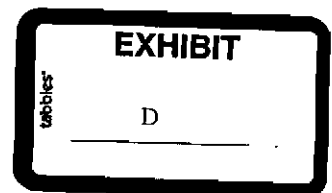


DISTRICT COURT, PARK COUNTY COLORADO 300 – 4 th Street Fairplay, Colorado 80440	▲ COURT USE ONLY ▲
<p>Plaintiffs: ELK FALLS PROPERTY OWNERS ASSOCIATION, a Colorado corporation; KATHRYN WELLS; THE PAUL VASTOLA AND SUZANNE G. NELSON LIVING TRUST, U/A; ROBERT W. PHELPS; and KEVIN O'CONNELL</p> <p>Defendants: VERA B. DUNWODY and DRAYTON D. DUNWODY, and FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association; and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PARK, COLORADO</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
AFFIDAVIT OF MICHAEL ARAGON	

STATE OF COLORADO)
)ss
 County of Jefferson)

Michael S. Aragon, being duly sworn upon his oath, deposes and states as follows:

1. I have been a property owner in Elk Falls Subdivision, Block 3 since 1982, when I purchased lot 29, address 34840 Aspen Lane, Pine, Co 80470.



2. I purchased Lot 29, in Block 3 from William Sttat. January 1982.
3. I began building my home in 1983, and completed it with a Certificate of Occupancy in 1984.
4. In 1983, I attended the Annual Meeting held by a group of property owners in the Elk Falls area known as Elk Falls Property Owners Association.
5. A copy of the minutes of the Annual Meeting held July 10, 1983 by the EFPOA is attached. The meeting was held at the Lodge building located at Elk Falls Ranch owned by Elk Falls Ranch Development Co. also known at the Club House and Swimming Pool area.

6. In 1986, there were 20 full time residents including myself that lived in Elk Falls Subdivisions, Block 1, 2, & 3.

<u>Names</u>	<u>Lots</u>
Mike Aragon & family	Blk 3, lt 29
Mark & Katie Felices	Blk 3, lt 41
Joe & Joanie Wakely	Blk 3, lt 21, + easement
Ronald & Kate Biller	Blk 2, lts 89,90,101,102
Jack & Leah Phillips	Blk 3, lt 7
Jack & Jeanie Erickson	Blk 2, lt 115
John & Mary Damsma	Blk 2, lt 95
Haskel & Carole Wade	Blk 2, lts 73 & 87
Gilbert & Lynn Godin	Blk 3, lts 12,13,17
Arthur & Marian Lounsbury	Blk 1, lts 21, 23
Thomas Robertson	Blk 3, lt 38 + easement
Sam & Donna Arundale	Blk 2, lt 72
Lawrence & Mary Ellen Blair	Blk 1, lt 7,8,9a, Blk 2 lt 48.56
Matt & Shelia Bower	Blk 2, lt 75,80
Jay Buck	Blk 1, lt 18
Don Corder	Blk 2, lt 84
Robert & Lee Druva	Blk 1, lt 25
Jim & Jean Ely	Blk 3, lt 24 & 25
Karen Katz	Blk 2, lt 93
Michael & Michelle Szysielski	Blk 3, lt 32

7. In 1986, full residents in the Elk Falls area that accessed their properties through the ranches "Main Gate" operated by Elk Falls Dev. Co employee Andy & Bessie Beye were members of the Sportsman's Club.

8. In 1986, there was confusion about the membership dues that POA members paid to the POA, the confusion was new residences believed their POA dues automatically enrolled them into the Sportsman's club membership. The Sportsman's Club dues were \$325.00 annually with a \$175.00 initiation fee. The POA dues were separate.

9. Elk Falls Subdivision property owners in Block 1, 2, & part of 3 had an optional route to access their lots through the East Gate road aka Upper Ranch Rd gate. (refer to Block 2 plat)

10. The East Gate aka Upper Ranch Rd. gate was manually operated with a padlock and key connect to a chain. I issued keys based on request from property owners to be able to access the private property within the subdivision and Andy Beye issued keys for Sportsman's Club members to be able to access the Upper Ranch property operated by the Elk Falls Ranch Dev. Co..

11. In 1982, Andy Beye, Elk Falls Ranch Dev. Ranch Manager was known as the Gate Keeper for the main gate located on Elk Falls Ranch Dev. Co. property also known as "TheMain Gate"

12. Between 1982 and 1986 prior to Andy Beye's death, I observed Andy maintaining the Dev. Co roads. Andy maintaining the subdivision roads for hire based on property owners request. The Property Owners Association and private lot owners hired Andy Beye for road repairs, road maintenance, and snow removal.

13. In 1986, The property owners in Elk Falls Subdivisions voted to amend the Subdivision covenants to included "Mandatory Dues" for future lot owners within Blocks 1, 2, & 3.

14. Since 1986, my property has been exempt "Grandfathered" from the 1986 Amended Covenants and any dues I have paid between 1986 to 2010 were volunteered under an exempt "Grandfathered" status.

15. During my ownership of lot 29 blk 3, I have been a paying member of The Sportsman's Club, a paying member of the Swimming Club (owned by Elk Falls Dev. Co, operated by Elk Falls Property Owners Association under a lease agreement) and a volunteer due paying member of the Property Owners Association "EFPOA".

