

DISTRICT COURT, ELBERT COUNTY, COLORADO
751 Ute Ave.
Kiowa, Colorado 80117
Phone: 303-621-2131

DATE FILED: August 31, 2018 4:06 PM
FILING ID: 4A4E85F94D39A
CASE NUMBER: 2018CV30071

Plaintiffs:

MEADOWS STATION HOMEOWNERS
ASSOCIATION; CHUCK BOYD; WENDY BOYD;
MIGUEL ALVAREZ; LIZ ALVAREZ; KAHL
FORINGTON; ANNE MARX; SCOTT MARX; JAMES
HAY; SANDRA HAY; BRIAN BERST; ALECIA
BERST; CHRIS HATTON; KRISTINE DOKE; MIKE
LILLROSE; NANCY LILLROSE; DAN ATKINSON;
BEV ATKINSON; DICK DICCIARDELLO; and TERI
DICCIARDELLO

v.

Defendants:

THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF ELBERT; ALF-SPRING VALLEY
RANCH, LLC; and ELBERT COUNTY, COLORADO.

Attorneys for Plaintiffs:

Donald M. Ostrander, No. 12458
Joel M. Spector, No. 36561 (Special Counsel)
Hamre, Rodriguez, Ostrander & Dingess, P.C.
3600 S. Yosemite Street, Suite 500
Denver, Colorado 80237
Phone Number: (303) 779-0200
FAX Number: (303) 779-3662
E-mail: mail@hrodllaw.com

▲ COURT USE ONLY ▲

Case No:

Div:

COMPLAINT AND JURY DEMAND

Plaintiffs file this Complaint and allege the following:

PARTIES

1. Plaintiff Meadows Station Homeowners Association (“HOA”) owns property at 121 Meadow Station Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
2. Plaintiffs Chuck and Wendy Boyd reside at 520 Meadow Station Circle, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
3. Plaintiffs Miguel and Liz Alvarez reside at 512 Meadow Station Circle, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
4. Plaintiff Kahl Forington resides at 536 Meadow Station Circle, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
5. Plaintiffs Anne and Scott Marx reside at 371 Buckskin Court, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
6. Plaintiffs James and Sandra Hay reside at 43866 Buckskin Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
7. Plaintiffs Brian and Alecia Berst reside at 43882 Buckskin Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
8. Plaintiffs Chris Hatton and Kristine Doke reside at 1483 Carlson Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
9. Plaintiffs Mike and Nancy Lillrose reside at 1857 Carlson Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
10. Plaintiffs Dan and Bev Atkinson reside at 1675 Carlson Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
11. Plaintiffs Dick and Teri Dicciardello reside at 1291 Carlson Road, Parker, Colorado, which is within 500 feet of the proposed improvements to County Road 178.
12. Defendant Board of County Commissioners of the County of Elbert (“BOCC”) is a body corporate and politic operating at 215 Comanche Street, Kiowa, Colorado.
13. Defendant ALF-Spring Valley Ranch, LLC (“Developer”) is developing a subdivision known as Spring Valley Ranch in Elbert County and has applied to the BOCC for certain approvals to do so.

14. Defendant Elbert County, Colorado is named per C.R.C.P. 57(j) and C.R.S. § 13-51-115.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction over the action pursuant to Article VI, Section 9 of the Colorado Constitution; C.R.C.P. 57; C.R.S. § 13-51-106 et seq.

16. Venue is proper per C.R.C.P. 98 because the BOCC is located in Elbert County, Colorado, because Developer can be found in Elbert County, Colorado, because the action is premised upon a land use decision in Elbert County, Colorado, and because the action concerns real property situated in Elbert County, Colorado.

GENERAL ALLEGATIONS

17. Developer submitted various land use applications to BOCC and/or other governmental bodies ultimately requesting approval of a subdivision known as Spring Valley Ranch.

18. On or about February 14, 2018, BOCC approved Resolution 18-8.

19. Per Resolution 18-8, BOCC approved the Third Amendment to Spring Valley Ranch Development Guide Agreement (“the Development Guide”).

20. Per Section 6.2.7 of the Development Guide, “At the sole discretion of the Developer either County Road 178 or County Road 182 shall be constructed in conformance with County Regulations, in cooperation with Elbert County from Delbert Road east to County Road 13 in conjunction with the issuance of any residential building permits for Planning Area M.” There is currently no right-of-way for County Road 178.

