

The annual meeting of the members of the High Park Road Association was held at the Cedaredge Community Center on November 8, 2008.

The meeting was called to order by Gary Fischer.

In attendance: Richard Belden

Jim Brown (attorney)  
Peter Brown  
Roger and Betty Bulla  
Diane and Kent Clampitt  
Steve and Tammy Clough  
Roberta Dalton  
Carol and Gary Fischer  
Mark and Judy Fairchild  
Daniel Gates  
Michael Keune  
Bruce and Tanya Marvin  
Mindi Piggott  
Ward and Shelly Rabb  
Dawn Sudmeier  
Aaron Wagner  
Reese Wagner  
Doyle Worthington

Represented by Proxy:

Steven Burr (Proxy to Richard Belden)  
Robert Foster (Proxy to Bruce Marvin)  
Charles T. Frey Estate (Proxy to Gary Fischer)  
Stefvanie and Eamonn Kerrigan (Proxy to Mark and Judy Fairchild)  
Steven Letterhos (Proxy to Roberta Dalton)

Dispensed with reading of the minutes from the last meeting.

Richard reported on the status of road construction. The main road is fully completed. San Juan Vista and Williams Creek Road are not completed. Richard intends to start work on those next week. The parts of the road completed last year held up well over the winter.

Ward reported on the conclusions of the road inspection committee. Four inspections were performed. 23 compaction tests were done with all results between 95 and 98 percent modified Proctor density. Three gradations were performed on base and subbase material and all were acceptable. The surface material on the road near units 10 and 23 has started to wear down.

Dawn Sudmeier read portions of last year's minutes and had several comments and questions:

1. Dawn commented that the grading work and culvert installation near the bottom of the road has been completed and is satisfactory.
2. The driveway gate is working satisfactorily.
3. Status of the work needed on Squirrel Rock Road? Richard reported that has been completed.

4. Status of the Granby Ditch culvert work? Richard reported that a second culvert was added.

Motion by Dawn Sudmeier to approve the minutes from last meeting as submitted. Second by Roberta Dalton. Motion carried.

Richard reported that the main road gate is not working. Dan Gates noted that every time the battery is removed for more than a few seconds, the code is erased. Dan will re-program the gate with the new code of 2525.

Dawn expressed concern regarding the slow progress on the roads yet to be completed. Requested that the Board ask Ed Seubert to write a letter regarding the status of the roads and the intended completion schedule. This letter will be posted on the HPRA web site.

Discussion regarding status of governing document modifications: Gary reported that the a set of proposed modifications wasn't submitted by the Board due to a combination of disagreement among the Board members and lack of participation by one of the Board members. It is likely that, with a new Board member, it will be possible to make progress by the next annual meeting.

Letters from the HPRA attorney and Ward Rabb regarding his hunting operation and use of HPRA units to gain access to adjacent properties were handed out (see attached). Ward presented his position: He bought the existing hunting lodge in 2004. The previous owner had an established hunting operation that had either been allowed or expressly permitted by HPRA. Ward's operation consisted of significantly fewer hunters than prior to his purchase. Ward had leased property from Cedaredge Park Development (CPD). When he discontinued that lease, a conflict developed between him and CPD. Ward had offered that roads not be developed to his units. He is careful to limit his hunting operations to undeveloped portions of the area. He is also diligent in working with the State of Colorado regarding hunting operations.

Roberta – Do Ward's units border on public lands? Yes.

Reese – There have been substantially fewer problems since the hunting lodge changed hands. That has been a big improvement.

Dawn – There has not been a noticeable increase in traffic.

Doyle – Believes that there was an HPRA vote at some time to allow the hunting operation.

Dawn – Recalls that Ed Seubert agrees that the original hunting operation had been approved.

Jim – He is certain that Ed Fischer approved the original hunting lodge operation.

Bruce – What about the issue of access across HPRA lands to adjacent properties?

Ward – Part of the purpose for purchasing those lots was to gain access to adjacent properties. His understanding was that he was being granted access to adjacent lands for hunting purposes. His attorney advised him that the deed restriction only applied to others, not to the property owners. He is careful to try and not increase the traffic load on the road. He drives the hunters in using his vehicle.

Jim – He wrote the deed restriction with the purpose of assuring that the High Park Road system could not be effectively extended to provide access to the Alexander property without HPRA approval. It was based on a precedent case of Wright vs. Horse Creek Ranch. He believes that pedestrian access is not a problem but ATV access is a gray issue.

Mindi – She suggests that a solution be negotiated. Pursuing injunctive relief would be too expensive. Ward has reasons to clarify the issue because, as long as there are legitimate questions, he has a cloud on his property use.

Jim – The currently proposed budget will not support litigation.

Doyle – He doesn't think it is appropriate for HPRA to say that they can't access adjacent property by foot, horse or ATV.

Aaron – The real issue is to prevent access by non – owners.

Reese – It doesn't seem right that he would be prevented from crossing other units to gain access to property outside the High Park Development even if he had the unit owner's permission.

