

7-10-10 Sassafra Meeting

Facts:

1. It takes 2/3 of all property owners, regardless of whether they are “members” of SMEPOA, to change anything in the covenants additional covenants.
2. The courts ruled that the “additional covenants” were not approved based upon a vote of 2/3 of all of the owners. In that case, the court seems to be correct in its ruling that they are not enforceable, at least with regard to owners who did not sign the “additional covenants.”
 - a. Question? – Was this a proper ruling of the court as these are not “amended” covenants, but rather additional covenants?
 - b. Question? - Since these were entered into voluntarily by those who did chose to sign, aren't they still enforceable with regard to the folks who signed and therefore are “members”?
3. The association is still mandated to maintain the roads. The association is still bears this responsibility to 100% of the owners, despite this being muddled by the fact that the creator of the covenants was incompetent in not clearly spelling this out.

Mistakes:

1. According to one real-estate attorney - *“The attorney who wrote up the original covenants should be shot.”* He was kidding of course, but the point still is valid ☺
2. It is possible that we were not competently represented in court in defense against these lawsuits.
3. There is a document from 1993 entitled **“Grant of nonexclusive roads and other easements.”** One pages 2 and 3 of this document, **“...all costs for the maintenance and repair of the road easement area shall be the responsibility of the owner or owners of each lot,”** going on to state that each lot shall contribute its fair share of the costs. This seems to be cut and dry. We are in this situation precisely because this language was not included in the (18 sets of) original covenants.
 - a. Question? – Was this document presented to the court in our defense? This document is not cited in the appellate court decision! If this document was never presented to the courts, then it appears that we were not competently represented in court.
 - b. Question? – Can anything be done about this now with regard to where the progression of the lawsuits? According to Mike Moran and other attorneys, the rulings against us are *res judicata* (things decided) by the court and cannot be revisited. However, another legal opinion is that in theory, it is not too late to go back to the trial court and ask them to re-open the case based upon new evidence, but it is totally at the judge’s discretion, but the judge may not have the right to re-open the case since it could be out of term.
 - c. Question? – In light of this document, if it were to be presented in future litigation, could that even Goulds and Hawkins could be forced to pay to the

future. Answer per an attorney – perhaps. However, despite this document, the court ruling could forever make this non-enforceable, but only with regard to those two owners.

- d. Question ? - To which owners does this 1993 document apply? If this document refers only to portions but not all of the development, are there other similar easement documents granting easements to subsequent portions of the development?

Is transferring the roads to the County a good thing?

Is ownership of the roads by Dawson County better than keeping them private? This has been debated in recent weeks since the proposal and request for votes and proxy votes was put forth a few weeks ago. Some of the pros and cons:

Pro:

This is a quick, relatively easy, and final solution to the problem we are in now.

Con:

It might be quick and easy, but it is not good for everyone, as it offers no solution at all for the folks whose properties are not on Upper or Lower Sassafras Roads.

Pro:

The county can more efficiently maintain the roads, perhaps at less cost than if we do it on our own.

Con:

- How often does government more efficiently manage a task compared to private citizens who have a direct stake in the outcome?
- We do not have the layers of administrative and beaurocratic overhead to pay for. Virtually all the money we raise to maintain the roads is available to pay for the roads – no managers, politicians, secretaries, etc.
- Our taxes will be raised in order to do this, so we will still be paying for them one way or another.
- Consider what happens in times such as these, when governmental budgets are slashed as revenues are down – services are cut, county employees are laid off, etc. (but the higher taxes we will pay would remain the same!).

Assumption:

The county will care about us and the quality of our roads.

More correct assumption?

- We are a tiny subdivision, which is off of a tiny mountain road which is a road that you have to travel through another county to even get to, which is off of a very rural twisty mountain road, which is at the far corner of the county – how can they possibly care about our roads as much as we care about them ourselves? How far down the

chain of priorities will we be for the county?

- Look at Monument Road! Sure it is in Pickens County, but do you really believe that the Dawson County government overall is substantially more effective, efficient, and caring – not just now, but into the next couple of decades?

Pro:

The county will take care of snow removal.

Con:

We are a tiny subdivision, off of a tiny mountain road, off of a very rural twisty mountain road at the far corner of the county. The county has extremely limited snow removal equipment. How far down the chain of priorities will we be for the county for snow removal?

Pro:

It has been said that statistics show that our property values will go up.

Con:

This does not tell the whole story, but rather an average. More specifically, roads that are in poor condition have higher values if the county takes them over. But private roads that are nicely maintained, as are ours, have higher property values than homes that are on public, county roads.

