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## Summary of yesterday's meeting

1 message

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Sherry Whitaker <whitaker@sopris.net>

Sun, May 18, 2008 at 9:04 AM

To: Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <Barbula1@juno.com>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Sherry & Kyle Whitaker <whitaker@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

A meeting was held yesterday (May 17, 2008) at the Gibson residence. In attendance were Bill Gibson, Chris Manuel, Stephanie Templon, Tony May and Kyle Whitaker. The special meeting was called to discuss the Sorensen's concerns with the recent road maintenance. The Sorensen's have indicated that they will be taking action on their own to restore the lower section of the road back to a state of disrepair. The legal status of the road was discussed in length, and while we feel we have a pretty good understanding of our legal rights in regard to road maintenance, there are still some legal clarifications needed.

The point of contention centers around who has the right to maintain the road, including gates, road narrowing, the installation of speed bumps or dips, etc., and if the Sorensen's own the surface of the road and can unilaterally make decisions regarding the road.

A number of items were discussed and suggestions were made of how we could work with the Sorensen's to resolve their concerns, while still keeping in the best interest of our subdivision. While these suggestions are preliminary at this time, we wanted to share them with all members of the HOA to consider for discussion at our August meeting. If you have other suggestions, please forward them to me and I will compile them for discussion.

- Explore our options as an HOA into gating the access to the adjoining subdivision.
- Coordinate with the Sorensen's on the installation of culverts and drainage issues on the lower road around their property.
- Revisit the lowering and posting of a speed limit that would be enforceable by the sheriff's department.

To conclude the meeting, the homeowners in attendance agreed to pursue a vote of the HOA on two proposals:

1. Should the HOA seek legal advice to clarify the ownership, maintenance rights, and control of the lower road? The end result would consist of a legal opinion that would be provided to all homeowners, the Sorensen's, and the HOA of the adjoining subdivision. The written legal opinion would document our rights and obligations.
2. Should the HOA hire a surveyor to monument the physical location of the right-of-way/easement of the lower road from CR 245 (Buford Road) to the beginning of the subdivision (the loop road)? The subdivision plat indicates that the right-of-way/easement consists of a 50' wide area centered upon an alignment starting at CR 245 and continuing to the boundary of the subdivision. We all can assume that the center line of the road is close to this alignment, but that may in fact be a bad assumption. It was felt that having a survey completed and documented would also clarify the extent of our access rights.

I will prepare a ballot along with a copy of this email and either hand deliver or mail them to each homeowner. I will contact both the attorney we have used in the past (Melodi Massih) and a couple of surveyors to get cost estimates to include in the ballot authorizing spending authority on these two issues.

Please let me know if you have any questions, or contact one of the homeowners present at yesterday's meeting if you need any additional information.

Sincerely,

Sherry Whitaker

TERHA Secretary/Treasurer

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**TERHA EMERGENCY MEETING: Richard Sorensen- road improvement**

9 messages

Bill Gibson &lt;3elkcreek@sopris.net&gt;

Fri, May 16, 2008 at 3:30 PM

To: Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <Barbula1@juno.com>, Chandelle May <cmay@garfieldre2.k12.co.us>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

All- Richard and Jenna drove up to our house this afternoon (Friday 2:00 PM) to let us know how disappointed they are with the road improvement along the entrance easement thru their property. Yesterday he instructed the GMCO crew to recreate the ditch along the West side of the road, as it was done 2 years ago, which they did. Today the ditch in the lower road was removed per our discussion and vote at the last homeowners meeting. The majority of TERHA members had agreed to grade the road back to its original condition, thus widening it to the 25' easement .

Richard's objection to removing the ditch is that he believes it was somewhat effective in 'traffic-calming' when two vehicle were approaching in opposite directions. The original intent, as I recall, was that the ditch made the usable part of the road 20' wide rather than 25' wide and should theoretically slow traffic. To make matters worse, when the mag-chloride was dispersed along the lower road today a large amount of it drained into their lawn near the driveway. Since the drainage is not adequate along the West side of the lower road and he does not have a culvert under his driveway this poor drainage situation will only continue.

It is Richard's contention that he has asked TERHA (in the past) to slant/grade the road toward the East along his house so the water will drain away from his house and drive. It is also his opinion that the easement is his property and he has domain over what condition in which will remain. In other words, he believes it is within his legal right to slow traffic on the road/easement at his discretion. Additionally, Richard has consulted with his lawyer to this end. He ultimately would prefer that the road remain full of potholes so that traffic will slow down for safety & dust will be mitigated. He plans to bring a backhoe on the road Sunday to create speed-obstacles and/or improvements as he sees fit.

Richard has asked me to contact TERHA regarding his concerns/plans and discuss them before Sunday AM May 18- as outlined below:

1) Do we prefer speed BUMPS or DIPS?

2) He may decide to GATE the lower road along his property and gate the Apache/access road under the premise that it will be a livestock grazing area.

3) Many members of TERHA and Elk Creek Estates subdivision are driving too fast past his property, raising dust and creating a hazard. They have had a dog and cat hit by vehicles in the past.

4) Richard has invited anyone concerned to stop by his house to discuss the issues.

I would propose we have meeting at 2:00 PM tomorrow, Saturday at our house- 203 Elk Run Road, 984-0736. Please rsvp if you can make it. Otherwise if you cannot make the meeting please send your response or any ideas to this email- reply to all on your response. Any ideas on how to slow traffic without altering the condition of the road would be appreciated.

Bill Gibson

----- Original Message -----

From: Sherry & Kyle Whitaker

To: Alec & Angelique Raffin ; Amy Luetke ; Barbara Cebula-McCune ; Bill Gibson ; Chandelle May ; Christine Manuel ; Jim Hancock ; Judy Haptonstall ; Justin Wareham ; Kathy Kopf ; Liane Anderson ; Quentin & Tiffany Gonzales ; Richie Luetke ; Stephanie & Tim Templon ; Thad & Denise Greene ; Tony May

Sent: Wednesday, April 23, 2008 1:54 PM

Subject: HOA Meeting & Road Repairs

Hi Everyone,

Our next HOA meeting will be on Wed, **August 20<sup>th</sup>** at 6:00 p.m. at the New Castle Community Center. This is a different day than I previously requested. I will send out a reminder as we get closer to that date.

Also, Tony is working on getting the road repairs set up, but it looks like it will happen mid-May. I will also pass on more information to you as I know more.

For those of you who needed a copy of the minutes and an updated roster mailed to you, those were mailed today.

Thanks,

Sherry

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No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.23.3/1393 - Release Date: 4/23/2008 8:12 AM

To: Bill Gibson <3elkcreek@sopris.net>, Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <Barbula1@juno.com>, Chandelle May <cmay@garfieldre2.k12.co.us>, Christine Manuel <elkcreek@sopris.net>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

I cannot make it tomorrow but I was one of those in favor of road narrowing as a traffic calming measure



Jim Hancock, P.E.

Town of Gypsum Engineer

PO Box 130

Gypsum, Colorado 81637

(970) 524-1728

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**From:** Bill Gibson [mailto:3elkcreek@sopris.net]

**Sent:** Friday, May 16, 2008 3:31 PM

**To:** Sherry & Kyle Whitaker; Alec & Angelique Raffin; Amy Luetke; Barbara Cebula-McCune; Chandelle May; Christine Manuel; Jim Hancock; Judy Haptonstall; Justin Wareham; Kathy Kopf ; Liane Anderson; Quentin & Tiffany Gonzales; Richie Luetke; Stephanie & Tim Templon ; Thad & Denise Greene ; Tony May

**Subject:** TERHA EMERGENCY MEETING: Richard Sorensen- road improvement

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Amy Luetke <amy@propertyshopinc.com>

Fri, May 16, 2008 at 4:23 PM

Reply-To: amy@propertyshopinc.com

To: Bill Gibson <3elkcreek@sopris.net>, Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Barbara Cebula-McCune <Barbula1@juno.com>, Chandelley May <cmay@garfieldre2.k12.co.us>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

Bill –

Thanks for the email. Unfortunately, Richie and I will not be able to meet tomorrow. We feel strongly that although we do want to respect that the Sorensen's live close to the road, we are paying GMCO a lot of money to improve the condition of the road for our use. The road should be improved per TERHA's specifications (since it is our legal easement and we are paying for the road repairs) and not immediately destroyed because of one owner's personal preference. I think our focus should be on improving the quality of the road into the subdivision and respecting the location of the Sorensen's home by slowing down rather than making the entrance unsightly and cumbersome with ditches and potholes in an attempt to slow traffic.

Has our association contacted an attorney about our legal rights in this situation in the past?

Thank you for your help.