Mindi – There are legitimate claims on both sides. There are two basic issues – the deed restriction and the interests of the HPRA. The deed restriction needs to be renegotiated. There could be a release of the deed restriction by Fischer/Frey (F/F) in conjunction with an agreement. Jim – F/F can't unilaterally resolve this issue. There needs to be multi-party negotiations. They can't be resolved in a membership meeting because there are underlying legal issues to consider.

Roberta – Could the Covenants be amended to address this issue? Mindi replied yes.

Dawn – The main concern is that the road not be effectively extended to adjacent properties so that the road use increases. As far as the HPRA is concerned, it is not what an individual does with his property, but the impact it has on the roads. The intent of the deed restriction along with the interest of the HPRA need to be clarified.

Jim – Agrees with Dawn. The real question to be answered is whether Ward's use of his property and access across it results in more heavy use of the road than was originally anticipated. Litigation would probably turn on the results of traffic studies and quantifying the burden of the road by Ward and his operations.

Ward – He has talked to a lot of members and there seems to be a general agreement that his property use is acceptable. He would like a member vote.

Jim – The Board needs to know what action the HPRA members want.

Gary – Wants a sense from the members regarding how to proceed.

Ward – He will pay the cost of modifying the deed restriction.

Dawn – Suggests that the Board not pursue litigation.

Mindi – This discussion has provided the Board with a basic understanding of how the members want to proceed. It should be satisfactory to just include that in the minutes.

Discussion of proposed budget submitted by Bruce Marvin. Bruce described the basis for his numbers.

Ward – His independent estimate of the cost for road maintenance for the next year was \$10,500, very close to Richard's \$11,000.

Mindi – Units for which assessments have not been paid by the due date cannot vote. Since there was no due date on the current outstanding assessment call, that is not an immediate issue. However, future assessment calls should have a due date.

Motion by Roberta Dalton to accept the budget and assessments as proposed. Second by Mike Keune. Motion carried.

Board of Director member elections were held for the position currently held by Jim Root:

Nomination of Ward Rabb by Roberta Dalton, seconded by Dan Gates.

Dawn expressed concern that ward might have to abstain on issues regarding use and access across his property.

Ward elected as Director by majority vote.

Mindi – By regulation, there can be no surplus assessments collected.

Dawn – Recommended that the annual meeting be changed to October.

Bruce – Robert Foster asked about whose cows graze in the area. They are Nate Hawkins'.

Mike Keune – Hawkins is willing to repair the fence to keep the cows out.

Motion by Ward to adjourn. Second by Dawn.  
Meeting adjourned.

Submitted by:



Bruce Marvin  
Secretary/Treasurer  
High Park Road Association

# OVERHOLSER & CONERLY

Mindi L. Conerly Piggott, Esq.  
[mlc@montroselawyers.com](mailto:mlc@montroselawyers.com)  
333 South Townsend Avenue  
P.O. Box 729  
Montrose, Colorado 81402

Ryan F. Callahan, Esq.  
[rtc@montroselawyers.com](mailto:rtc@montroselawyers.com)  
(970) 249-3449 Voice  
(970) 249-7455 Facsimile  
[www.montroselawyers.com](http://www.montroselawyers.com)

October 21, 2008

Baker Ward Rabb  
224 South Main St.  
Monticello AR 71655

Re: High Park Road Association concerns

Dear Ward:

This firm represents the High Park Road Association ("HPRA"). Recently, HPRA contacted our office regarding developing concerns over your current use of High Park Road, specifically, using the road to access adjacent properties and for commercial benefit. This letter is intended to inform you that your current use may be in violation of both HPRA's declaration of covenants and your own deed restrictions. It is also intended to present some ideas on how to resolve a dispute involving your violations.

HPRA is a planned community under the Colorado Common Interest Ownership Act ("CCIOA"), codified as §38-33.3-101, et. seq., Colorado Revised Statutes. As stated in Article IX, Section 4 of the declaration of participation in CCIOA, HPRA explicitly prohibits the following:

**Section 4.** Except as provided hereinbelow, no trade or business of a commercial nature, including the exploration and development of minerals other than oil and gas, in, upon or under any lot covered by these covenants, nor any noxious or offensive activity shall be carried on upon any such lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. This restriction shall not preclude exploration and development of oil and gas. With the prior written consent of the Declarants (or the Board of Directors of the High Park Road Association after control of the Association is relinquished by the Declarants) a unit owner may be permitted to use and occupy a unit located on a tract of not less than 35 acres as a commercial hunting lodge or outfitter facility. In granting such permission the Declarants (or the Board of Directors of the Association) may restrict the number of hunters to be accommodated by the facility and require the submission of plans and specifications for such facilities for review and approval.

As it relates to your current commercial hunting lodge, HRPAs is primarily concerned with the use of the road to access adjacent lands. This is restricted in your deed:

**Restrictive covenant:**

Grantees hereby covenant, acknowledge, and agree that the access provided by High Park Road to Units 10 and 23 may not be used to provide access to any other lands outside of the High Park Road Association. This restriction and covenant shall constitute covenant running with the land for the benefit of all lands within High Park Road Association, enforceable by the High Park Road Association and/or any individual unit owner within High Park Road Association, and shall include remedies for enforcement by injunction, specific performance, and damages, including the right for the enforcing party to recover all costs of such enforcement action, including reasonable attorney fees.

