

Elk Falls Property Owners' Association

Annual meeting minutes

7/10/2011

Call to order

The meeting was called to order by the president, Paul Vastola, at 14:04.

It was announced that a quorum (20% of members entitled to vote) was in attendance. There were 45 members in good standing present in person and 27 proxies were delivered to members and/or the Board of Directors from members in good standing.

Approval of 2010 minutes

A motion was made to approve the 2010 minutes by Sam Shapiro. The motion was seconded by Kevin O'Connell. Approved.

Introduction of new residents

Kristen Carr, the granddaughter of longtime resident and one of the founders of the Association, Jamie Houze, was introduced. No other new residents made themselves known.

President's report

Paul reported that it had been another full year of dealing with the access lawsuit with Lower Lake Ranch and Drayton and Vera Dunwody. Encouraging and frustrating events seemed to occur almost every week. So far the EFPOA prevailed on every decision. The fight has been longer and more expensive than anticipated. Mediation was unsuccessful because the Dunwodys were unwilling to negotiate.

Paul announced the trial date has been set to start Jan 30, 2012. Counsel will be available later in the meeting to discuss the details of the case. Paul stated he cannot wait for return to normal because the lawsuit has tainted the reputation of the subdivision because buyers are concerned about future access rights.

Paul announced that the current Board members had agreed to serve yet another year if the membership chooses to re-elect them to finish the work they started in an attempt to preserve access to the subdivision. He reminded the attendees that we are doing this because we're involved and committed to doing what's best for everyone in the neighborhood, not for ourselves.

Regarding other issues, the roads are in pretty good shape because of recent rains and grading. Another charge to the Board from last year was what to do when vacancies occur on the Board. A clarification was written into the bylaws which Paul reviewed. (See Amended & Restated By-Laws dated 7/10/2011 at www.ElkFallsPOA.org for details.)

A date has been set for a pot-luck at the Davis ranch. Announcements will be forthcoming.

State Parks report

Jen Marten, chief ranger and park manager, gave a slide show and report on the status of Staunton State Park. The master plan that was approved in June 2010 allocated \$5 million for phase one and included a visitor's center, trails, 100 parking spots, etc. The park is scheduled to open sometime in 2012. It is estimated that 133,000 visitors will visit the park annually.

Jen then added that because of austerity measures the visitor center funding was being held and that there is no longer any general fund funding for parks. To save money, the Colorado State Parks department and the Department of Wildlife have merged. It was proposed to close four parks but as of now only one will close. Staunton will open. However, phase I will change: There will be no visitor center, and the group picnic area is questionable. However it's hard to make predictions because everything's changing almost daily.

Entrance by bike or on foot will be free of charge.

You can become involved as a partner, a stakeholder (for organizations), as a volunteer, a friend, or as a contributor.

Architectural (Fred Wells) report:

There has been no activity.

Monica Lester, EFPOA's counterclaim council:

Fred Wells introduced Monica Lester, Associate with Hall and Evans, who is the attorney appointed by the Board's insurance company to defend the Board against the Dunwodys' counterclaim. Ms. Lester explained that because of the close relationship between the counterclaim and the access lawsuit the Association has against the Dunwodys, she has worked closely with our attorneys at Montgomery, Little and Soran and has taken the lead in the mediation and discovery aspects of the legal battle.

She spoke last year about counterclaims. Since then she has become better informed with much of the research and some written discovery behind us. Monica summarized the current situation: Following the road blockade by the Dunwodys and the EFPOA's response, the Dunwodys filed civil conspiracy and permanent injunction counterclaims. The Dunwodys have listed 40 individuals with knowledge of a conspiracy. Ms. Lester has contacted approximately 23 of those individuals and none have admitted any knowledge of a conspiracy and none have admitted any knowledge of a so-called Ravens society. Supposedly the Ravens have conspired to run the Dunwodys out of business and have damaged Dunwody property. Ms. Lester explained it was important to confirm there is no evidence or to seek it out if there was any. Part of her job is to help prove EFPOA's claim as that helps support the defense of the counterclaim. Ms. Lester's fees have exceeded \$100,000 and have been paid by the insurance company.

In May Ms. Lester was approached for settlement by Dunwody's attorney, Victor Boog. Ms. Lester has insisted that all members of EFPOA be released. She also insisted that the EFPOA be released of responsibility for any damages, and business losses even though the Dunwodys' business is not a part of the case. On June 15, a release and settlement offer was prepared and according to Mr. Boog, the Dunwodys accepted the offer. On June 23 Ms. Lester received a letter from Mr. Boog that Dunwodys rescinded their settlement agreement. The settlement agreement may be enforceable and/or a modified agreement may be acceptable to both sides. At this time there is no resolution to the counterclaim.

Many questions were answered.

Fred Skillern, EFPOA's primary attorney:

Fred Wells introduced Mr. Skillern, partner with Montgomery, Little and Soran, a prominent attorney in Denver specializing in real estate law. Mr. Skillern has been involved with continuing legal education for 12 years, is an ex-judge, and is currently involved with securing our rights to use the disputed roads.

