

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. Crusier, No. 30601 Boog & Crusier, 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
<p>RESPONSE IN OPPOSITION TO MOTION TO RECONSIDER ORDER GRANTING DEFENDANTS’ AMENDED MOTION TO JOIN BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY AS A PARTY OR, IN THE ALTERNATIVE, TO DISMISS BOARD OF COUNTY COMMISSIONERS AS A PARTY PURSUANT TO C.R.C.P. 12(b)(6)</p>	

Defendants, Vera B. Dunwody and Drayton D. Dunwody, as their Response in Opposition to the Motion to Reconsider Order Granting Defendants’ Amended Motion to Join Board of County Commissioners of Park County as a Party or, in the Alternative, to Dismiss Board of County Commissioners as a Party Pursuant to C.R.C.P. 12(b)(6) state as follows:

1. The joinder motion should not be denied as untimely.

C.R.C.P. 16(b)(8) states that “[n]o later than 120 days after the case is at issue, all motions to amend pleadings and add parties to the case shall be filed.” The initial parties to this case were the Plaintiffs Elk Falls Property Owners Association (the “EFPOA”), Kathryn Wells, Paul Vastola, and Robert W. Phelps, and the Defendants, Vera B. Dunwody and Drayton D. Dunwody. The case between said parties was first at issue upon Plaintiffs’ filing of a reply to the Defendants’ Counterclaim on April 26, 2010. Had the case continued with only such parties, C.R.C.P. 16(b)(8) indicates that motions to amend pleadings and add additional parties should have been filed on or before August 24, 2010. The Motion of Peter Braun and Renae J. Braun for leave to intervene was filed on June 15, 2010. An Answer to the Complaint in Intervention of Peter J. Braun and Renae J. Braun was thereafter filed on June 29, 2010. Said Answer constitutes a pleading permitted by C.R.C.P. 7. Thus, since C.R.C.P. 16(b)(1) provides that “a case shall be deemed at issue at such time as all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed, the at issue date then became June 29, 2010. Based thereon, Defendants assert that motions to amend pleadings and add additional parties would thereby be extended until October 27, 2010.

On July 9, 2010, Plaintiffs filed an Amended and Restated Complaint, which added another Defendant, namely, Farm Credit of Southern Colorado. The Dunwody’s Answer to the Plaintiffs Amended and Restated Complaint was filed on August 18, 2010, and a disclaimer was filed by Farm Credit of Southern Colorado on August 27, 2010. The Dunwodys respectfully submit that their Answer to Plaintiffs’ Amended and Restated Complaint and the filing of the Disclaimer of Farm Credit of Southern Colorado both constitute pleadings permitted by C.R.C.P. 7, which would result in an at-issue date less than a month before the filing of the Defendants’ Motion to Join Board of County Commissioners of Park County as a party.

C.R.C.P. 16(b)(1) further provides that a case shall be deemed at issue “at such other time as the court may direct.” In addition, this Court in applying the Colorado Rules of Civil Procedure is not bound by the literal language of Rule 16, an obvious example being this Court’s rules with respect to trial settings, which is inconsistent with C.R.C.P. 16(b)(4). Pursuant to C.R.C.P. 1, the Rules of Civil Procedure are to be liberally construed to secure the just, speedy, and inexpensive determination of every action. Case law also confirms that application of the provisions of C.R.C.P. 16 are not mandatory and enforcement of the literal language of the rules may result in reversal on appeal. See *Wright v. Woller*, 976 P.2d 902 (Colo. App. 1999); *Consolidated Hardwoods v. Alexander Const.*, 811 P.2d 440 (Colo. App. 1991); *J.P. v. District Court*, 873 P.2d 745 (Colo. 1994).

2. Joinder of Park County in this case was warranted pursuant to C.R.C.P. 19(a) and the cases of *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).

To the extent that Park County wishes to disclaim any interest in the Disputed Roads as defined in the Plaintiffs' Amended and Restated Complaint, it can simply file a disclaimer as previously done by Farm Credit of Southern Colorado. Such a disclaimer would actually result in judicial economy as opposed to a waste of legal and judicial resources and of taxpayer money, as asserted in the County's Motion.

Respectfully submitted this 17th day of November, 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 17th day of November, 2010, a true and correct copy of the foregoing **RESPONSE IN OPPOSITION TO MOTION TO RECONSIDER ORDER GRANTING DEFENDANTS' AMENDED MOTION TO JOIN BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY AS A PARTY OR, IN THE ALTERNATIVE, TO DISMISS BOARD OF COUNTY COMMISSIONERS AS A PARTY PURSUANT TO C.R.C.P. 12(b)(6)** 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.*