16. In Dec. 2007, I was contacted by a female neighbor at my home, she claimed to represent the EFPOA board and they were requesting property owners in Elk Falls to sign a petition requesting information from the Dunwody's (new buyers of Sportsmans' Club) of their intended use of the property. I signed a blank piece of paper. I later discovered that the petition I signed was not used for the intended purpose, instead it was presented to a BOCC meeting in Park County in opposition of a re-zoning application by the Dunwody's.

17. In 2008, I was contacted by The Dunwody's after they purchased the Elk Falls Ranch aka Sportsman's Club property about entering into a road use agreement for \$24.00 per year.

18. After the Dunwody's road use proposal conversation, I contacted Suzy Nelson about it. I explained to her that the Dunwody's claimed they owned the bottom five feet of my driveway, they ask for \$24.00 per year for access and Suzy said "Why would you pay them \$24.00 when you have historical rights to use your driveway and Juniper Rd.". Suzy suggested I talk to Fred Wells for legal advice and not to pay the Dunwody's. In the Fred Wells conversation we discussed how a

claim for prescriptive easement would be better than for adverse possession. He explained that if this went to court

“We don’t want to own the property we just want to use the property, because prescriptive easement works better than adverse.” Fred explained Colorado law to me about the 18 year requirement to qualify for a prescriptive easement. Fred Wells advised me not to pay the Dunwody’s the \$24.00. A few days later I received a bill from Wells Law Firm which describe the conversation as a consultation.

19. When Suzy Nelson said Historical Rights, that was the first time I ever heard of that term used here. Since that conversation I have heard “Historical Rights” use numerous times within the area.

20. After this event I decided to go to Park County Road and Bridge, Mapping Dept, and Clerk and Recorder Office located in Fairplay to do my own research. After visually inspecting the Block 3 plat, Juniper Road does not exist in Park County or on the Dunwody’s survey.

21. After my research I notified the Dunwody’s that everything you have been saying is correct, I informed the Dunwody’s I was building a new driveway off of Lower Aspen Lane.

22. In 2009, Suzy Nelson contacted me several times requesting donations to the EFPOA board’s legal battle against the Dunwody’s. The legal battle Suzy Nelson described was the road issue.

Further affiant sayeth naught.

Michael S. Aragon
Michael S. Aragon

Subscribed and sworn to before me this 18th day of December, 2010 by Michael S. Aragon.

[Signature]
Notary Public

My Commission expires: 5-20-2013

RECORD OF PROCEEDINGS

SPECIAL MEETING OF THE ELK FALLS PROPERTY OWNER'S ASSOCIATION, INC.

Pursuant to due and proper notice, a special meeting of the members of Elk Falls Property Association, Inc., was held at the Board of Directors Room, of Elk Falls Club of Park County, Colorado at 2 o'clock p.m. on the 26th day of October 1968 with a quorum of members being present in person.

The meeting was brought to order by President Aud Hanna and the minutes of the Board of Director's meeting held on July 7th, 1968, at 2 p.m. were read and upon motion duly made, seconded and unanimously carried, were approved.

It was determined that in the case of joint property owners, that individuals would each be allowed one vote for the Association.

A discussion of the road maintenance program revealed that two and one-half days of grading were required and that this grading was paid for by the Association. The Elk Falls Ranch Development Company provided the necessary culverts as were needed with the exception of one culvert donated by Mr. Nelson.

Mr. Bill Barker stated that during the grading process, a considerable amount of dirt and rock were pushed upon his property. Precautions should be made in the future to alleviate this type of situation.

Mr. Gast advised us that the subdivisions 1 and 2 were accepted by the county and dedicated to the county but that the agreement which Mr. Berg had with the county was to maintain the roads in order to keep them private. If the county maintains the roads then they become public roads and would be subject to invasion of our present privacy. The agreement at that time was made between Emil Snyder and Elmer Berg. It was brought to the attention of the Association that the roads in plat 1 and 2 do not comply with the present 50 foot width requirement for county roads, however, they were accepted several years ago by Jefferson County without reservations. The portion of the road in front of the lodge does not belong to either blocks 1 or 2.

Mr. Dillinger stated that when he purchased his land from Mr. Berg, he was advised the roads would be maintained by Mr. Berg.

It was determined that the maintenance of the road the past several years has not been very good and consequently a new maintenance program should be provided. A proposal was made in the past to Mrs. Sally Berg to install the culverts and grade the road properly and if this was done, the Owner's Association would take over the maintenance of the roads. This proposal was rejected by Mrs. Berg's attorney. A statement was made by Mr. Kellogg that the roads were presently owned by Sally and approved by the county and that until Mrs. Berg relinquishes her maintenance of the roads it is either her responsibility or the county's responsibility to maintain them.

A question was raised as to whether the Association desires to maintain a private road or allow the county to take over the roads. A motion was made and seconded to maintain the roads in blocks 1 and 2 on a private basis. A vote was taken and a unanimous decision made to maintain them as private roads.

A motion was made, seconded and passed to have Mr. Gast contact Mr. Lou Hellerstein, Mrs. Berg's attorney, and negotiate a settlement for allowing Mrs. Berg to relinquish her obligation to maintain the roads so that the Association will be in a position to maintain the roads in the future.

There being no further business, the meeting was adjourned.