**Amy**

Amy Luetke, CRS

Broker/Owner

The Property Shop

1117 Grand Ave.

Glenwood Springs, CO 81601

970.947.9300 office

970.618.4956 cell

970.947.9335 fax

**Amy**

Amy Luetke, CRS

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970.618.4956 cell  
970.947.9335 fax

[amy@propertyshopinc.com](mailto:amy@propertyshopinc.com)

-----Original Message-----

**From:** Bill Gibson [mailto:[3elkcreek@sopris.net](mailto:3elkcreek@sopris.net)]

**Sent:** Friday, May 16, 2008 3:31 PM

**To:** Sherry & Kyle Whitaker; Alec & Angelique Raffin; Amy Luetke; Barbara Cebula-McCune; Chandelle May; Christine Manuel; Jim Hancock ; Judy Haptonstall; Justin Wareham; Kathy Kopf ; Liane Anderson; Quentin & Tiffany Gonzales; Richie Luetke; Stephanie & Tim Templon ; Thad & Denise Greene ; Tony May

**Subject:** TERHA EMERGENCY MEETING: Richard Sorensen- road improvement

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[Quoted text hidden]

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[stemplon@sopris.net](mailto:stemplon@sopris.net) <[stemplon@sopris.net](mailto:stemplon@sopris.net)>

Fri, May 16, 2008 at 4:59 PM

To: Bill Gibson <[3elkcreek@sopris.net](mailto:3elkcreek@sopris.net)>

Cc: [whitaker@sopris.net](mailto:whitaker@sopris.net), [raffin@rof.net](mailto:raffin@rof.net), [amy@propertyshopinc.com](mailto:amy@propertyshopinc.com), [Barbula1@juno.com](mailto:Barbula1@juno.com), [cmay@garfieldre2.k12.co.us](mailto:cmay@garfieldre2.k12.co.us), [elkcreek@sopris.net](mailto:elkcreek@sopris.net), [jim@townofgypsum.com](mailto:jim@townofgypsum.com), [jhaptonstall@rfsd.k12.co.us](mailto:jhaptonstall@rfsd.k12.co.us), [wareham\\_justin@yahoo.com](mailto:wareham_justin@yahoo.com), [kwolf@sopris.net](mailto:kwolf@sopris.net), [delianaw@comcast.net](mailto:delianaw@comcast.net), [qgpainting@aol.com](mailto:qgpainting@aol.com), [actionappraisal@sopris.net](mailto:actionappraisal@sopris.net), [greenes@sopris.net](mailto:greenes@sopris.net), [245road@gmail.com](mailto:245road@gmail.com)

Hello All,

While it is important to respect Richard's property and take care when driving on the road, we believe that easement legally belongs to the county as an unincorporated county road. Therefore, while we are legally obliged to maintain the road, it is considered county property. Richard has no right to alter that road "as he sees fit." We believe that narrowing the road would be an effective way to slow traffic, and we may want to consider that as a "peace offering." Otherwise, if Richard decides to pursue his own idea of road maintenance, it may be within our right as a subdivision to notify the Sheriff's Office and have him charged with criminal mischief. The same situation would hold true for any other resident living on a county road. Just because there is a disagreement with a traffic issue, it does not give a homeowner the right to alter the road according to his/her discretion. It is not private property. If it was such a problem he or the previous owner should not have sold the easement to the county. I think all of the residents from 3 Elk Run have tried hard to slow down and be respectful when driving by his property. Unfortunately, we cannot control those living in the other subdivision, nor delivery people or visitors to the area. We have spent a lot of money on road maintenance and we need to do what is best for our neighborhood. I don't believe Richard provides any money for road maintenance, nor does anyone in the other subdivision. Until they do, road maintenance decisions should be ours and ours alone.

We will do our best to attend the meeting. Thank you for staying involved with this issue.

Stephanie

--- [3elkcreek@sopris.net](mailto:3elkcreek@sopris.net) wrote:

From: "Bill Gibson" <[3elkcreek@sopris.net](mailto:3elkcreek@sopris.net)>  
To: "Sherry & Kyle Whitaker" <[whitaker@sopris.net](mailto:whitaker@sopris.net)>, "Alec & Angelique Raffin" <[raffin@rof.net](mailto:raffin@rof.net)>, "Amy Luetke" <[amy@propertyshopinc.com](mailto:amy@propertyshopinc.com)>, "Barbara Cebula-McCune" <[Barbula1@juno.com](mailto:Barbula1@juno.com)>, "Chandelle May" <[cmay@garfieldre2.k12.co.us](mailto:cmay@garfieldre2.k12.co.us)>, "Christine Manuel" <[elkcreek@sopris.net](mailto:elkcreek@sopris.net)>, "Jim Hancock" <[jim@townofgypsum.com](mailto:jim@townofgypsum.com)>, "Judy Haptonstall" <[jhaptonstall@rfsd.k12.co.us](mailto:jhaptonstall@rfsd.k12.co.us)>, "Justin Wareham" <[wareham\\_justin@yahoo.com](mailto:wareham_justin@yahoo.com)>, "Kathy Kopf" <[kwolf@sopris.net](mailto:kwolf@sopris.net)>, "Liane Anderson" <[delianaw@comcast.net](mailto:delianaw@comcast.net)>, "Quentin & Tiffany Gonzales" <[qgpainting@aol.com](mailto:qgpainting@aol.com)>, "Richie Luetke" <[actionappraisal@sopris.net](mailto:actionappraisal@sopris.net)>, "Stephanie & Tim Templon" <[stemplon@sopris.net](mailto:stemplon@sopris.net)>, "Thad & Denise Greene" <[greenes@sopris.net](mailto:greenes@sopris.net)>, "Tony May" <[245road@gmail.com](mailto:245road@gmail.com)>  
Subject: TERHA EMERGENCY MEETING: Richard Sorensen- road improvement  
Date: Fri, 16 May 2008 15:30:51 -0600

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[delianaw@comcast.net](mailto:delianaw@comcast.net) <[delianaw@comcast.net](mailto:delianaw@comcast.net)> Fri, May 16, 2008 at 8:13 PM  
To: [stemplon@sopris.net](mailto:stemplon@sopris.net), [Bill Gibson <3elkcreek@sopris.net>](mailto:Bill Gibson <3elkcreek@sopris.net>)  
Cc: [whitaker@sopris.net](mailto:whitaker@sopris.net), [raffin@rof.net](mailto:raffin@rof.net), [amy@propertyshopinc.com](mailto:amy@propertyshopinc.com), [Barbula1@juno.com](mailto:Barbula1@juno.com), [cmay@garfieldre2.k12.co.us](mailto:cmay@garfieldre2.k12.co.us), [elkcreek@sopris.net](mailto:elkcreek@sopris.net), [jim@townofgypsum.com](mailto:jim@townofgypsum.com), [jhaptonstall@rfsd.k12.co.us](mailto:jhaptonstall@rfsd.k12.co.us), [wareham\\_justin@yahoo.com](mailto:wareham_justin@yahoo.com), [kwolf@sopris.net](mailto:kwolf@sopris.net), [qgpainting@aol.com](mailto:qgpainting@aol.com), [actionappraisal@sopris.net](mailto:actionappraisal@sopris.net), [greenes@sopris.net](mailto:greenes@sopris.net), [245road@gmail.com](mailto:245road@gmail.com)

To All,

We agree with Stephanie on this one. The way we understand it the "easement" is no longer the Richards private property to do with "as he sees fit". However the laws work here it seems that the county road on which we all depend on for access to our homes has become ours alone to maintain even though it is functioning as a public road. I think damages to the road should be treated as though they are damages to our private property and should not be taken lightly. As far as the points he has raised;

1. We do not prefer bumps or dips. From my observations these tend to degrade the condition of dirt / gravel roads by causing washboarding and ruts from runoff. I personally don't believe these are effective as "traffic calming" measures. If we as a subdivision are doing our part to control speed then that's about all we can do. We would have no problem with having a police presence down there on occasion to deter excessive speeds but creating an obstacle course is not the answer.
2. we're not sure what he wants to gate but we should find out if he has a legal right to gate the road.
3. We drive slow on this road and respect his property. We can't speak for others and we as a subdivision cannot control the majority of traffic that drives by his property; that is the traffic from Elk Creek Estates subdivision. See number 1 above regarding police presence. We are tired of his dog trying to run under our wheels when we are going 5 miles an hour. We can live with that because we are dog lovers but if you cannot control your animals then the owner has to take the risk.
4. We may or may not make the meeting. I think we should protect our investment in the road and stand firm on this one even if it takes some legal advice.

In addition we would recommend that Richard's put a culvert in under their driveway to improve their drainage situation just as everyone else does.

We are not opposed to him paying for the costs to grade the road away from his house, however we are not interested in altering the road if it means additional monies out of our HOA fund.

Best Regards,

Landon & Liane Anderson

----- Original message -----

From: <stemplon@sopris.net>

----- Forwarded message -----

From: <stemplon@sopris.net>

To: "Bill Gibson" <3elkcreek@sopris.net>

Cc: <whitaker@sopris.net>, <raffin@rof.net>, <amy@propertyshopinc.com>, <Barbula1@juno.com>, <cmay@garfieldre2.k12.co.us>, <elkcreek@sopris.net>, <jim@townofgypsum.com>, <jhaptonstall@rfsd.k12.co.us>, <wareham\_justin@yahoo.com>, <kwolf@sopris.net>, <delianaw@comcast.net>, <qgpainting@aol.com>, <actionappraisal@sopris.net>, <greene@sopris.net>, <245road@gmail.com>

Bcc:

Date: Fri, 16 May 2008 23:14:53 +0000

Subject: Re: TERHA EMERGENCY MEETING: Richard Sorensen- road improvement

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We will do our best to attend the meeting. Thank you for staying involved with this issue.

Stephanie

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Tony May <245road@gmail.com>

Fri, May 16, 2008 at 11:19 PM

To: delianaw@comcast.net, stemplon@sopris.net, Bill Gibson <3elkcreek@sopris.net>, whitaker@sopris.net, raffin@rof.net, amy@propertyshopinc.com, Barbula1@juno.com, cmay@garfieldre2.k12.co.us, elkcreek@sopris.net, jim@townofgypsum.com, jhaptonstall@rfsd.k12.co.us, wareham\_justin@yahoo.com, kwolf@sopris.net, qgpainting@aol.com, actionappraisal@sopris.net, greene@sopris.net

All,

We are opposed to any speed dips or bumps. As well, we are for keeping the road width as it is now without the traffic calming ditch.