Acknowledged by Grantees:

  
Baker W. Rabb

  
Shelly J. Rabb

This restrictive covenant is in compliance with CCIOA. In particular, the remedies and enforcement provisions in the restrictive covenant are directly on point with CCIOA statutes. High Park Road Association or any individual unit owner within the Association can enforce the covenant and recover cost of such enforcement. Therefore, the dispute over use of the road is not necessarily limited to yourself and the Association, but, potentially, to any landowner within the subdivision.

HPRA sees your accessing adjacent property on foot from one of the HPRA units as a violation of this covenant. We believe the hunting operation fall usage of the road results in disproportionate damage and increased maintenance cost for HPRA. However, the Board would like to explore an agreement to resolve your current violation. Such agreement would involve making monthly payments to the Association for a portion of the road maintenance. A dollar figure would have to be discussed. Second, any agreement would have to include language that satisfies Article IX, Section 4, provided above. This would include specifying the amount of land used for the hunting operation and the number of hunters participating in the outfit for Association approval. Any agreement would require signatures by all land owners, binding all parties to the terms. Furthermore, it would require a new deed of your property if your grantor is willing to remove the restriction.

If you are unresponsive to the ideas presented herein we will advise our client to seek its legal remedies. Please contact our office by November 5, 2008 to express willingness to negotiate the points discussed. We look forward to hearing from you soon.

Sincerely,



Mindi L. Conerly Piggott



Ward Rabb and Doyle Worthington, Owners

Arkansas Office:  
224 S. Main St.  
Monticello, AR 71655  
Phone (870) 367-6905  
Fax (870) 367-5199

Colorado Office:  
7540 N. Peyton Hwy.  
Peyton, CO 80831  
Phone (719) 683-7703  
Fax (719) 683-7704

November 3, 2008

High Park Road Association  
c/o Ms. Mindi L. Conerly Piggott, Esq.  
P.O. Box 729  
Montrose, CO 81402

RE: High Park Road Association Concerns

Dear Ms. Piggott:

We are in receipt of, and herewith respond to, your letter of October 21, 2008, regarding concerns of the High Park Road Association ("HPRA") relating to our use of High Park Road.

At the time of our purchase of Unit 11 of High Park Road Association, in August, 2004, a commercial hunting lodge was already in operation on the property, and had been for over 10 years prior to our acquisition of same. Consent by the HPRA Board had obviously been given for this operation, which would negate any violation of Article IX, Section 4 of the declaration of participation in CCIOA by HPRA. Furthermore, some of the board members were receiving compensation from the hunting operation from leasing their lands for use by said operation.

Regarding the use of High Park Road to access adjacent property outside HPRA, we do not view our current use as a violation of the restrictive covenants contained in the deed for Units 10 and 23. The purpose of the purchase of Lots 10 and 23 from Fischer/Frey was to ensure our access to leased property used by the hunting operation. The restrictive covenant contained in the deed specifically states that access cannot be provided by High Park Road. High Park Road is not developed past the eastern boundaries of these lots, therefore cannot be used to access other properties. It was specifically agreed upon at the time of purchase that HPRA would not be required to extend High Park Road for access to Lot 23. Nothing in the covenant restricts non-vehicular traffic over our property to properties which we can legally access, either inside or outside of the HPRA.

The allegation that use of the High Park Road by our hunting operation results in "disproportionate damage and increased maintenance cost for HPRA" is far-fetched, to say the least. We conduct our hunting operation for approximately three months out of the year. The majority of our clients are picked up at the airport and driven to the Lodge in our vehicle. Once there, most clients do not leave until the

hunt is over, and they are transported back to the airport in our vehicle. Alternately, if all of the units we own were developed for residential use, there would be a significant increase of traffic on High Park Road. A family with two vehicles, living on these lots during accessible months, would make at least two trips per day per vehicle on the road. Multiplying that times the number of lots we own, and allowing for minimal trips on weekends, that would be over 5000 trips on High Park Road in the space of a year. We do not travel High Park Road anywhere near that number of times during hunting season. We have calculated our travel on the road to be less than 200 trips per year.

I would also like to take this opportunity to tell you about other projects that we are involved in with regard to this property. Through the services of our staff wildlife biologist, in conjunction with the State of Colorado, U.S. Forest Service and Bureau of Land Management, numerous studies have been, and are being, conducted on wildlife habitat, wildlife feasibility studies, and native plant studies. We are committed to long-term nature preservation for this area and region, which only increases the values and ability of area residents to enjoy the natural beauty which surrounds us.

I appreciate your taking the time to discuss this matter with me over the phone, and also for adding this matter to the agenda for the upcoming HPRA meeting. We are looking forward to the opportunity to present our point of view before the entire membership for discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ward Rabb', written in a cursive style.

Ward Rabb