

MONTGOMERY LITTLE  
& SORAN, PC

---

Attorneys at Law

Nathan G. Osborn, Esq.  
303-779-2727  
nosborn@montgomerylittle.com

November 19, 2010

Lee Phillips, Esq.  
Hayes Phillips Hoffmann & Carberry PC  
P.O. Box 1046  
Fairplay, CO 80440  
hcphillips@hphclaw.com

Re: *Elk Falls Property Owners Association v. Dunwody, et al.*  
Park County Case No. 2010cv65, Div. B  
Our File No. 11485-1

Dear Lee:

I provide this letter and enclosed documents to assist the Park County Board of County Commissioners ("Park County") in determining its position in this case. My hope is that after considering this letter and attachments, Park County will conclude that the Disputed Roads are public roads.

As you are aware, Plaintiffs have multiple legal theories that support their claim to permanent access over the Disputed Roads. One theory is that the Disputed Roads are public roads. This theory is premised on (a) the dedication in the plats for Elk Falls Blocks 1 and 3, (b) Park County and Jefferson County treating the Disputed Roads as public roads, (c) numerous documents and maps evidencing these are public roads, and (d) Elk Falls residents and invitees, and the predecessors in title to the Dunwodys, treating the Disputed Roads as public roads.

Our impression is that Jefferson County and Park County have treated the Disputed Roads as public roads. The Jefferson County school district used portions of Elk Creek and Juniper Road on its regular bus route to pick up and drop off school children of Elk Falls Subdivision residents. Approximately sixteen years ago, Jefferson County paved approximately 300 feet of Juniper Road to accommodate its school busses. Jefferson County also plows some of the parking area in front of the Lodge off of Elk Creek Road and unloads the snow in and around the intersection of Elk Creek and Juniper. Park County also, at minimum, agreed to maintain a portion of the Disputed Roads in 1969. See Attachment A, Resolution of Park County Board of Commissioners.

There are numerous documents evidencing that Park County thought the Disputed Roads were public roads including:

(1) In January 1969, the Park County Board of County Commissioners passed a resolution accepting all roads in Elk Falls Subdivision Block 3 for maintenance. This resolution is recorded in the meeting minutes (Attachment A). By extension, if Park County accepted the "roads in Block 3" for maintenance, they also accepted the Disputed Roads, because a portion of the Disputed Roads is necessary to access Block 3.

(2) The Block 3 Plat Map describes an extension of South Elk Creek Road (Attachment B). It also lists "Plat of Elk Falls Block 1" on the face of the plat, as being adjacent to Block 3. The face of the Block 3 Plat Map also dedicates all roads on the plat for public use. Taken together, it follows that the grantor, the Elk Falls Ranch Development Company, likely intended to dedicate the Disputed Roads as public roads. Likewise, if Park County did not, at minimum, recognize South Elk Creek Road as a public right-of-way when platting Block 3 in 1968, Park County would have allowed the platting of a substantial portion of Block 3 without access. More likely, Park County read the Block 1 plat, which describes the Disputed Roads and is filed in Park County, as establishing a public right-of-way and approved the plat for Block 3 accordingly.

(3) The 1959 Block 1 plat map, which was filed in Jefferson County and later in Park County, refers to the Disputed Roads as 50-Foot Right(s) of Ways (Attachment C). The two 50-Foot Right(s) of Ways and extensions of the Right(s) of Way are located in Park County. When examining the Block 1 plat map, it is clear that Alice Berg intended to dedicate the two 50-foot Right(s) of Ways and their extensions for public use because (a) in 1959 these roads were on Ms. Berg's unsubdivided private property, (b) Ms. Berg would not have listed the Right(s) of Ways on the Block 1 plat if they were not intended for access by the Elk Falls residents and the general public, as she did not need to reserve access for herself across her own land, (c) the face of the plat dedicates all roads "as shown hereon" to Jefferson County, (d) Ms. Berg would not have landlocked Block 1 residents when platting the subdivision, and (e) Jefferson County would not approved a plat for a subdivision that landlocked residences. Because this plat is also filed in Park County, logic dictates that the Disputed Roads are likely Park County public roads. Also note that, on the Block 1 plat, the Disputed Roads are extensions of roadways within the platted subdivision, and do not terminate in cul-de-sacs like the other subdivision roads. Presumably, Ms. Berg intended that residents be allowed use of these Right(s)-of-Ways for access, and she included them on the plat map to evidence her intent.

(4) In 1976, the Elk Falls Property Owners' Association investigated whether a gate could be installed in front of the Elk Falls lodge next to the "Bye Property" (just

south of where South Elk Creek Road intersects with Juniper Road). On August 12, 1976, the Park County Board of County Commissioners sent a letter to the Elk Falls Property Owners' Association, advising that a gate could not be installed in front of the Elk Falls lodge because the roads were public roads, and were to remain open for public use (Attachment D). Similarly, the Elk Falls Property Owners' Association wrote a letter to property owners in the subdivision re: Park County's conclusions (Attachment E). To that end, it appears that in 1976 Park County believed, at minimum, that the roads near the South Elk Creek Road and Juniper Road intersection were public roads.

(5) Plaintiffs have discovered a purported Park County map where a portion of Elk Creek Road is referred to as **County Road 1184** (Attachment F). Plaintiffs are uncertain where the name County Road 1184 derives from, but believe it is indicative of Park County's position regarding the Disputed Roads. The County Road 1184 name, as well as the name County Road 83, also appear on Google Maps relating to the Disputed Roads (Attachment G, Attachment H, and Attachment I).

Elk Falls residents have treated the Disputed Roads as public roads for decades. Since at least the 1940's, Elk Falls residents have used the Disputed Roads as if they were public roads. For many years, the Disputed Roads were the only avenue of ingress and egress to numerous homes. No Elk Falls resident has ever received permission or paid for use of the Disputed Roads. Various vendors of Elk Falls residents, delivery trucks, contractors, garbage trucks, mail services, Park County and Jefferson County emergency vehicles, UPS and Fed-Ex vehicles (who refuse to deliver if West Gate access is not available) have all used the Disputed Roads, without objection, as if they were public right-of-ways. The mail for most Block 3 and many Block 2 residents was also delivered by the U.S. Postal Service to mail boxes on Elk Creek Road, at the junction of portions of Elk Creek and Juniper Road. Until the Dunwody's purchased their property in 2008, the legal status of the Disputed Roads was never an issue.

Plaintiffs also believe it is in Park County's best interest to support a finding that the Disputed Roads are public roads. Park County may face significant costs by taking no position. For example, if the Court adjudges that the Disputed Roads are private roads, then Park County would likely need to procure an easement from the Dunwodys to, at least, obtain access to the portions of Elk Creek Road within Block 3 that Park County has undertaken maintenance. Seemingly, it is not appropriate for Park County to allow one landowner to arbitrarily control access rights for a substantial group of Park County residents that reside in a Park County approved subdivision. Without an easement, County vehicles would be forced to traverse the inconvenient and dangerous alternate route to access numerous Block 3 dedicated roads and Elk Falls Subdivision residences.

Lee Phillips, Esq.  
November 19, 2010  
Page 4

The Elk Falls Property Owners' Association has indicated a willingness to assume maintenance costs, as they historically have, and release Park County from this obligation, should Park County be willing to conclude the Disputed Roads are public roads. This would not be a burden, as the Elk Falls Property Owners' Association has been paying for maintenance of subdivision roads for decades.

Thank you for your cooperation in this matter. Feel free to give me a call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan G. Osborn". The signature is stylized and cursive.

Nathan G. Osborn

Enclosures