### Legal

We have been advised by legal counsel that TERHA as a legal right to cross the Sorenson property without impediment, granted in full by the Kozak Exemption. The Kozaks owned the property before the Sorensens and the Kozak Exemption explicitly defines perpetual egress and ingress through the property. The right-of-way is 50'.

When we were looking into paving the loop, we hired a lawyer to help us with the process. The lawyer advised that the Sorensens could not gate the main road but could probably gate the back way into Elk Creek subdivision.

Further, TEHRA legal documentation also provides definition of financial liability on road maintenance for the property owners of the Kozak Exemption. We have been letting the Sorenson's slide on their share of road maintenance since they have owned the property.

### Position - Sympathetic, think again.

I will not be held hostage by a disgruntle property owner that has consistently bullied TERHA residences and resorted to passive terroristic activities like illegally dispersing dog feces on the road and physically damaging the road. Richard has openly talked with different people on how he can passively destroy the road by spinning his tires to make a rut to start the wash board cycle once again. I witnessed him doing this right in front of his driveway. I asked him numerous times to stop tossing the dog feces on the road and he would laugh in my face. Finally, a TEHRA resident called in a deputy to talk to the Sorenson's about this crime.

- The catch is that if the Sorenson's say that they are satisfied with the calming ditch, then why did they continue with the acts of aggression directed at his neighbors?

### Action

Given that the Sorenson's have stated that they will be taking action to alter the existing road with their own equipment, I am in full agreement to call in the Sheriff to halt any activity and press charges. I would even prescribe financial retribution through civil action if property damage occurs. At a minimum, financial damages would include the cost to repair the road, back maintenance fees, and attorneys fees. Bring it on.

Taking a stand.  
Tony May

[Quoted text hidden]  
[Quoted text hidden]  
[Quoted text hidden]

---

Bill Gibson <3elkcreek@sopris.net> Fri, May 16, 2008 at 11:39 PM  
To: Tony May <245road@gmail.com>, delianaw@comcast.net, stemplon@sopris.net, whitaker@sopris.net, raffin@rof.net, amy@propertyshopinc.com, Barbula1@juno.com, cmay@garfieldre2.k12.co.us, elkcreek@sopris.net, jim@townofgypsum.com, jhaptionstall@rfsd.k12.co.us, wareham\_justin@yahoo.com, kwolf@sopris.net, qgpainting@aol.com, actionappraisal@sopris.net, greene@sopris.net

Tony- Thanks for your input. That brings the current total to seven (7) TERHA households who have replied stating that they want the road to remain in its current (improved) condition.

All- Any new comments or suggestions would be greatly appreciated as they will all be incorporated in the meeting at 2:00 PM Saturday.

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Internal Virus Database is out-of-date.  
Checked by AVG.  
Version: 7.5.524 / Virus Database: 269.23.8/1413 - Release Date: 5/3/2008 11:22 AM

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Sherry Whitaker <whitaker@sopris.net> Sat, May 17, 2008 at 8:25 AM  
To: Bill Gibson <3elkcreek@sopris.net>, Tony May <245road@gmail.com>, delianaw@comcast.net, stemplon@sopris.net, raffin@rof.net, amy@propertyshopinc.com, Barbula1@juno.com, cmay@garfieldre2.k12.co.us, elkcreek@sopris.net, jim@townofgypsum.com, jhaptionstall@rfsd.k12.co.us, wareham\_justin@yahoo.com, kwolf@sopris.net, qgpainting@aol.com, actionappraisal@sopris.net, greene@sopris.net

We are in agreement with the other homeowners and against the narrowing of the road. My recollection of the meeting two years ago (this was the meeting Jana Sorenson attended) was that our homeowners association was generally sympathetic to their concerns regarding people speeding past their house, but that there were limitations on what could be accomplished by our HOA without impeding our ability to use the road. These limitations were controlled primarily by our inability to limit the amount or speed of the traffic from the other subdivision and the Sorenson's perception of what represented "excessive speed". While I don't doubt that some people "speed" past their house, I believe they may have an unrealistic expectation of what a reasonable speed is. I don't believe that the narrowing of the road for the last couple of years has had an effect on the people that drive the fastest past the Sorenson's house. There is not enough two-way traffic on the road for the narrowing to have the desired effect, it has just caused the rest of us to try and get out of the way when we meet one of these cars. Two-way traffic is a "traffic calming" measure on its own, but we don't have the traffic volume to realize this effect. While I respect the Sorenson's desire to limit speed, I question their ability to destroy the road or demand that the road be narrowed. They purchased a property that is split by a road and encumbered by an easement that was meant for access to our subdivision. I would like to take a look at the easement agreement, so if anyone has a copy please let me know. Otherwise, I will go to the courthouse on Monday and get a copy for whoever wants one.

I hope that the Sorenson's will take a few days and reconsider before they "tear up" the road with equipment. While I am willing to work with them on the drainage, the Sorenson's have had more of an impact on the drainage in that area than our road has. They have completely filled in the drainage on the east side of the road without installing a culvert and the elevation of their driveway would make it difficult to get the drainage to go to the east side of the road without significant dirt work.

Sherry and I will try to make the meeting this afternoon.

Regards,

Kyle and Sherry

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**From:** Bill Gibson [mailto:3elkcreek@sopris.net]  
**Sent:** Friday, May 16, 2008 11:39 PM  
**To:** Tony May; delianaw@comcast.net; stemplon@sopris.net; whitaker@sopris.net; raffin@rof.net; amy@propertyshopinc.com; Barbula1@juno.com; cmay@garfieldre2.k12.co.us; elkcreek@sopris.net; jim@townofgypsum.com; jhaptonstall@rfsd.k12.co.us; wareham\_justin@yahoo.com; kwolf@sopris.net; qgpainting@aol.com; actionappraisal@sopris.net; greene@sopris.net

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[Quoted text hidden]

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**Tony May** <245road@gmail.com>  
To: Sherry Whitaker <whitaker@sopris.net>

Sat, May 17, 2008 at 9:59 AM

I made copies of the Kosar agreement with 'Exhibit A'. and I'll drop it off at your house today.  
There is additional documentation on the easement in one of the black boxes. It may be in a file for the pavement project.

[Quoted text hidden]



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## Update on Road

3 messages

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Sherry & Kyle Whitaker <whitaker@sopris.net>

Sun, May 18, 2008 at 12:18 PM

To: Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Bill Gibson <3elkcreek@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Kyle & Sherry Whitaker <whitaker@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

All,

At the meeting yesterday, the group asked if I would touch base with the Sorensens and give them an update on what our HOA was pursuing and to try and better understand their position. After talking to the Sorensens this morning I think it is fair to say that their concerns are very simple – they want the traffic slowed down past their house. The Sorensens agree that the various agreements regarding whether the road is an access easement or a privately owned public right-of-way are not completely clear. They sought legal advice a couple of years ago and feel that they own the road and have the right to do whatever they want to the road as long as they maintain access for our subdivision. This could include narrowing the road, gates, speed bumps, dips, etc..

I tried to convey to the Sorensens that our homeowners understand their concerns and are more than willing to work with them on a solution. They agreed not to move forward with any changes to the road for now. I let them know that we were in the process of seeking legal advice and a survey, but that it required a vote of the association and it would be a couple of weeks before we would know if the association would move forward on those two items. I offered that we would share any information we get with them and welcome any suggestions they have on a workable solution.

Kyle

---

Bill Gibson <3elkcreek@sopris.net>

Sun, May 18, 2008 at 4:13 PM

To: Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

Sherry & Kyle- Thanks for taking the time to outline all of this. Looking forward to voting and finding some definitive answers on the road issue.

Chris & I agree that we should consult an attorney to determine our rights, or lack thereof, on the access road.

We also agree that a survey would be prudent. The fellow we used for our lot survey was Rich Holman of Silt- 876-2947. Apparently he was involved with the original survey of the sub-division and loop road so he has some prior knowledge.

Bill & Chris

[Quoted text hidden]

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No virus found in this incoming message.

Checked by AVG.

Version: 7.5.524 / Virus Database: 269.23.16/1448 - Release Date: 5/16/2008 7:42 PM

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stemplon@sopris.net <stemplon@sopris.net>

Sun, May 18, 2008 at 6:06 PM

To: Bill Gibson <3elkcreek@sopris.net>

Cc: whitaker@sopris.net, raffin@rof.net, amy@propertyshopinc.com, barbaracm@sopris.net, elkcreek@sopris.net, jim@townofgypsum.com, jhaptonstall@rfsd.k12.co.us, wareham\_justin@yahoo.com, kwolf@sopris.net, delianaw@comcast.net, qgpainting@aol.com, actionappraisal@sopris.net, greene@sopris.net, 245road@gmail.com

Sherry and Kyle,

Thank You for talking to the Sorenson's and taking time to outline the issues. Tim and I would also be supportive of obtaining both legal council and a survey of the road to clarify any ambiguity that currently exists. Then we can pursue a resolution that is equitable for all parties involved.

Have a great rest of your weekend!

