

DISTRICT COURT, PARK COUNTY COLORADO 300 – 4 <sup>th</sup> Street Fairplay, Colorado 80440	<b>▲ COURT USE ONLY ▲</b>
<p><b>Plaintiffs:</b> 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><b>Defendants:</b> VERA B. DUNWODY and DRAYTON D. DUNWODY, and FARM CREDIT OF SOUTHERN COLORADO, ACA, an agricultural credit association</p> <p><b>Plaintiffs in Intervention:</b> 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: <b>2010 CV 65</b>  Div.: 1
<b>DEFENDANTS’ VERIFIED MOTION TO JOIN INDISPENSIBLE PARTIES</b>	

**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”), respectfully move this Court to join as indispensable parties each owner of property within the Elk Falls Subdivision which the Elk Falls Property Owners Association (hereinafter “EFPOA”) purports to represent as parties entitled to claim an interest in the Disputed Roads. As grounds therefor, the Dunwodys state as follows:

1. Prior to 1986, EFPOA was a voluntary organization with no authority to assess or represent owners of lots within the Elk Falls Subdivision.

2. As noted in paragraph 13 of the Plaintiffs' Complaint, when Block 1 of the Elk Falls Subdivision was platted in 1959, there were but a few small cabins located within the boundaries of Block 1, Elk Falls Subdivision, and such cabins were located on tracts not subject to the Map, Dedication, and Protective Covenants for Elk Falls – Block 1, recorded on December 22, 1959 at Book 1243, page 400 in the records of the Jefferson County Clerk and Recorder.

3. Prior to 1970, only thirteen of the present 52 lots within Block 1 of the Elk Falls Subdivision had residences constructed on them. Thus, prior to 1970, 75% of the lots within Block 1, Elk Falls Subdivision were vacant.

4. Prior to 1980, two additional residences were constructed on lots within Block 1, Elk Falls Subdivision, and only five additional residences were constructed during the 1980's.

5. During the years 1990, 1991, and 1992, only three additional residences were constructed in Block 1 of the Elk Falls Subdivision. Thus, more than one-half of the lots within Block 1 of the Elk Falls Subdivision were first developed for residential purposes within eighteen years of the date this action was initiated in February, 2010.

6. Development of residences on lots within Block 2 of the Elk Falls Subdivision, which was platted in 1963, has been even more recent. Only six lots of the 73 lots in Block 2 were developed for residences during the 1960's. An additional five lots were developed for residential purposes during the 1970's, and an additional 26 lots were developed for residential purposes in the 1980's.

7. In the years 1990, 1991, and 1992, an additional three lots were developed for residential purposes. Thus, 33 of the lots within Block 2 of the Elk Falls Subdivision were first developed for residential purposes within eighteen years of the date this action was initiated in February, 2010.

8. Twenty of the 46 lots within Block 3 of the Elk Falls Subdivision were developed for residential purposes within eighteen years of the filing of this action in February, 2010.

9. Most, if not all, of the residents of the Elk Falls Subdivision have been members of the Elk Falls Ranch Sportsman's Club for a number of years; and by virtue thereof, had permissive use of the Disputed Roads.

10. For the aforesaid reasons few, if any, of the present owners of lots within the Elk Falls Subdivision would be able to establish prescriptive rights across the Disputed Roads, and none of the named Plaintiffs will be able to do so.

11. None of the named Plaintiffs nor any other owner of lots within the Elk Falls Subdivision has an easement of record across the Disputed Roads.

12. For those owners of lots in Block 3, whose only access is South Elk Creek Road, that portion of South Elk Creek Road included within the description of the Disputed Roads is a way of necessity to their respective properties. Said lot owners abutting South Elk Creek Road have never been denied access across that portion of South Elk Creek Road located on the Dunwody property, and it is undisputed that such portion of South Elk Creek Road located on the Dunwody property is a way of necessity to such lots. A claim by any other lot owners in the Elk Falls Subdivision that the Disputed Roads are a way of necessity to their property would be a groundless and frivolous claim.

13. A number of lot owners within the Elk Falls Subdivision are now and have been paying the Dunwodys to utilize the Disputed Roads.

14. Numerous other lot owners within the Elk Falls Subdivision have no desire for the EFPOA to claim an interest in the Disputed Roads on their behalf.

15. Because the material facts relative to the claims asserted by the EFPOA on behalf of property owners within the Elk Falls Subdivision are unique to each lot owner, each of the lot owners within the Elk Falls Subdivision that seeks to acquire an interest in the Disputed Roads is an indispensable party to this action.

WHEREFORE, Defendants respectfully move this Court to require the joinder of all lot owners within the Elk Falls Subdivision who seek to quiet title to an interest in the Disputed Roads.

Respectfully submitted this 8th day of September, 2010.

BOOG & CRUSER, P.C.

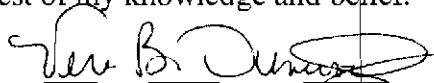
*/s/ Victor F. Boog – original signature on file  
at the offices of Boog & Cruser, P.C.*

  
Victor F. Boog, No. 2561

VERIFICATION

STATE OF COLORADO    )  
  ) ss  
County of Jefferson    )

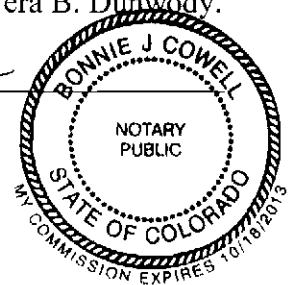
I hereby certify that the statements contained in the foregoing Motion to Join Indispensible Parties are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Vera B. Dunwody, Defendant

Subscribed and sworn to before me this 8<sup>th</sup> day of September, 2010 by Vera B. Dunwody.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10/18/13



**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of September, 2010, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO JOIN INDISPENSIBLE PARTIES** was sent electronically via LexisNexis File and Serve, properly addressed to:

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*/s/ Bonnie J. Cowell – original signature on file  
At the Offices of Boog & Crusen, P.C.*