Mr. Skillern stated we were on schedule for what we planned 15 months ago. However the costs were more than what was planned because of additional motions filed by the Dunwodys that needed to be dealt with. They have

agreed to reduce rates and defer billing until later so the Association can pay some expenses over time. Mr. Skillern explained that easement issues can get intensely personal and this case is no exception. He explained some of the attempts at mediation that have already occurred and requested that if anyone had any ideas that have not been tried to please come forward.

Mr. Skillern explained that we have five strong legal arguments and a decision in our favor on only one is sufficient for us to win the case. In addition, Courts don't tend to reverse 45 years of status quo.

In answer to a question, Mr. Skillern stated that there is no individual exposure to fees or costs.

Treasurer's (Rena Braun) report

Janice Spikes reviewed the financial records and found everything correlated and was correct.

A financial statement handout was passed out. It reflected all income and expenses to date with the exception of homeowners who paid their dues at the meeting.

Questions were raised about outstanding liens, and the pros and cons of foreclosing on those properties was discussed. The costs of foreclosure would probably exceed any potential gain so the best alternative was to file liens and collect when a property was sold.

Katy Wells moved to accept the report. Dave Jensen seconded. Approved.

Road (Suzy Nelson) report

Because of a dry winter we only needed two plowings during the past year. In order to save money, the Board elected to change the snow depth that required plowing from three inches to six inches. Because of this, Blackbear, our contracted snow plow service chose to lower our priority for plowing. Other problems included the fact that a new driver for Blackbear missed some roads, and did some other roads poorly. After discussions they offered to cancel our contract and recommended Shane Row who did an excellent job of plowing our roads. Suzy is trying to contact him to set up next year's contract.

Grading the roads last year was somewhat of a challenge because of equipment problems. However our contractor did a fabulous job this year. Our plan this year is to improve six or eight areas that need road base. Two of these have already been done.

Two speed limit signs were installed which were purchased by the Crespo board.

Suzy explained that the three bid requirement made it difficult to get work done because many contractors did not feel it was worth their time to submit a bid. Removing the three bid requirement for snow plowing and road grading was discussed. It was moved by Kevin O'Connell to remove the three bid requirement unless an association member is involved in performing the work. In such a case, a competing bid would be required. The motion was seconded by Merle Lehmkuhl. Approved.

Secretary's (Bob Phelps) comments:

Bob reminded everyone that when he ran for the Board two years ago, his platform was to negotiate peace between the Property Owners' Association and the Dunwodys. Despite several attempts it was not only impossible to find a middle ground with the Dunwodys, it was impossible to even ascertain the Dunwodys' long range plans or requirements as a starting point for negotiations. Any short term solutions (the only solutions offered by the Dunwodys) would only postpone negotiations and potentially give up any existing homeowner rights. Fortunately the Board's decision to consult legal advice was just in time.

Bob emphasized what a privilege it has been to work with the current Board members. They are all dedicated and competent individuals whose insight and hard work has protected Elk Falls residents from the very real possibility that the historic access route to their properties via the west gate could have been lost.

Special assessment for roads

Fred explained that our legal expenses were only temporarily deferred and we will need to eventually cover these costs. David Crespo moved by that we increase the mandatory association dues by \$200 per owner for one year with any excess going into the general fund for future use. (The dues for 2011-2012 will be \$500 for homeowners and \$400 for land owners and homes bordering on Elk Creek Road east of the west gate returning to \$300 and \$200 respectively for subsequent years.) The motion was seconded by Kevin O'Connell. Following discussion, the motion was approved by a vote of 63 yes and 9 no.

Firewise

Marie Hensick, chairwoman for the Firewise Committee reported that the community contributed the equivalent of \$4000 and 150 hours for fire mitigation. The minimum requirement to be a Firewise community is \$875. Volunteer Firewise efforts not only decrease the risk of fire damage in the community, if one should occur, but it can also result in decreased insurance costs and increased property values. See the Elk Falls Firewise web site at <http://www.elkfallsfirewise.org>.

Marie added that the McGarva tree service can help with any needed tree service and offer discounts after November 1.

New business

Steve Sparer's offer to monitor the state park signage was gratefully accepted.

Nomination of candidates for EFPOA board of directors

Nominations were entertained for Board officers for the 2011-2012 year. Kevin O'Connell moved and Matt Hennehan seconded that we nominate and re-elect the current Board officers for another term.

Election of Board members

As there were no other nominations forthcoming, the question was called and a paper secret ballot was distributed to all voting members. 69 ballots were returned, 5 were blank, and the remainder confirmed the re-election of the current Board members, Paul Vastola, Suzy Nelson, Renae Braun, Fred Wells, and Bob Phelps.

Adjournment

As there being no additional business, the meeting was adjourned.

Respectively submitted,

/s/ Robert Phelps
Secretary