Stephanie

--- 3elkcreek@sopris.net wrote:

From: "Bill Gibson" <3elkcreek@sopris.net>

To: "Sherry & Kyle Whitaker" <whitaker@sopris.net>, "Alec & Angelique Raffin" <raffin@rof.net>, "Amy Luetke" <amy@propertyshopinc.com>, "Barbara Cebula-McCune" <barbaracm@sopris.net>, "Christine Manuel" <elkcreek@sopris.net>, "Jim Hancock " <jim@townofgypsum.com>, "Judy Haptonstall" <jhaptonstall@rfsd.k12.co.us>, "Justin Wareham" <wareham\_justin@yahoo.com>, "Kathy Kopf " <kwolf@sopris.net>, "Liane Anderson" <delianaw@comcast.net>, "Quentin & Tiffany Gonzales" <qgpainting@aol.com>, "Richie Luetke" <actionappraisal@sopris.net>, "Stephanie & Tim Templon " <stemplon@sopris.net>, "Thad & Denise Greene " <greene@sopris.net>, "Tony May " <245road@gmail.com>

Subject: Re: Update on Road

Date: Sun, 18 May 2008 16:13:27 -0600

[Quoted text hidden]



Antonio Pantalones <245road@gmail.com>

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## Ballot on authorizing spending for legal fees

5 messages

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Sherry & Kyle Whitaker <whitaker@sopris.net>

Fri, Jun 13, 2008 at 10:54 AM

To: Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Bill Gibson <3elkcreek@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Kyle & Sherry Whitaker <whitaker@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

We have been able to get some information back from the attorney, Melodi Masish, whom we have used in the past. She estimates it will be just under \$1500 to do the legal work we are requesting (see point #1 below for review).

We have so far been unable to obtain a quote for the surveying. Consequently, the ballot below is solely for the authorization of spending authority on legal fees alone.

I should also let you know the financial condition of the HOA at this point. After paying GMCO \$17,199.50 for road maintenance and insurance premiums of \$955.00, we have \$11,020.32 remaining in our Alpine Bank account. If anyone needs any further information on the HOA's financial capacity at this point, please let me know.

Please let me know which of the following options your household wished to vote for.

- 1.) YES, I agree to authorize the spending of up to \$1500.00 to obtain legal services to research, perform document review and provide a written legal opinion on the status of the lower road and the access of the neighboring subdivision.
  
- 2.) NO, I do not agree to authorize the spending of up to \$1500.00 to obtain legal services to research, perform document review and provide a written legal opinion on the status of the lower road and the access of the neighboring subdivision.

If you do not wish to respond via email, Kyle and I will hand deliver ballots over the course of the weekend.

Thank you,

Sherry Whitaker

TERHA Secretary/Treasurer

---

**From:** Sherry Whitaker [mailto:[whitaker@sopris.net](mailto:whitaker@sopris.net)]  
**Sent:** Friday, June 13, 2008 10:30 AM  
**To:** Sherry & Kyle Whitaker  
**Subject:** FW: Summary of yesterday's meeting

---

**From:** Sherry Whitaker [mailto:[whitaker@sopris.net](mailto:whitaker@sopris.net)]

**Sent:** Sunday, May 18, 2008 9:05 AM

**To:** Alec & Angelique Raffin; Amy Luetke; Barbara Cebula-McCune; Christine Manuel; Jim Hancock ; Judy Haptonstall; Justin Wareham; Kathy Kopf ; Liane Anderson; Quentin & Tiffany Gonzales; Richie Luetke; Sherry & Kyle Whitaker; Stephanie & Tim Templon ; Thad & Denise Greene ; Tony May

**Subject:** Summary of yesterday's meeting

A meeting was held yesterday (May 17, 2008) at the Gibson residence. In attendance were Bill Gibson, Chris Manuel, Stephanie Templon, Tony May and Kyle Whitaker. The special meeting was called to discuss the Sorensen's concerns with the recent road maintenance. The Sorensen's have indicated that they will be taking action on their own to restore the lower section of the road back to a state of disrepair. The legal status of the road was discussed in length, and while we feel we have a pretty good understanding of our legal rights in regard to road maintenance, there are still some legal clarifications needed.

The point of contention centers around who has the right to maintain the road, including gates, road narrowing, the installation of speed bumps or dips, etc., and if the Sorensen's own the surface of the road and can unilaterally make decisions regarding the road.

A number of items were discussed and suggestions were made of how we could work with the Sorensen's to resolve their concerns, while still keeping in the best interest of our subdivision. While these suggestions are preliminary at this time, we wanted to share them with all members of the HOA to consider for discussion at our August meeting. If you have other suggestions, please forward them to me and I will compile them for discussion.

- Explore our options as an HOA into gating the access to the adjoining subdivision.
- Coordinate with the Sorensen's on the installation of culverts and drainage issues on the lower road around their property.
- Revisit the lowering and posting of a speed limit that would be enforceable by the sheriff's department.

To conclude the meeting, the homeowners in attendance agreed to pursue a vote of the HOA on two proposals:

1. Should the HOA seek legal advice to clarify the ownership, maintenance rights, and control of the lower road? The end result would consist of a legal opinion that would be provided to all homeowners, the Sorensen's, and the HOA of the adjoining subdivision. The written legal opinion would document our rights and obligations.
2. Should the HOA hire a surveyor to monument the physical location of the right-of-way/easement of the lower road from CR 245 (Buford Road) to the beginning of the subdivision (the loop road)? The subdivision plat indicates that the right-of-way/easement consists of a 50' wide area centered upon an alignment starting at CR 245 and continuing to the boundary of the subdivision. We all can assume that the center line of the

road is close to this alignment, but that may in fact be a bad assumption. It was felt that having a survey completed and documented would also clarify the extent of our access rights.

I will prepare a ballot along with a copy of this email and either hand deliver or mail them to each homeowner. I will contact both the attorney we have used in the past (Melodi Massih) and a couple of surveyors to get cost estimates to include in the ballot authorizing spending authority on these two issues.

Please let me know if you have any questions, or contact one of the homeowners present at yesterday's meeting if you need any additional information.

Sincerely,

Sherry Whitaker

TERHA Secretary/Treasurer

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**Stephanie** <stemplon@sopris.net> Fri, Jun 13, 2008 at 11:20 AM  
To: Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Bill Gibson <3elkcreek@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

Sherry,

Tim and I vote YES

Thanks for your involvement!

Stephanie  
[Quoted text hidden]

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**Tony May** <245road@gmail.com> Fri, Jun 13, 2008 at 11:48 AM  
To: Stephanie <stemplon@sopris.net>  
Cc: Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Bill Gibson <3elkcreek@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Thad & Denise Greene <greene@sopris.net>

Chadelle and I vote YES

Thanks.

[Quoted text hidden]

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**Bill Gibson** <3elkcreek@sopris.net> Sat, Jun 14, 2008 at 12:11 AM  
To: Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Richie Luetke <actionappraisal@sopris.net>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

Chris and I vote (1) YES on the authorization for legal fees.

----- Original Message -----

**From:** Sherry & Kyle Whitaker

**To:** Alec & Angelique Raffin ; Amy Luetke ; Barbara Cebula-McCune ; Bill Gibson ; Christine Manuel ; Jim Hancock ; Judy Haptonstall ; Justin Wareham ; Kathy Kopf ; Kyle & Sherry Whitaker ; Liane Anderson ; Quentin & Tiffany Gonzales ; Richie Luetke ; Stephanie & Tim Templon ; Thad & Denise Greene ; Tony May

**Sent:** Friday, June 13, 2008 10:54 AM

**Subject:** Ballot on authorizing spending for legal fees

[Quoted text hidden]

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No virus found in this incoming message.

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Version: 8.0.100 / Virus Database: 270.3.0/1502 - Release Date: 6/13/2008 7:25 PM

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**Richie Luetke** <actionappraisal@sopris.net>

Sun, Jun 15, 2008 at 8:13 AM

To: Sherry & Kyle Whitaker <whitaker@sopris.net>, Alec & Angelique Raffin <raffin@rof.net>, Amy Luetke <amy@propertyshopinc.com>, Barbara Cebula-McCune <barbaracm@sopris.net>, Bill Gibson <3elkcreek@sopris.net>, Christine Manuel <elkcreek@sopris.net>, Jim Hancock <jim@townofgypsum.com>, Judy Haptonstall <jhaptonstall@rfsd.k12.co.us>, Justin Wareham <wareham\_justin@yahoo.com>, Kathy Kopf <kwolf@sopris.net>, Liane Anderson <delianaw@comcast.net>, Quentin & Tiffany Gonzales <qgpainting@aol.com>, Stephanie & Tim Templon <stemplon@sopris.net>, Thad & Denise Greene <greene@sopris.net>, Tony May <245road@gmail.com>

[The Luetke's vote yes](#)

-----Original Message-----

**From:** Sherry & Kyle Whitaker [mailto:[whitaker@sopris.net](mailto:whitaker@sopris.net)]

**Sent:** Friday, June 13, 2008 10:54 AM

**To:** Alec & Angelique Raffin; Amy Luetke; Barbara Cebula-McCune; Bill Gibson; Christine Manuel; Jim Hancock ; Judy Haptonstall; Justin Wareham; Kathy Kopf ; Kyle & Sherry Whitaker; Liane Anderson; Quentin & Tiffany Gonzales; Richie Luetke; Stephanie & Tim Templon ; Thad & Denise Greene ; Tony May

**Subject:** Ballot on authorizing spending for legal fees

[Quoted text hidden]

**OLSZEWSKI, MASSIH & MAURER, P.C.**  
**ATTORNEYS AT LAW**

Edward B. Olszewski  
Melody D. Massih  
Amanda N. Maurer

Website:  
[www.ommpc.com](http://www.ommpc.com)

P.O. BOX 916  
214 – 8<sup>TH</sup> STREET, SUITE 210  
GLENWOOD SPRINGS, CO 81602

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TELEPHONE: 970.928.9100  
FACSIMILE: 970.928.9600

June 26, 2008

Three Elk Run Homeowners Association  
c/o Sherry Whitaker, Secretary  
0723 Elk Run Road  
New Castle, CO 81647

**RE: Legal Representation - Road Easement Issues**

Dear Three Elk Run Homeowners Association:

The purpose of this letter is to confirm our engagement as legal counsel regarding the above-referenced matter. The Colorado Supreme Court requires all attorneys to have written agreements with their clients concerning the work to be performed on behalf of the client and the fees to be charged for that work. This letter is intended to serve as confirmation that you have engaged our firm to represent you in the referenced matter. You may in the future ask us to represent you on other matters. Our representation of you at all times will include only those matters as to which you have requested us to render advice.

