

RECORDED IN  
COUNTY OF JEFFERSON  
STATE OF COLORADO  
RECEPTION NO. 86134079  
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DISTRICT COURT, COUNTY OF JEFFERSON, STATE OF COLORADO

Civil Action No. [REDACTED]

FINDINGS OF FACT AND ORDER

RECEIVED  
District Court  
Jefferson County

1-73

CHARLES AND MARIAN BOTTINELLI, et al.,

Plaintiffs,

Filed in the District Court

MAY 14 1986

vs.

MAURICE "MO" DAVIS, et al.,

MAY 14 1986

Division 2 \_\_\_\_\_  
Enter  \_\_\_\_\_  
File \_\_\_\_\_

Defendants.

of Jefferson County, Colorado

THIS MATTER coming on to be heard this 14th day of May, 1986, and the Court, having heard the testimony of the parties and received the evidence and memoranda submitted by the parties, makes the following Findings of Fact and Order:

FINDINGS OF FACT

1. This court has determined that a prescriptive road easement, known as the Sampson and Ridge Road exists in a continuous right-of-way starting at the county road known as the Phillipsburg Deermond Road and extending to the north and east as more fully described on the following exhibits:

(A) Exhibit A - constitutes a written legal description of the road as it exists from the county road to the quarter section line south of the plat of the Smith Subdivision

(B) Exhibit B - constitutes a map depicting the centerline of the Sampson and Ridge Road described in Exhibit A, commencing at Point A and continuing to Point B

(C) Exhibit C - constitutes a plat plan of the Smith Subdivision and depicts the location of the Sampson and Ridge Road as it traverses Smith Subdivision, commencing at Point C and continuing to Point D along the east fork and commencing at Point C and continuing to Point E along the north fork

(D) Exhibit D - constitutes a survey depicting the continuation of Sampson and Ridge Road from Point E (same reference point as shown on Exhibit C) and continuing to Point F and from Point G continuing to Point H (same reference point as shown on Exhibit F)

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(E) Exhibit E - constitutes a survey depicting the continuation of Sampson and Ridge Road from Point F (same reference point as shown on Exhibit D) and continuing to Point G

(F) Exhibit F - constitutes a survey depicting the continuation of Sampson and Ridge Road from Point H (same reference point as shown on Exhibit D) and continuing to Point I where the Sampson and Ridge Road terminates for purposes of this proceeding 2

That portion of the Sampson and Ridge Road lying between Point B on Exhibit B and Point C on Exhibit C has not been surveyed or described herein, but is physically in existence and is being used for access. The Sampson-Ridge Road Association, Inc. (hereinafter "Association") reserves the right to submit an additional legal description of the roadway as it exists between Points B and C, if it so desires, and have that legal description appended to the other legal descriptions attached to the Court's Order herein for the purpose of confirming the location of Sampson and Ridge Road.

2. Attached hereto as Exhibit G is a multi-columned list. Said Exhibit # shows: *DTMSV*

*SRT* *SRB* *WAF* a) In Column 1, a listing of all owners of real property abutting said roadway per the written report of Land Title Guarantee Company, dated September 16, 1982.

b) In Column 2, a listing of the address/legal description of land owned by the party shown on Column 1 as of the date of the Land Title Guarantee Report.

c) In Column 3, a listing of the mortgagee or mortgagees, if any, of the real property denoted in Column 2 above as of the start of this litigation.

3. This court has found the Sampson or Ridge Road Association to be the "de facto" agent for the easement owners to provide for road maintenance.

4. Venue is proper pursuant to C.R.C.P. 98a in that this action deals with interests in real property, which real property is located within Jefferson County, Colorado.

5. The hearing herein is a final disposition of this case respecting all contestants. No contestant is shown to be exempt herefrom as being either a minor, an incompetent, an officer or agency of the State of Colorado, or subject to relief due to military service.