21. Per Section 6.2.9 of the Development Guide, “County Road 13 shall be constructed in conformance with County Regulations, in cooperation with Elbert County from County Road 174 north to either County Road 178 or County Road 182 in conjunction with the issuance of any residential building permits for Planning Area M. The decision by the Developer in Section 6.2.7 above shall determine the construction of County Road 13.”

22. Accordingly, per the Development Guide approved in Resolution 18-8, Developer was given the option to develop, improve, and/or construct County Road 178.

23. Developer did, ultimately, select to develop, improve, and/or construct County Road 178, as opposed to County Road 182.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment: Insufficient Notice)

24. Plaintiffs adopt all previous allegations.

25. Per the Elbert County Subdivision Regulations, at least fifteen (15) days prior to the day of the Public Hearing before the BOCC regarding the Development Guide amendment to develop County Road 178, Developer was required to notify all owners of property adjacent to and within five hundred (500) feet of County Road 178 by certified mail, return receipt requested.

26. Not one of the Plaintiffs received such notice.

27. By chance, in early March 2018, a county resident was informed that the BOCC had approved the construction of County Road 178 passing along the north side of Section 26. After looking into the matter, it was discovered that the Development Guide, including the provisions regarding County Road 178, had, indeed, already been approved. This was the first time any of the Plaintiffs learned about the development of County Road 178.

28. Plaintiffs seek declaratory relief under C.R.C.P. 57 and C.R.S. § 13-51-101 et seq. against Defendants, and, specifically, a declaration that the approval of Resolution 18-8 was in violation of the notice provisions contained in the Elbert County Subdivision Regulations.

29. Plaintiffs are legally interested, per C.R.C.P. 57(b) and C.R.S. § 13-51-106, per the deeds to their property, per the Elbert County Subdivision Regulations, and per Resolution 18-8 which implicates property—proposed County Road 178—within 500 feet of Plaintiffs' property.

30. Plaintiffs are seeking a determination of construction or validity arising out of the approval of Resolution 18-8 and, specifically, whether the procedural prerequisites for such approval were followed.

31. Such a determination would terminate the uncertainty or controversy giving rise to this proceeding.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment: Insufficient Notice/Arbitrary and Capricious Action)

32. Plaintiffs adopt all previous allegations.

33. A board of county commissioners acts arbitrarily and capriciously when it fails to follow procedures outlined in its own land use ordinances. See Western Paving Constr. Co. v. Board of County Commissioners, 506 P.2d 1230 (Colo. 1973).

34. Due to the inadequate notice alleged above, BOCC violated its own Subdivision Regulations when it approved the Development Guide through Resolution 18-8.

35. In so doing, the BOCC acted arbitrarily and capriciously, and its approval of the Development Guide should be set aside. See Colo. State Bd. of Nurse Exam'rs v. Hohu, 268 P.2d 401, 405 (Colo. 1954) (“Courts are not to be impotent, stand idly by, and allow unrestricted exercise of authority by Boards, not granted by statute, or permit the arbitrary and unjustified exercise of discretion.”).

36. As alleged above, the legal prerequisites for declaratory judgment under C.R.C.P. 57 are satisfied.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment: IGA/Arbitrary and Capricious Action)

37. Plaintiffs adopt all previous allegations.

38. The Board of County Commissioners of Douglas County and the Board of County Commissioners of Elbert County entered into an Intergovernmental Agreement (“IGA”) dated February 26, 2013 and recorded on March 22, 2013 at Douglas County Reception No. 2013023816.

39. The proposed County Road 178 would intersect with Delbert Road at a location identified by the IGA as an Affected Public Road maintained by Elbert County.

40. The IGA requires consultation with Douglas County and consideration of Douglas County’s comments before Elbert County approves County Road 178.

41. The BOCC has not complied with the terms of the IGA.

42. The BOCC’s approval of County Road 178 is, therefore, arbitrary and capricious and should be set aside.

43. As alleged above, the legal prerequisites for declaratory judgment under C.R.C.P. 57 are satisfied.

FOURTH CLAIM FOR RELIEF
(Declaratory Judgment: Open Meetings Act)

44. Plaintiffs adopt all previous allegations.

45. Prior to the February 14, 2018 meeting at which the BOCC approved Resolution 18-8, two or more members of the BOCC, constituting a quorum, held a private meeting—not a chance meeting or social gathering—at which County Road 178 was discussed.

