

Elk Falls Property Owners' Association

Annual meeting

7/8/2012

Call to order

President Paul Vastola called the meeting to order at 14:08.

Of the 142 homeowners, there were 54 homeowners in good standing present and 29 represented by proxy for a total of 83 which exceeds the number required for a quorum.

President's report

Paul expressed his thanks to everyone for good attendance. He also thanked everyone for their support at the recent trial in Fairplay. His statement that "we won" evoked spontaneous applause. Paul went on to summarize the recent legal issues involved in the access case. We successfully dealt with several attempts to distract us from our goal of maintaining access for all residents – the culmination being the weeklong trial in Fairplay. It was a long and expensive struggle but it was the right thing to do – despite an appeal by the Dunwodys to the Colorado State Board of Appeal. Unfortunately we will need additional money to pay our attorneys for their outstanding job at trial and to pay the expenses of the appeal. We will outline the specifics later regarding the need for additional money.

Paul noted that the Officers and Directors Insurance Company helped out against the counter claim filed by the Dunwodys to the tune of about \$100,000. Because the claims were so closely related, this saved us nearly that much in legal expenses.

This has been a high profile case in the community. The Glen Elk association was involved in a similar battle. Their case was equally expensive but fortunately we have more members over which to spread the costs.

Paul stated that Fred Wells has offered to become one of the attorneys of record and will receive no fees unless we are awarded fees by the court. His efforts so far have been essential to our success and this will allow those efforts to be even more effective.

Finally, the Board has again offered to "hang in" for another year to finish the process but anyone can be nominated and voted in per the desires of the membership.

On other notes:

- On September 8 there will be the second annual Elk Falls party at the Davis ranch. The Davises have been very gracious and supportive.
- See Renae for information regarding the incinerator at Shaffer's crossing.
- Kevin Nadeau has created a device that he and Paul drag around to help smooth roads. If you have any interest in using the device to drag roads, see Kevin.

Approval of 2011 minutes

Copies of last year's meeting minutes were posted in several locations for review. Sam Shapiro moved to approve the minutes. Cyd Lantz seconded. Approved.

Introduction of new residents

Richard Raichel and Judith Lamb on Lower Aspen Lane.
Jamie Smyser across from Dunwodys
Bruce and Nance Kessler on Upper Aspen Lane

Colorado State Parks update – Jennifer Marten

Jennifer Marten, ranger and park manager for Staunton State Park gave an update of the status of the park. She noted:

- The staff has doubled – “now there are two of us.” The new ranger's name is Colin Chishm.
- Fire mitigation on 122 acres below Conifer Mountain was just completed.
- The Elk Creek fire department is now using the park for training
- Trail plans have been approved by Jefferson County.
- Construction contracts for the new entrance road were awarded in May. Construction will begin soon. Of note is the fact that the contractor is saving trees by creating a nursery. He will then replant the trees. He is also saving top soil and which will be reused.
- Northwest Woodland Services has begun trail construction. There will be 18 miles of trail in phase I.
- In phase I there will be parking for only 100 vehicles, a picnic site, a temporary entrance building, and 5 horse trailer parking sites.
- Training of 53 new volunteers is underway. They have been actively working, contributing 682 hours so far.
- The first rock climbing route has been bolted.
- Friends of Staunton State Park has applied to become a 501(C)3 tax-exempt organization.
- The park will open in October.
- New signage is in the works for Upper ranch Road, etc.

Firewise Community update – Marie & Mike Hensick, Cyd Lantz, Kevin Nadeau

Marie thanked the membership for their support. She encouraged everyone to report mitigation hours. She explained that we get various benefits including insurance rebates if we maintain our firewise certification. In addition, there is a 50% deduction on state taxes for fire mitigation expenses.

Kevin reported on the IREA tree policy – IREA will cut down dead trees for free if they are near power lines. Green trees touching or near lines will be trimmed for free.

Upcoming firewise projects: On Saturday the 4th of August tree trimming and slash removal is scheduled at the Winzenberg's and Phelps's properties.

Marie gave Cyd a 'fox-ha't reward for her help with firewise.

Marie introduced Chief Bill McLaughlin. The Chief thanked the membership for their interest and help. ElkCreekFire.org contains several documents covering fire mitigation, evacuation preparation, etc.

Marie talked about the importance of address and road signs and explained details of a recent incident where response was slow. It was a combination of county coordination (because Elk Falls subdivision is in both Jefferson and Park counties) and also because of being unable to find the appropriate address because of lack of street signs. Marie emphasized that we should make it clear we are in Elk Falls Fire Protection district in Jefferson County even though we may live in Park County.

Road report – Suzy Nelson

We had a very dry winter and only one plowing in 2012. There were two gradings, but only the spring grading was complete because we finally got water. Let Suzy know if your road was missed. Some steel culvert markers are deteriorating and need replacing but there is little money to do it. Kevin Nadeau has tools to clear out culverts that can be borrowed just by calling him. Suzy recommend using the same contractor, George Haywood, to snow plow this winter. He did a good job last year. High Country Trucking has done a good job of grading also. The road signs at Juniper and Jensen and Elk Creek Road that were removed by the Dunwodys are still missing. The resolution is pending and will be discussed later.