Open and frequent communication with you is crucial to ensure the best possible representation in this matter. All information relating to your representation in this matter will be kept confidential unless you authorize disclosure. In addition, all confidential communications between us during the representation are protected by the attorney-client privilege. I therefore encourage candor on your part in sharing information with me.

I have informed you that my current hourly rate is \$175.00 per hour and I will be the attorney primarily responsible for your matter. My partners may also assist on this matter, and their hourly rates will not exceed \$175.00. When appropriate, I may engage the services of my paralegal whose current hourly rate is \$65.00 per hour. Fees will be determined by the amount of time devoted to your affairs and the hourly rates described above. Our hourly rates are established according to our levels of experience and ability, and the fee scale itself is

June 26, 2008

Page 2

occasionally adjusted. In addition to these hourly rates, the firm may pass on to you the costs and expenses incurred in my representation of you.<sup>1</sup>

I have not required a retainer in this matter based on my past representation of you. For your information, any retainer we are given will initially be held in our COLTAF (Colorado Lawyer Trust Account Foundation) account, and will be applied to our billing. Interest from this account will be paid to COLTAF to help fund non-profit legal services. We will generally submit a statement for fees and costs to you on a monthly basis, and expect full payment within 30 days. If it is ever necessary for you to delay payment, we expect that you will contact us and make arrangements for the delay. Interest will accrue on past due balances at the rate of 1.5% per month. We reserve the right to terminate our attorney/client relationship or stop work for nonpayment. If our firm is required to initiate collection proceedings on any unpaid balance, the prevailing party in any such action shall be entitled to recover attorneys fees and costs. If at any time you feel the need to discuss charges for work performed on your behalf, alternative billing arrangements, or any other issues related to our representation of you in this matter, please do not hesitate to contact me.

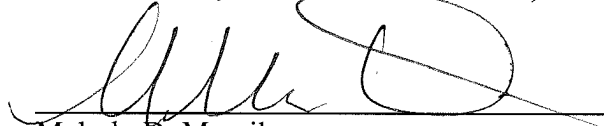
We are pleased to have the opportunity to serve as your counsel, and are eager to make it an enjoyable and beneficial relationship. If the arrangements described in this letter are not consistent with your understanding, please get in touch with me immediately so that we may resolve any differences.

If the terms of this arrangement are satisfactory, please sign and date below and return an original to me at the address listed above. I have provided you with a duplicate original for your file.

Please contact me with any questions or concerns you have. I look forward to working with you.

Very truly yours,

OLSZEWSKI, MASSIH & MAURER, P.C.



Melody D. Massih

MDM:kmg

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<sup>1</sup> Examples of costs and expenses that may be incurred include: registered mail, overnight delivery service, photocopying (\$.25 per page after 50 copies), court filing fees, service of process fees, publication costs, expert-witness opinions, long-distance phone calls, required travel (\$.585 per mile for vehicles, actual cost incurred for coach fares on airlines), etc.

June 26, 2008

Page 3

READ AND ACCEPTED:

Three Elk Run Homeowners Association

\_\_\_\_\_  
Sherry Whitaker, Secretary

Date: \_\_\_\_\_

**OLSZEWSKI, MASSIH & MAURER, P.C.**  
**ATTORNEYS AT LAW**

Edward B. Olszewski  
Melody D. Massih  
Amanda N. Maurer

Website:  
[www.ommpc.com](http://www.ommpc.com)

P.O. BOX 916  
214 – 8<sup>TH</sup> STREET, SUITE 210  
GLENWOOD SPRINGS, CO 81602

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TELEPHONE: 970.928.9100  
FACSIMILE: 970.928.9600

November 7, 2008

Three Elk Run Homeowners Association, Inc.  
c/o Sherry Whitaker, Secretary  
0621 Elk Run Road  
New Castle, CO 81647

**RE: Road Easement Issues**  
**Attorney-Client Privileged Communication**

Dear Three Elk Run Homeowners Association:

The purpose of this letter is to give a legal opinion regarding the rights and obligations of Three Elk Run Homeowners Association, Inc. (hereinafter "Three Elk Run") to the road known as Elk Run Road, starting at County Road No. 245 and crossing property owned by Richard and Janna Sorensen before entering into the Three Elk Run Subdivision. I will also discuss the neighboring subdivision, Elk Creek Development, and its use of Elk Run Road.

For some background on the Sorenson property, Esther and Kazimierz Kozak were the previous owners of the Sorenson property and some other property adjacent to Three Elk Run Subdivision. In 1994, Kozaks split their approximately 40 acre property into 4 tracts as part of a subdivision exemption process with Garfield County. Sorensons purchased Tract 4 of the Kozak Exemption on January 29, 1999. I have reviewed the deeds in the Sorenson chain of title, which were researched and provided to me by Commonwealth Title Company, and there is nothing in these deeds regarding rights or obligations of Sorensons as to Elk Run Road. Attached are copies of the deeds in the Sorenson chain of title for your records. However, there is a separate conveyance of right of way through Sorenson's property as is set forth in the next paragraph.

The portion of Elk Run Road crossing the Sorenson property was conveyed to the use of the public on January 20, 1995 by the Kozaks. I have attached the Conveyance and Dedication of Right of Way dated January 20, 1995 (hereinafter referred to as "Right of Way Conveyance") and recorded in the real estate records of the Garfield County Clerk and Recorder on March 15, 1995. This Right of Way Conveyance dedicated Elk Run Road as it crosses the Sorenson property as a **perpetual public roadway, access and utility easement for the installation and maintenance of streets and roads**. The Right of Way Conveyance also gives the right to the

Three Elk Run Homeowner's Association  
November 7, 2008  
Page 2

public to trim interfering trees and brush. A Correction to the Right of Way Conveyance dated June 23, 1995 and recorded on July 5, 1995, was made to correct a scrivener's error in the Right of Way Conveyance, but did not change any of the rights or obligations set forth in the original Right of Way Conveyance. I have attached the Correction of Conveyance and Dedication of Right of Way.

Thus, Elk Run Road as it crosses the Sorenson property is a public road, and Sorensens cannot stop any member of the public from crossing this road. In addition, per the Right of Way Conveyance, the public has the right to maintain this road, and Sorensens cannot direct if or how the road should be maintained.

I have been asked to discuss the rights and responsibilities of the neighboring subdivision, Elk Creek Development, in relation to Elk Run Road. It is my understanding that some homeowners in Elk Creek Development use the portion of Elk Run Road that crosses Sorensens' property to get to their homes. Elk Creek Development was established as a subdivision in 1965. It appears that the portion of what is now called Elk Run Road that crosses Sorensens' property generally runs along a road that was called "Apache Drive". "Apache Drive" does appear on the plat for Elk Creek Development, and was dedicated to the public as a road in 1965 when the plat was filed with Garfield County. Thus, the homeowners in Elk Creek Development do have the right to use this portion of Elk Run Road, as it is a public road per the dedication in 1965 as well as per the Right of Way Conveyance of 1995. As far as any written obligations of Elk Creek Development to maintain Elk Run Road or "Apache Drive", there is nothing in Elk Creek Development's Covenants requiring that they maintain this road. I have attached the Restrictive Covenants for Elk Creek Development for your information.

As to the maintenance of Elk Run Road, even though it is a public road, the County has chosen not to maintain this road. It is my understanding that Three Elk Run has been maintaining Elk Run Road with no contribution by Sorensens or Elk Creek Development, who also use this road. As stated above, there is no written obligation in Elk Creek Development's subdivision documents that Elk Creek Development be responsible for maintaining this road. However, in the Three Elk Run Covenants, paragraph 2.2.1, Three Elk Run is given the power to maintain roadways dedicated to the public (i.e. Elk Run Road). Paragraph 18 of the Covenants also addresses the maintenance of the public road ways, and states that the costs for maintenance, repairs and snow removal shall be collected as assessments by Three Elk Run.

In addition to the ability for Three Elk Run to maintain Elk Run Road as set forth above, there is a Maintenance Agreement between Kozaks and Three Elk Run, recorded on July 5, 1995, that states that Tract 1 of the Kozak Exemption and each lot owner in Three Elk Run is to pay a proportionate share of the costs of maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Elk Run. This Maintenance Agreement was entered into as part of a separate transaction between Kozak and the developer of Three Elk Run for a grant of a different easement to Kozak and only extends to Tract 1 of the Kozak Exemption. The Maintenance Agreement does not speak to maintenance obligations of Tract 4 or any of the

OLSZEWSKI, MASSIH & MAURER, P.C.

Three Elk Run Homeowner's Association  
November 7, 2008  
Page 3


other Kozak Exemption tracts, or to Elk Creek Development's maintenance obligations. Enclosed is a copy of the Maintenance Agreement.

There is Colorado case law that states absent any agreement on the question of maintenance of a private right of way, the burden of upkeep should be distributed between the users of the road in proportion to their use of the road. *R.A. Barnard v. W.B Gaumer*, 361 P.2d 778 (Colo. 1961). Since this is a public road but it is privately maintained, Three Elk Run could argue that this case law does apply, and seek contribution from all users of the road for its maintenance, understanding that the other road users may disagree and decline to pay maintenance costs for the road.