46. At the private meeting, the BOCC agreed to permit the Developer to choose whether to improve and/or construct County Road 178 or County Road 182.

47. This decision was subsequently announced at the February 14, 2018 meeting.

48. The private meeting referenced above was not properly noticed.

49. The private meeting referenced above does not have formal minutes of the meeting available for public inspection.

50. Per C.R.S. § 24-6-402(8), the approval of the Development Guide, as included in Resolution 18-8 is invalid.

51. Plaintiffs are entitled to declaratory judgment that Resolution 18-8 is invalid as it pertains to approval of the Development Guide.

52. As alleged above, the legal prerequisites for declaratory judgment under C.R.C.P. 57 are satisfied.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment: Action Inconsistent With Master Plans)

53. Plaintiffs adopt all previous allegations.

54. The BOCC's land use determinations must be consistent with the county's master plan. If the BOCC desires land use determination inconsistent with the county's master plan, the master plan must be formally amended and the proper procedures followed.

55. On pages 5-8, 6-5, and 6-15 of the West Elbert County Transportation Master Plan, County Road 182 is specifically identified as a road that is to be constructed. There is no mention of or reference to County Road 178 in the Transportation Master Plan.

56. By giving Developer the discretion to choose County Road 178 in lieu of County Road 182, Resolution 18-8 is inconsistent with the master plan, is arbitrary and capricious, and must be set aside.

57. Plaintiffs are entitled to declaratory judgment that Resolution 18-8 is invalid as it pertains to approval of the Development Guide.

58. As alleged above, the legal prerequisites for declaratory judgment under C.R.C.P. 57 are satisfied.

SIXTH CLAIM FOR RELIEF
(Declaratory Judgment: Funds For CR 182)

59. Plaintiffs adopt all previous allegations.

60. Per Resolution 06-16, as a condition of development, Developer was to deposit with Elbert County a lump sum total of \$1,471,800. This money was earmarked for a traffic signal at County Road 182 and Delbert Road. This requirement has not been amended or withdrawn.

61. The development of Spring Valley Ranch cannot proceed without Developer's deposit, and the deposit must be used exclusively for a traffic signal at County Road 182 and Delbert Road, and not for any development of County Road 178.

62. Plaintiffs seek declaratory relief under C.R.C.P. 57 and C.R.S. § 13-51-101 *et seq.* against Defendants, and, specifically, a declaration that development of Spring Valley Ranch cannot proceed without the lump sum payment described above.

63. Plaintiffs are legally interested, per C.R.C.P. 57(b) and C.R.S. § 13-51-106, per the deeds to their property, per the Elbert County Subdivision Regulations, and per Resolution 18-8 which implicates property—proposed County Road 178—within 500 feet of Plaintiffs' property. Specifically, the development of the intersection at Country Road 182 and Delbert Road would render the development of County Road 178 unnecessary.

64. Plaintiffs are seeking a determination of construction or validity arising out of the terms of Resolution 06-16.

65. Such a determination would terminate the uncertainty or controversy giving rise to this proceeding.

SEVENTH CLAIM FOR RELIEF
(Injunctive and Declaratory Relief: Drainage)

66. Plaintiffs adopt all previous allegations.

67. Elbert County relies upon and/or has adopted drainage standards established by the Urban Drainage and Flood Control District.

68. The proposed County Road 178 would be the primary access to a community of over 1,700 people at final buildout, and the road represents arterial access required for emergency ingress and egress.

69. Culverts for the proposed County Road 178 would need to be designed for a 100-year, 24-hour storm; inundation of habitable structures would not be allowed during such a storm, and the entire arterial roadway must be designed so that it cannot be overtopped.

70. As currently designed, the proposed County Road 178 would result in flooding of one or more properties within the Meadow Station Homeowners' Association during a 100-year, 24-hour storm event.

71. The proposed County Road 178 would cross two major drainages with tributary watersheds of roughly 4 ½ and 9 ½ square miles.

72. The proposed County Road 178 alignment bisects multiple large watersheds with tributary drainages consistently reporting to the south side of the proposed roadway, thereby requiring the installation of culverts.