Treasurer's report – Renae Braun

Bob Wallace reviewed financial reports and found everything to be in order.

We now have a definitive cost ceiling of \$35,000 on legal appeal fees

Renae reviewed passed out financial statement. She noted that we still owe approximately \$90,000 for attorney fees, mostly for their court appearance and we only have \$24,000 in the bank. Including appeal fees, we could owe up to \$125,000.

Renae recommend a special assessment of \$300 due in September and an increase of dues to \$600 for 2013.

Pat Pesta moved that there be a special assessment of \$300 payable in September and a one time increase in dues from the current \$300 to \$600 for 2013. Anyone wanting to split payment may do so with payments to be made in February and April. Randie Boldra seconded. Vote using counted voting cards carried by a vote of 67 to 4.

Comments from Bob Phelps, secretary

Bob reminded everyone that his platform for election to the Board three years ago was to negotiate a quick settlement to the access dispute with the Dunwodys. Three years later progress has been made but it has been excruciatingly slow and expensive. Fortunately the court has ruled in our favor on every hurdle the Dunwodys erected and most importantly ruled in our favor following the formal trial in late January and early February. The Dunwodys, as expected, have appealed the court's ruling and Fred will have more to say about the details shortly.

Bob expressed his thanks for the support the Board has received from the community – it has been so very important in keeping us going. Bob also extended the highest praise to the other Board members, all of which have worked so long and diligently to protect the community from this imminent threat. Bob stressed how privileged he has been, and how fortunate the Property Owners' Association has been to have these dedicated, hard-working individuals working on the Board.

Architectural report and comments about the outcome and future of lawsuits – Fred Wells

Fred started by stating that the bottom line is that not only did we win but that we won for all the right reasons. The Judge's decision was based on solid law and a significant court record. Fred mentioned and thanked several important people who helped and/or testified, especially Roger Huser, the Elk Falls Development Company's manager, and Dick Gast, board member and attorney for the Elk Falls Development Company. The importance of the history of Elk Falls as told by these people vs. as told by the Dunwodys was essential to our case. Fred also singled out the help of Janice Easley who spent time pulling documents and the individual plaintiffs. Finally, Fred thanked the homeowners for their support and encouragement and discussed how much effort was spent by Board members and others.

The court ruled that Elk Creek Road up to the west gate is a public road. All homeowners, friends, vendors, and guests have an implied easement over the other disputed roads (Elk Creek Road beyond the west gate and Juniper and Jensen Roads). There is a 50 foot wide easement. There was no express statement at the trial regarding ownership, only access. We assume the Dunwodys own the roads and that the problem now will be with maintenance. Usually if you have rights to use a road it includes the right to maintain the roads and/or the requirement that you maintain them.

In terms of the appeal, both sides have submitted statements summarizing what the appellate court should be looking at. Whether there will be oral arguments is yet to be determined. The next step is the brief writing. Fred is very comfortable with the court findings except for some technical issues. One technical issue is standing of the Board and the Association to represent homeowners. The standing of the Association to bring suit has been confirmed in our favor prior to the trial but is still being argued.

Fred noted that we were awarded \$38,000 in costs but no attorney fees. But whether we can collect these costs is questionable. We have nevertheless filed liens against the Dunwodys.

Regarding other issues, the Board is supposed to enforce the Covenants. The subdivision's covenants haven't had any real issues but some minor ones such as encasing of stove pipes and short term rentals. The covenants need revision. For example, unlicensed ATV's are not allowed on public roads but there is a question of whether public roads that are not accepted are included. In response to a question, Fred explained the difference between covenants and zoning.

There has been nothing major as far as new construction approvals. Most approvals have involved sheds, fences, etc.

Fred discussed the importance of the special assessment to cover legal costs of the trial and the appeal.

New business

David Crespo discussed zoning constraints and covenant constraints as related to nuisance noise from the Dunwoody cabins vs. events after the 9:00 PM ending time. David has filed complaints but nothing has happened. He encouraged others to also make reports. David encouraged interested individuals to see him regarding details of zoning restrictions with regard to Lower Lake Ranch events.

Fred Wells informed homeowners that the process for road vacation has changed. With the future opening of Staunton State Park road vacation may become more desirable and more viable. Indeed, vacation may be desirable for both homeowners and Park County because during research for trial Paul found that Park County accepted block 3 roads for maintenance. So far Park County has avoided maintaining these roads.

David Crespo volunteered the fact that no parking on public roads signs are required every 150 feet but suggested that maybe we should at least request no parking signs be placed at the mailboxes.

Nomination of candidates for EFPOA Board of Directors

The current Board members offered to serve another term because of the continuing legal challenges to subdivision access and the difficulty of bringing replacements "up to speed". The floor was opened for nominations and no additional nominations were offered. However it was moved that John Carr be appointed an alternate to the Board to help as needed. The motion was seconded and approved by voice vote.

Election of Board members

As required by the Bylaws, a secret ballot was passed out that included the names of the current Board members. As there was no competition, the current Board members were all re-elected.

Adjournment

The meeting was adjourned at 16:50.

/s/ Bob Phelps
Secretary