | <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> |
| <p>Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado corporation; KATHRYN WELLS; THE PAUL VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A; ROBERT W. PHELPS; and KEVIN O’CONNELL</p> <p>Defendants: VERA B. DUNWODY and DRAYTON D. DUNWODY, and FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association</p> <p>Plaintiffs in Intervention: PETER J. BRAUN and RENAE J. BRAUN</p> | |
| Victor F. Boog, No. 2561 Amanda B. Cruser, No. 30601 Boog & Cruser, P.C. 3333 S. Wadsworth Blvd., Suite D201 Lakewood, CO 80227 303-986-5769 Fax 303-985-3297 <i>Attorneys for Defendants Vera B. Dunwody and Drayton D. Dunwody</i> | Case Number: 2010 CV 65 Div.: 1 |
| DEFENDANTS’ AMENDED MOTION TO JOIN BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY AS A PARTY | |

Certification

Undersigned counsel hereby certifies that he has discussed this motion with counsel for the Plaintiffs in accordance with C.R.C.P. 121, section 115, paragraph 8, and that Plaintiffs’ counsel opposes this motion.

Defendants, Vera B. Dunwody and Drayton D. Dunwody (hereinafter the “Dunwodys”), pursuant to C.R.C.P. 19(a) and C.R.C.P. 20(a), respectfully move this Court

for joinder of the Board of County Commissioners of the County of Park, state of Colorado, as a party in this action. As grounds therefor, said Defendants state as follows:

1. Pursuant to C.R.C.P. 19(a),

[a] person who is properly subject to service of process in an action shall be joined as a party in the action if: . . . (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (A) As a practical matter impair or impede his ability to protect that interest If he has not been so joined, the court shall order that he be made a party.

2. In this action, the Plaintiffs have alleged that the Disputed Roads are public roads (see Plaintiffs' Amended and Restated Complaint, para. 22, 25, 41, 45, 47, 60, and 67).

3. The Board of County Commissioners of Park County have an interest in the outcome of this litigation since such Board has the right to have judicial determination as to the character of the Disputed Roads, and if found to be public, to have injunctive relief against those who would interfere with the consistent use thereof. *Leach v. Manhart*, 96 Colo. 397, 400, 43 P.2d 959, 960 (1935). *Accord, Dept. of Natural Resources, Wildlife Commission, Division of Wildlife v. Cyphers*, 74 P.3d 447, 449 (Colo. App. 2003).

4. Disposition of Plaintiffs' claim that the Disputed Roads are public roads may in the County's absence as a practical matter, impair or impede its ability to protect its interest in public roads.

5. Historically, the Elk Falls Property Owners Association ("EFPOA") has precluded members of the public from utilizing public roads within the platted Elk Falls Subdivision. Such action by the EFPOA would indicate that it is not a proper party to be representing the public in this action, and that a more appropriate party would be the Board of Commissioners of Park County.

6. C.R.C.P. 20(a) provides in pertinent part that "[a]ll persons may be joined in one action as defendants . . . if any question of law or fact common to all defendants will arise in the action. A . . . defendant need not be interested in obtaining or defending against all the relief demanded."

7. Here, Park County has an interest in the issue of whether the Disputed Roads are public roads. Thus, the joinder of Park County in this action would be appropriate.

WHEREFORE, the Dunwodys respectfully move this Court to enter an order making Park County a party to this action.

Respectfully submitted this 8th day of September, 2010.

BOOG & CRUSER, P.C.

*/s/ Victor F. Boog – original signature on file
at the offices of Boog & Cruser, P.C.*

Victor F. Boog, No. 2561

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2010, a true and correct copy of the foregoing **DEFENDANTS' AMENDED MOTION TO JOIN BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY AS A PARTY** was sent electronically via LexisNexis File and Serve, properly addressed to:

Kirk B. Holleyman
Kirk Holleyman, P.C.
1050 – 17th St., Suite 1750
Denver, CO 80265

Frederick B. Skillern
Montgomery Little Soran & Murray PC
5445 DTC Parkway, Suite 800
Greenwood Village, CO 80111

Michael W. Jones
Monica Lester
Hall & Evans LLC
1125 – 17th St., Suite 600
Denver, CO 80202

*/s/ Bonnie J. Cowell – original signature on file
at the offices of Boog & Cruser, P.C.*