73. Plaintiffs seek declaratory relief under C.R.C.P. 57 and C.R.S. § 13-51-101 et seq. against Defendants, and, specifically, a declaration that the proposed development of County Road 178 would cause a taking or damaging of property pursuant to Article II, Section 15 of the Colorado Constitution or constitutes and impermissible regulatory taking for which no compensation has been offered.

74. Plaintiffs further seek injunctive relief enjoining the construction of County Road 178, as it is currently proposed, which would be in violation of drainage standards.

EIGHTH CLAIM FOR RELIEF
(Injunctive and Declaratory Relief: Roadway Safety)

75. Plaintiffs adopt all previous allegations.

76. The alignment of the proposed County Road 178 imposes an unreasonable risk to the safety health and welfare of the Elbert County citizens and the adjoining landowner Plaintiffs.

77. The proposed design basis is outdated and requires a current traffic plan. The most recent outdated traffic plan proposes to convey over 1,000 cars during peak hours from a two-lane road to a two-lane road.

78. Multiple on grade road accesses entering Delbert Road including single and multiple residences driveways and secondary road accesses are currently not considered in the traffic plan or safety analyses.

79. Decision site distance is not in accordance with guidelines from the American Association of State Highway and Transportation Officials (AASHTO) (reference: A Policy and Geometric Design of Highway and Street, sixth edition, 2011 AASHTO).

80. The proposed plan contradicts guidelines from the National Highway Traffic Safety Administration (NHTSA).

81. The proposed roadway alignment incorporates unsafe longitudinal and the easement geometry does not allow for establishing sufficient recovery zones in accordance with the Roadside Design Guide and in total violates Elbert County design guidelines. Mitigation of the identified safety issues will in turn further adversely affect drainage above and impact adjoining landowners.

82. Plaintiffs seek declaratory relief under C.R.C.P. 57 and C.R.S. § 13-51-101 *et seq.* against Defendants providing that the proposed County Road 178 is not in compliance with AASHTO, or the NHTSA guidelines and enjoining construction of County Road 178 for lack of compliance with the guidelines.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. A declaration that the BOCC's approval of Resolution 18-8 was in violation of the notice provisions contained in the Elbert County Subdivision Regulations, and, therefore, such approval is invalid, null, and void.

B. A declaration that the BOCC acted arbitrarily and capriciously in approving the Development Guide through Resolution 18-8, and, therefore, such approval is null and void.

C. A declaration that the BOCC violated the Open Meetings Act when it approved Resolution 18-8 giving Developer the option to develop County Road 178.

D. A declaration that the approval of Developer's option to construct County Road 178, as included in Resolution 18-8, is inconsistent with the Master Plan and, therefore, arbitrary and capricious and null and void.

E. A declaration that development of Spring Valley Ranch cannot proceed without the Developer's lump sum deposit of \$1,471,800 to Elbert County, to be used exclusively for a traffic signal at County Road 182 and Delbert Road, and not for any other purpose.

F. A declaration that the proposed development of County Road 178 would cause a taking or damaging of property as recognized in Article II, Section 15 of the Colorado Constitution or otherwise constitutes an unconstitutional regulatory taking.

G. Injunctive relief preventing construction of the proposed County Road 178 until such time, if any, that the BOCC approves construction of the road after following all requisite procedural requirements.

H. A declaration that the proposed County Road 178 is not in compliance with AASHTO or the NHTSA guidelines and enjoying construction of County Road 178 for lack of compliance with the guidelines.

I. Such costs and attorney fees as may be permitted in law or equity.

J. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a jury on all claims and issues so triable.

Respectfully submitted this 31st day of August, 2018.

HAMRE, RODRIGUEZ, OSTRANDER & DINGESS, P.C.
**/s/ DONALD M. OSTRANDER'S DULY SIGNED PHYSICAL COPY OF
THIS DOCUMENT IS ON FILE AT THE OFFICE OF HAMRE,
RODRIGUEZ, OSTRANDER & DINGESS, P.C. PURSUANT TO CRCP
RULE 121, SECTION 1-26(9)**

By: _____

Donald M. Ostrander, No. 12458

Joel M. Spector, No. 36561 (Special Counsel)

ATTORNEYS FOR PLAINTIFFS

Plaintiffs Address:

43774 Buckskin Road

Parker, Colorado 80138