Assumption:

Having the roads public roads will not make our community less safe or desirable.

More correct assumption?

- The reality is that public is public.
- Hunters, hikers, ATV drivers, and all other sorts of potentially undesirable people/activities will have the legal right to drive through, check it out, park on the roadsides.
- Our mountains are mostly undeveloped, so it looks like it would be no harm to anyone for such folks to engage in those types of activities.
- Many of our owners do NOT live here full time. When the road is public, our unattended homes will be more at risk of break-ins.

Even if this were to be a good thing, why do we have to do this now?

- The message that has been conveyed from the Board to all of the property owners is that this is an option that might never exist again with Dawson County, so we have to do it now. But...
 1. Feeling pressured that way is not a good thing when it comes to trying to make the truly best decision.

2. Dawson County would not even be considering this if it weren't advantageous for them – they are going to assess additional “special” taxes for every property owner who benefits from the roads they take over – that include properties on the minor roads as well. They will make money when they get the roads, and will continue to do so forever.
3. So, if they are willing to take over the roads now, the logical conclusion is that they are going to be willing to do this in the future.

Is transferring the roads an acceptable solution for everyone?

- No – it is not. Please consider:
 1. Regardless of the court decision, the association and the board still have a fiduciary and legal obligation to maintain the roads, and in doing so, the association/board must act in the best interest of all of the owners.
 2. When questioned how the association will continue to maintain the minor roads into the future, the only answer that we have been given is that SMEPOA will remain “committed to taking care of our neighbors who live on the minor roads.”
 3. But how will we do that? The answers I have been given from the board are that this will occur on a voluntary basis, because the board “believes that people of good will would be willing to pay” in the future to maintain the lesser roads.
 4. **But what if they don't? What is plan B? There is no plan B!**
 5. Voluntary contributions already, in just one year, have dropped to 67%. We would be naïve to believe that voluntary contributions might not continue to drop over the years and decades with the 75% of people who do not live on the minor roads, especially since their taxes will be going up. To think otherwise is but wishful, hopeful thinking. But wishful, hopeful thinking provides no guarantee whatsoever for the folks on the minor roads.
 6. The Board meeting and annual meeting minutes have already noted that people are having a hard time getting realtors to list their problems and a hard time getting lenders to give out construction loans to build on the lesser roads.
 7. I talked to three realtors in the area in the past week who are familiar with what is going on, and none of them would be willing to invest a penny into listing and marketing a property in Sassafra right now.
 8. I talked to three lenders today as well, including the one who holds the note to my property. None of them would even consider discussing a building loan with me under these current circumstances, and especially not if the vote passes.
 9. So, if this decision is made, it is permanent, and it provides no protection for the folks who own properties on roads other than Upper and Lower Sassafra. This decision would likely guarantee that people who own houses on the lesser roads will not be able to sell in the future, and people who own lots

would not be able to sell or to secure building loans to build homes on their lots.

10. **Therefore, if the Association, at the urging of the Board, notes to turn over the roads, knowing that this situation is what it is, it puts everyone at potential risk for tremendous legal liability in the future – not just risks of lawsuits like the ones we have been dealing with, but lawsuits for actual monetary damages!**

Options:

- Let's fix the situation in a way that provides protection for everyone, as well as maintaining the benefits and protections of having a private community.
- **Option one:** We explore the possibility of fixing the association by properly amending the existing documents. This needs to be done with 2/3 vote, and if there is enough good-will to voluntarily continue to maintain the lesser roads, then there will be enough goodwill to get 2/3 of the good folks of this community to make this happen.
- **Option two:** We start from scratch and create a new association that meets all of the legal criteria for an association and gives us the rights to collect dues to take care of our community. To do this would take 100% agreement and participation, but only 100% of people who are willing. If there is enough good-will among folks to voluntarily continue to maintain the lesser roads, then surely those folks will be willing to join this new entity. The new entity does not have to be contiguous properties; we simply start with what we have, since what we have is all that we have anyway! Over time, after all of the lawsuits are settled and the dust settles, we then go on a campaign of spreading goodwill among our neighbors – we bring them brownies and muffins, we invite them to our homes for dinner, we offer to keep an eye on their homes and properties when they are away, we reach out individually, including the absentee landowners with vacant lots, and we convince them (with kindness!) how membership in the association will only benefit them and keep up the value of their investments?
- **WHAT DO WE HAVE TO LOSE, COMPARED TO WHAT WE HAVE TO LOSE BY TAKING DRASTIC AND PERMANENT ACTION RIGHT NOW BY TURNING OVER THE ROADS?**