I hope this addresses your questions and concerns with regard to Elk Run Road and the neighboring properties. Please contact me with any other questions you have.

Very truly yours,

OLSZEWSKI, MASSIH & MAURER, P.C.

By:   
Melody D. Massih

MDM:mkd  
Enclosures

GARFIELD  
State Doc. Fee  
**QUIT CLAIM DEED**  
JUL 05 1994  
\$ EXP

THIS DEED, made this 5<sup>th</sup> day of July, 1994, between NATHAN KING, ALINA KING, MARÍA CARRION-KOZAK and ROBERT KOZAK, of the County of Garfield and State of Colorado (Grantors) and KAZIMIERZ KOZAK and ESTHER S. KOZAK, whose legal address is P.O. Box 2647, Glenwood Springs, CO 81602, County of Garfield and State of Colorado, (Grantees):

WITNESSETH, That the Grantors, for and in consideration of the sum of One Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have remised, released, sold, conveyed and QUIT CLAIMED, and by these presents do remise, release, sell, convey and QUIT CLAIM unto the Grantees, their heirs, successors and assigns forever, not in tenancy in common, but in joint tenancy, all the right, title, interest, claim and demand which the Grantors have in and to the real property, together with improvements, if any, situate, lying and being in the County of Garfield and State of Colorado described as follows:

Tract 4, Kozak Exemption according to the plat thereof recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. \_\_\_\_\_

also known by street and number as: (vacant land)

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of the Grantors, either in law or equity, to the only proper use, benefit and behoof of the Grantees, their heirs and assigns forever.

IN WITNESS WHEREOF, the Grantors have executed this deed on the date set forth above.

[Signature]  
NATHAN KING

[Signature]  
ALINA KING

[Signature]  
ROBERT KOZAK

[Signature]  
MARÍA CARRION-KOZAK

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 19 day of June, 1994, by NATHAN KING, ALINA KING, MARÍA CARRION-KOZAK and ROBERT KOZAK.  
Witness my hand and official seal.

[Signature]  
Notary Public

Address:  
My commission expires:

My commission expires April 6, 1995.



3/1  
13/2  
4/10/94  
CONSIDERATION LESS THAN \$500.00

WARRANTY DEED

THIS DEED, Made this 19th day of July, 1996, between  
KAZIMIERZ KOZAK AND ESTHER S. KOZAK

of the said County of GARFIELD and State of COLORADO, grantor, and  
CLIFTON DAN GOLDEN AND CHEREE OUBER GOLDEN

whose legal address is 2111 NORTH FRONTAGE ROAD  
W. VAIL, CO 81657

DOC FEE: 5.80

of the said County of GARFIELD and State of COLORADO, grantee:

WITNESS, that the grantor, for and in consideration of the sum of Ten dollars and other good and valuable consideration DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the grantees, their heirs and assigns forever, not in tenancy in common but in joint tenancy, all the real property, together with improvements, if any, situate, lying and being in the said County of GARFIELD and State of Colorado described as follows:  
See Exhibit "A"

also known by street and number as:

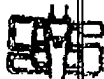
TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee, his heirs and assigns forever. And the grantor, for himself, his heirs, and personal representatives, does covenant, grant, bargain, and agree to and with the grantee, his heirs and assigns, that at the time of the enrolling and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except easements, restrictions, reservations and rights of way of record, or situate and in use, and real property taxes for the year 1996, not yet due or payable.

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

1855026



*Kazimierz Kozak*  
KAZIMIERZ KOZAK

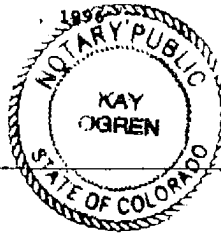
*Esther S. Kozak*  
ESTHER S. KOZAK

State of COLORADO )  
) ss.  
County of GARFIELD )

The foregoing instrument was acknowledged before me this 19th day of July  
by KAZIMIERZ KOZAK AND ESTHER S. KOZAK

My commission expires May 03, 1997. Witness my hand and official seal.

*Kay Ogren*  
Notary Public



110  
580

EXHIBIT A

Order Number: 96025581

496019 B-985 P-913 07/19/96 04:03P PG 2 OF 2

LEGAL DESCRIPTION

A tract of land in the West one-half of the Northeast one-quarter and the Northwest one-quarter of the Southeast one-quarter of Section 25, T. 5 S., R. 91 W., of the 6th P.M., in Garfield County, Colorado and being more particularly described as follows:

Beginning at the East one-sixteenth Corner of the East/West centerline of said Section 25, an iron pipe with an Aluminum Cap properly marked; thence N. 00 degrees 02'12" E. and along the East line of the said West one-half of the Northeast one-quarter of said Section 25, a distance of 768.42 feet;

thence S. 75 degrees 53' W. a distance of 148.03 feet to a point on the Easterly boundary line of Unit One Elk Creek Development, Doc. No. 230521, dated June 29, 1965, Garfield County records: the following eight (8) courses are along said Easterly boundary line:

- 1) S. 23 degrees 16' W. a distance of 159.59 feet;
- 2) S. 62 degrees 09' E. a distance of 104.78 feet;
- 3) S. 03 degrees 50' E. a distance of 10.00 feet;
- 4) S. 89 degrees 10' W. a distance of 22.28 feet;
- 5) S. 42 degrees 20' W. a distance of 191.84 feet;
- 6) S. 24 degrees 53' W. a distance of 81.92 feet;
- 7) S. 35 degrees 05' W. a distance of 48.85 feet;
- 8) S. 85 degrees 02' W. a distance of 32.71 feet;

thence S. 32 degrees 33'43" E. and along the Easterly line of that parcel described in Book 446 at Page 171 Garfield County records, a distance of 122.89 feet to a point in the centerline of the Coryell Ditch: the following eight (8) courses are along the centerline of said Coryell Ditch:

- 1) S. 36 degrees 36'51" W. a distance of 50.27 feet;
- 2) S. 43 degrees 59'07" W. a distance of 22.52 feet;
- 3) S. 68 degrees 16'37" W. a distance of 27.58 feet;
- 4) N. 86 degrees 34'01" W. a distance of 52.08 feet;
- 5) N. 76 degrees 05'49" W. a distance of 43.79 feet;
- 6) N. 58 degrees 49'30" W. a distance of 32.80 feet;
- 7) N. 56 degrees 30'02" W. a distance of 62.93 feet;
- 8) N. 60 degrees 16'35" W. a distance of 25.45 feet;

thence leaving said ditch centerline, S. 46 degrees 56'56" W. a distance of 55.55 feet to a point on the Northeasterly right of way line of County Road No. 245:

thence S. 61 degrees 16'57" E. and along said Northeasterly right of way line a distance of 294.62 feet:

thence S. 68 degrees 35' E. and continuing along said Northeasterly right of way line a distance of 136.22 feet:

thence N. 33 degrees 30' E. and along the Northwesterly line of that parcel described in Book 488 at Page 762 Garfield County records, a distance of 130.75 feet:

thence S. 65 degrees 21' E. and along the Northeasterly line of said parcel in Book 488 at Page 762, a distance of 129.98 feet:

thence N. 89 degrees 05'00" E. and along the East/West centerline of said Section 25, a distance of 26.69 feet to the Point of Beginning.

COUNTY OF GARFIELD  
STATE OF COLORADO

ALSO KNOWN AND DESCRIBED AS FOLLOWS:

TRACT 4

KOZAK EXEMPTION ACCORDING TO THE PLAT THEREOF RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO AS RECEPTION NO. 465410.

*pt 2-1-96/W*

11  
27

WARRANTY DEED

THIS DEED, Made this 29th day of January, 1999, between  
CLIFTON DAN GOLDEN AND CHEREE OUBER GOLDEN

of the said County of GARFIELD and State of COLORADO, grantor, and  
RICHARD SORENSEN AND JANNA R. SORENSEN

whose legal address is 0038 ELK RUN ROAD  
NEW CASTLE CO 81647

of the said County of GARFIELD and State of COLORADO, grantee:

DOC. FEE: \$17.60

WITNESS, that the grantor, for and in consideration of the sum of ONE HUNDRED SEVENTY-SIX THOUSAND & 00/100 DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto the grantees, their heirs and assigns forever, not in tenancy in common but in joint tenancy, all the real property, together with improvements, if any, situate, lying and being in the said County of GARFIELD and State of Colorado described as follows:

See Exhibit "A"

also known by street and number as: 0038 ELK RUN ROAD, NEW CASTLE, CO 81647

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee, his heirs and assigns forever. And the grantor, for himself, his heirs, and personal representatives, does covenant, grant, bargain, and agree to and with the grantee, his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, except easements, restrictions, reservations and rights of way of record, or situate and in use, and real property taxes for the year 1998, not yet due or payable.

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the grantee, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

*Clifton Dan Golden*  
CLIFTON DAN GOLDEN

*Cheree Ouber Golden*  
CHERE E OUBER GOLDEN

State of COLORADO )  
                                  ) ss.  
County of GARFIELD )

KRISTINE LEAHY  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires Sept. 10, 2000

The foregoing instrument was acknowledged before me this 29th day of January, 1999, by CLIFTON DAN GOLDEN AND CHEREE OUBER GOLDEN

My commission expires September 10, 2000. Witness my hand and official seal.

*Kristine Leahy*  
Notary Public

98029148

11  
17.60

EXHIBIT A

Order Number: 98029148

LEGAL DESCRIPTION

538634 02/03/1999 02:05P B1113 P88 M ALSDORF  
2 of 2 R 11.00 D 17.60 GARFIELD COUNTY CO

A tract of land in the West one-half of the Northeast one-quarter and the Northwest one-quarter of the Southeast one-quarter of Section 25, T. 5 S., R. 91 W., of the 6th P.M., in Garfield County, Colorado and being more particularly described as follows:

Beginning at the East one-sixteenth Corner of the East/West centerline of said Section 25, an iron pipe with an Aluminum Cap properly marked; thence N. 00 degrees 02'12" E. and along the East line of the said West one-half of the Northeast one-quarter of said Section 25, a distance of 768.42 feet; thence S. 75 degrees 53' W. a distance of 148.03 feet to a point on the Easterly boundary line of Unit One Elk Creek Development, Doc. No. 230521, dated June 29, 1965, Garfield County records: the following eight (8) courses are along said Easterly boundary line:

- 1) S. 23 degrees 16' W. a distance of 159.59 feet;
- 2) S. 62 degrees 02' E. a distance of 104.78 feet;
- 3) S. 03 degrees 50' E. a distance of 10.00 feet;
- 4) S. 89 degrees 10' W. a distance of 22.28 feet;
- 5) S. 42 degrees 20' W. a distance of 191.84 feet;
- 6) S. 24 degrees 53' W. a distance of 81.92 feet;
- 7) S. 35 degrees 05' W. a distance of 48.85 feet;
- 8) S. 85 degrees 02' W. a distance of 32.71 feet;

thence S. 32 degrees 33'43" E. and along the Easterly line of that parcel described in Book 446 at Page 171 Garfield County records, a distance of 122.89 feet to a point in the centerline of the Coryell Ditch: the following eight (8) courses are along the centerline of said Coryell Ditch:

- 1) S. 36 degrees 36'51" W. a distance of 50.27 feet;
- 2) S. 43 degrees 59'07" W. a distance of 22.52 feet;
- 3) S. 68 degrees 16'37" W. a distance of 27.58 feet;
- 4) N. 86 degrees 34'01" W. a distance of 52.08 feet;
- 5) N. 76 degrees 05'49" W. a distance of 43.79 feet;
- 6) N. 58 degrees 49'30" W. a distance of 32.80 feet;
- 7) N. 56 degrees 30'02" W. a distance of 62.93 feet;
- 8) N. 60 degrees 16'35" W. a distance of 25.45 feet;

thence leaving said ditch centerline, S. 46 degrees 56'56" W. a distance of 55.55 feet to a point on the Northeasterly right of way line of County Road No. 245:

thence S. 61 degrees 16'57" E. and along said Northeasterly right of way line a distance of 294.62 feet:

thence S. 68 degrees 35' E. and continuing along said Northeasterly right of way line a distance of 136.22 feet:

thence N. 33 degrees 30' E. and along the Northwesterly line of that parcel described in Book 488 at Page 762 Garfield County records, a distance of 130.75 feet:

thence S. 65 degrees 21' E. and along the Northeasterly line of said parcel in Book 488 at Page 762, a distance of 129.98 feet:

thence N. 89 degrees 05'00" E. and along the East/West centerline of said Section 25, a distance of 26.69 feet to the Point of Beginning.

ALSO KNOWN AND DESCRIBED AS FOLLOWS: TRACT 4 KOZAK EXEMPTION ACCORDING TO THE PLAT THEREOF RECORDED IN THE OFFICE OF THE CLERK AND RECORDER OF GARFIELD COUNTY, COLORADO AS RECEPTION NO. 465410.



**EXHIBIT "A"**

**ACCESS AND UTILITY EASEMENT**

An Access and Utility Easement in the W1/2NE1/4 of Section 25, Township 5 South, Range 91 West of the 6th P.M. being 50.00 feet in width and lying 25 feet on each side of the following described centerline:

Beginning at a point on the northerly right-of-way of County Road No. 245 whence the Southeast Corner of said W1/2NE1/4 bears S89°39'33"E 357.71 feet; thence 133.38 feet along the arc of a curve to the right having a central angle of 18°11'46" and a radius of 420.00 feet, the chord of which bears N 57°01'35"E 132.82 feet; thence 117.84 feet along the arc of a curve to the left having a central angle of 54°00'54" and a radius of 125.00 feet; thence N12°06'34"E 152.88 feet; thence 269.21 feet along the arc of a curve to the right said curve having a central angle of 13°31'49" and a radius of 1140.00 feet; thence N25°38'23"E 73.26 feet to the point of terminus said point being on the east line of said W1/2NE1/4 and also being on the west line of the Three Elk Run Subdivision from said point of terminus said Southeast Corner of said W1/2NE1/4 bears S00°02'12"W 642.97 feet.



EXHIBIT A  
ACCESS AND UTILITY EASEMENT

An Access and Utility Easement in the W1/2 NE1/4 of Section 25, Township 5 South, Range 91 West of the 6th P.M. being 50.00 feet in width and lying 25 feet on each side of the following described centerline:

Beginning at a point on the northerly right-of-way of County Road No. 245 whence the Southeast Corner of said W1/2 NE1/4 bears S. 89°39'33" E. 357.71 feet; thence 133.38 feet along the arc of a curve to the right having a central angle of 18°11'46" and a radius of 420.00 feet, the chord of which bears N. 57°01'35" E. 132.82 feet; thence N. 66°07'28" E. 26.69 feet; thence 117.84 feet along the arc of a curve to the left having a central angle of 54°00'54" and a radius of 125.00 feet; thence N. 12°06'34" E. 152.88 feet; thence 269.21 feet along the arc of a curve to the right, said curve having a central angle of 13°31'49" and a radius of 1140.00 feet; thence N. 25°38'23" E. 73.26 feet to the point of terminus, said point being on the east line of said W1/2 NE1/4 and also being on the west line of the Three Elk Run Subdivision from said point of terminus, said Southeast Corner of said W1/2 NE1/4 bears S. 00°02'12" W. 642.97 feet.

Return to: JAT  
Delaney & Balcomb, P.C. 2  
P.O. Drawer 790  
Glenwood Springs, CO 81602

Book 367 Recorded at 4:02 P.M. June 29, 1965  
Page 258 Reception No. 230525 Chas. S. Keegan, Recorder.

RESTRICTIVE COVENANTS

ELK CREEK DEVELOPMENT

KNOW ALL MEN BY THESE PRESENTS that the Elk Creek Development, Inc.,  
a corporation, the owner of the real property described on the map recorded as  
Document No. 130521 in the office of the Clerk and Recorder of Garfield  
County, Colorado, and having subdivided said property into lots to be used  
exclusively for residence purposes, and to protect the purchasers of said lots  
by appropriate restrictive covenants, do hereby adopt the following:

1. The following restrictions shall apply to Lots 10 to 17, both  
inclusive, Block 5; Block 6; Block 7; and Block 8 of the Elk Creek Development:

(a) No building shall be permitted on any lot having a ground  
floor area of the main structure, exclusive of carports, patios, and basements,  
of less than eight hundred square feet. Dwelling houses are limited to one  
family dwellings.

(b) Dwelling houses shall be completed within one year from the  
date work started on the structure.

(c) No structure of a temporary character, trailer, mobile home,  
basement, tent, shack, garage, barn, or other outbuilding shall be used on any  
of the above lots at any time as a residence, either temporarily or permanently.

2. UTILITY EASEMENT. Easements for the installation and maintenance  
of utilities and drainage facilities are reserved through, over, and across  
that portion of the lots described as follows:

The North ten (10) feet of the lots in Block 1 and Block 2;  
the South ten (10) feet of Lots 1 to 7, both inclusive, of  
Block 3; the North ten (10) feet of Lots 8 to 13, both  
inclusive, Block 3; the North ten (10) feet of Lots 1 to 3,  
both inclusive, Block 4; the South ten (10) feet of Lots 4  
to 7, both inclusive, Block 4; the South ten (10) feet of  
Lots 1 to 9, both inclusive, Block 5; the ten (10) feet  
contiguous with Comanchero Trail in Lots 10 to 17, both  
inclusive; Block 5; the ten (10) feet contiguous with Apache  
Drive from the Southwest corner of Lot 1 to the Southeast  
corner of Lot 9, Block 6; the ten (10) feet of Lots 1 to 8,  
both inclusive, of Block 7 contiguous with Apache Drive; the  
South ten (10) feet of Lots 8 to 13, both inclusive, of  
Block 7; the North ten (10) feet of Block 8.

3. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person, or persons, firm or corporation violating or attempting to violate any covenants, either to restrain the violation or to recover damages.

IN WITNESS WHEREOF, the undersigned corporation has signed the above on this 21st day of June, 1965.



ELK CREEK DEVELOPMENT, INC.

By Henry W. Dietz III  
President

Henry W. Dietz IV  
Secretary

STATE OF Arkansas )  
COUNTY OF Boone ) ss.

The above instrument was acknowledged before me this 21st day of June, A. D. 1965, by Henry W. Dietz, III, President, and Henry W. Dietz, IV, Secretary of Elk Creek Development, Inc.

Witness my hand and official seal.

My commission expires December 20, 1967.



Brenda M. Williams  
Notary Public

Recorded at 10:12 A.M. August 5, 1969 Book 403  
Reception No. 244039 Chas. B. Keegan, Recorder Page 513

AMENDMENT TO RESTRICTIVE COVENANTS  
OF ELK CREEK DEVELOPMENT  
OF RECORD IN DOCUMENT NO. 230525

KNOW ALL MEN BY THESE PRESENTS that the Elk Creek Development, Inc., a corporation, the owner of certain real property described on the map recorded or filed as Document No. 230521 in the office of the Clerk and Recorder of Garfield County, Colorado, did on June 29, 1965, record restrictive covenants concerning the property in the Elk Creek Development, which instrument is recorded in the office of the Garfield County Clerk and Recorder in Book 367 at Page 258 with Reception No. 230525;

That Section (a) of Paragraph 1 is hereby amended to read as follows:

"(a) No dwelling house or dwelling structure shall be permitted on any lot having a floor area of the main structure, exclusive of carports, patios, and basements, of less than eight hundred square feet. Dwelling houses are limited to one family dwellings."

Except as herein amended, the restrictive covenants contained in said instrument of record as Document No. 230525 are hereby ratified and approved.

IN WITNESS WHEREOF, the undersigned corporation has signed the above on this 28 day of July, 1969.

ELK CREEK DEVELOPMENT, INC.

By Henry W. Diet III  
President.

ATTEST:

Henry W. Diet III  
Secretary



STATE OF Colorado  
COUNTY OF Bear

ss.

The above instrument was acknowledged before me this  
26 day of July, 1969, by Henry W. Dietz, III,  
President, and Henry W. Dietz, IV, Secretary of Elk Creek  
Development, Inc.

Witness my hand and official seal.

My commission expires June 1, 1971.

James A. Chapple  
Notary Public



## **MAINTENANCE AGREEMENT**

### **A. PARTIES**

The parties to this Agreement are THREE ELK RUN HOMEOWNERS ASSOCIATION (HA) and KAZIMIERZ KOZAK and ESTHER KOZAK (Kozak).

### **B. RECITALS**

The reason and purpose for entering into this Agreement is premised upon the following:

1. HA is the association charged with the responsibility for the maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Three Elk Run Subdivision as the same appears upon plat thereof recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 473965 (Elk Run).
2. Kozak is the owner of Tract 1, Kozak Exemption, as the same appears upon plat thereof recorded in the office of the Clerk and Recorder of Garfield County, Colorado as Reception No. 465410 (Tract 1)
3. Kozak has received the conveyance of an easement and right-of-way from Three Elk Run LLC for an easement and right-of-way extending from Garfield County Road No. 245 through Elk Run to a point on the boundary between Lots 13 and 14, Elk Run, thence along the boundary of said Lots 13 and 14 to the easterly boundary of Tract 1.
4. The grant of the easement and right-of-way to Kozak is contingent upon Kozak entering into an agreement with HA for the purpose of Kozak paying a proportionate share of the maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Elk Run.

### **C. AGREEMENT**

The parties agree as follows:

1. **Recitals True and Correct.** The recitals above set forth are true and correct.

2. **Share of Maintenance Costs.** Kozak hereby agrees to pay his proportionate share of the costs of maintenance and upkeep of the roadways extending from Garfield County Road No. 245 through Elk Run (Roadways).

3. **Proportionate Share of Costs.** The costs and expenses of the maintenance of the Roadways shall be the proportionate share thereof which shall be paid by each lot owner within Elk Run. X

4. **Billing for Cost.** For purposes of maintenance and upkeep of the Roadways, HA shall bill Kozak on the same basis and at the same rate as all other homeowners are billed within Elk Run for such maintenance and upkeep; provided, however, the share to be paid by Kozak shall be for road maintenance and upkeep only and no other expenses of operating the homeowners association shall be included in such billing.

5. **Pertains to Tract 1 Only.** The scope of this Agreement shall extend to Kozak as the owner of Tract 1 and shall be an emolument, benefit to and obligation upon Tract 1 only and may not be assigned in whole or in part to any other person other than the owner of Tract 1.

6. **Gender.** The use of the singular masculine herein shall include the plural and feminine.

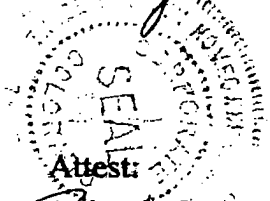
7. **Binding Effect.** The terms and conditions hereof shall extend to and be binding upon the parties hereto, their successors and assigns of all kinds.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year set opposite the name of each.

Date: June 16, 1995

THREE ELK RUN HOMEOWNERS ASSOCIATION

By: [Signature]  
President



Attest: Barbara Cebala-McCune  
Secretary

Date: \_\_\_\_\_

[Signature]  
KAZIMIERZ KOZAK

Date: June 23, 1995

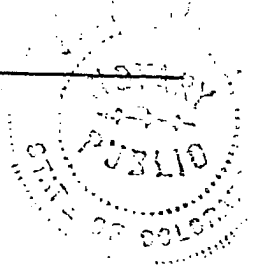
[Signature]  
ESTHER KOZAK

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of June, 1995, by Edward McCune as President and Barbara McCune as Secretary of Three Elk Run Homeowners Association.

Witness my hand and official seal. *my commission expires 4-18-98*

Sally Whitman  
Notary Public



Address: 2644 East Ave Rifle CO 81650  
My commission expires: 4-18-98

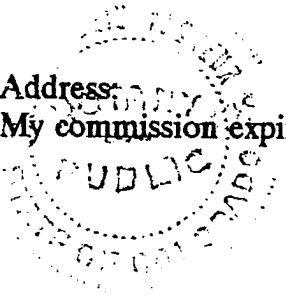
STATE OF COLORADO )  
 ) ss.  
COUNTY OF GARFIELD )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 1995, by Kazimierz Kozak and Esther Kozak.

Witness my hand and official seal.

Sally G. K. Vegren  
Notary Public

Address:  
My commission expires:



818 Colorado Avenue  
Glenwood Springs, CO 81601  
My commission expires May 1, 1997

Return to: JAT  
Delaney & Balcomb, P.C.  
P.O. Drawer 790  
Glenwood Springs, CO 81602  
Maintenance Agreement  
Three Elk Run Homeowners Association/Kozak

EXHIBIT "A"

ACCESS AND UTILITY EASEMENT

An Access and Utility Easement in the W1/2NE1/4 of Section 25, Township 5 South, Range 91 West of the 6th P.M. being 50.00 feet in width and lying 25 feet on each side of the following described centerline:

Beginning at a point on the northerly right-of-way of County Road No. 245 whence the Southeast Corner of said W1/2NE1/4 bears S89°39'33"E 357.71 feet; thence 133.38 feet along the arc of a curve to the right having a central angle of 18°11'46" and a radius of 420.00 feet, the chord of which bears N 57°01'35"E 132.82 feet; thence 117.84 feet along the arc of a curve to the left having a central angle of 54°00'54" and a radius of 125.00 feet; thence N12°06'34"E 152.88 feet; thence 269.21 feet along the arc of a curve to the right said curve having a central angle of 13°31'49" and a radius of 1140.00 feet; thence N25°38'23"E 73.26 feet to the point of terminus said point being on the east line of said W1/2NE1/4 and also being on the west line of the Three Elk Run Subdivision from said point of terminus said Southeast Corner of said W1/2NE1/4 bears S00°02'12"W 642.97 feet.



EXHIBIT A  
ACCESS AND UTILITY EASEMENT

An Access and Utility Easement in the W1/2 NE1/4 of Section 25, Township 5 South, Range 91 West of the 6th P.M. being 50.00 feet in width and lying 25 feet on each side of the following described centerline:

Beginning at a point on the northerly right-of-way of County Road No. 245 whence the Southeast Corner of said W1/2 NE1/4 bears S. 89°39'33" E. 357.71 feet; thence 133.38 feet along the arc of a curve to the right having a central angle of 18°11'46" and a radius of 420.00 feet, the chord of which bears N. 57°01'35" E. 132.82 feet; thence N. 66°07'28" E. 26.69 feet; thence 117.84 feet along the arc of a curve to the left having a central angle of 54°00'54" and a radius of 125.00 feet; thence N. 12°06'34" E. 152.88 feet; thence 269.21 feet along the arc of a curve to the right, said curve having a central angle of 13°31'49" and a radius of 1140.00 feet; thence N. 25°38'23" E. 73.26 feet to the point of terminus, said point being on the east line of said W1/2 NE1/4 and also being on the west line of the Three Elk Run Subdivision from said point of terminus, said Southeast Corner of said W1/2 NE1/4 bears S. 00°02'12" W. 642.97 feet.

Return to: JAT  
Delaney & Balcomb, P.C. 2  
P.O. Drawer 790  
Glenwood Springs, CO 81602

MAY 17 MINUTES - TERMA EMERGENCY MEETING  
2008 TONY/STEPHANIE/KYLE/BIL & CHRIS

KYLE - SUGGESTED TERMA SHOULD  
SURVEY 50' RIGHT OF WAY TO SET  
PRECEDENT OF RIGHT OF WAY. CONCERN  
ABOUT

STEPH - SPEED LIMIT IS 25 MPH, WE CAN  
ASK COUNTY TO LOWER IT TO 15 MPH.  
CREATE SPEED-ZONE WITH COUNTY (CALL  
JOHN MARTIN)

TONY - SHOULD RETAIN ATTORNEY

MELODY MASSIH - SUGGESTED TO  
LOOK INTO RIGHT OF

KYLE - ROAD BEING ALLOWED TO FAIL INTO  
DISREPAIR COULD BECOME A LIABILITY  
FOR TERMA - CAUSE ACCIDENTS

BIL  
KYLE - CONCERN OVER CREATING PROPER DITCHING  
ALONG BOTH SIDES OF ROAD WITH CULVERTS  
WOULD INVOLVE BIG PROJECT & COORDINATION.

KYLE - KOSAR EXEMPTION WAS EXISTING WHEN  
RICHARD BOUGHT PROPERTY

- SHOULD LOOK INTO STATUS OF APACHE  
DRIVE - CAN IT BE GATED?