ORDER

1. The owners of the foregoing properties, as listed on Exhibit G, for

themselves, their assigns and their successors in interest (hereinafter collectively referred to as Landowners) are confirmed to have or own a dominant easement estate for the use of the roadway described on Exhibits A-F inclusive, for access to and from the real properties described in Exhibit G\* Such right shall not be personal to the Landowners, but is appurtenant to the real property described on Exhibit G. \*for themselves and their guests and invitees.

2. In the event of a foreclosure by the mortgagees listed at Exhibit G, Column 3, such mortgagee shall have the right to use the roadway for access to and from the real property in which it has an interest. The lien of the mortgage or deed of trust of such mortgagee is superior to any lien or assessment later set forth herein for road maintenance costs which accrue prior to any listed mortgagee acquiring title to real property by foreclosure. Following acquisition of title, a mortgagee in ownership shall be charged for proportionate road maintenance costs in the same manner as any other Landowner.

3. With respect to the Association:

a) The Association has been incorporated as a Colorado not-for-profit corporation.

b) Each Landowner shall have a right to become a member of the Association having voting powers as set forth in the Association's Articles of Incorporation and Bylaws; provided, however, that for each assessment imposed by the Association there shall be one (1) vote.

c) The Association shall own the right to use the road on behalf of and in trust for its members and have the responsibility for maintenance of same as more specifically defined in Bylaws to be adopted. Members of the Association shall convey the access rights appurtenant to their land described in Exhibit G to the Association.

d) The Association shall adopt Bylaws providing for:

1) The adoption of an annual budget to cover costs of snow plowing, grading, maintenance and administrative costs.

2) The billing of those costs to Landowners upon a formula which:

a) Charges in proportion to the length of road used, with Landowners closer to the county road paying a lesser portion of expenses than those more distant from the public road.

b) Recognizes that improved lots or land parcels shall be charged at a higher rate than unimproved, vacant land, to reasonably reflect the greater use and impact on the roadway by Landowners of improved lots.

c) Takes into account such other factors as may be equitable.

3) The initial Bylaws shall conform to this order. Changes in the Bylaws relating to budgeting procedures, cost allocation and voting rights shall not be changed without approval by:

a) Two-thirds vote of the Owners of improved land and

b) Approval by the Owners of unimproved vacant land on the

following basis:

1) Notice of a proposed change in budgeting procedure, cost allocation, or voting rights shall be given to the Owners of all unimproved land at their last known address by certified mail, return receipt requested

2) A vote of two-thirds of those Owners of unimproved, vacant land who respond to the notice shall be sufficient to approve a change in budgeting procedure, cost allocation or voting rights

c) The Bylaws shall provide a fair and reasonable procedure whereby Landowners may withdraw from or join the Association

4. Changes in Road Location and Maintenance:

a) Neither the Association nor any Landowner shall intentionally or materially change the location of the surveyed centerline of the Sampson and Ridge Road, as denoted on Exhibits A and B or the width of the Sampson Ridge Road as it presently exists without the express written consent of the Landowners of the land across which the proposed relocated or widened road is to pass and of the Association under such procedures as are specifically defined in the Bylaws to be adopted.

b) Neither the Association nor any Landowner shall change the location or width of the Sampson and Ridge Road shown on Exhibits C, D, E and F without the express written consent of the Landowners of the land on which the proposed relocation or widening is to occur and without the consent of the Landowners who pay for maintenance of the road segment in question.

c) The Association shall be entitled to collect the costs of road maintenance and Association costs and expenses from its members, under such procedures as are defined in Bylaws to be adopted. Such amounts shall be the personal obligation of respective members of the Association and their heirs, successors and assigns. The Association shall also be entitled to assess for the costs of future improvements or major maintenance to the Sampson and Ridge Road; provided such improvements are approved by two-thirds of the members of the Association owning improved land whose access is impacted by the proposed future improvements or major maintenance and also by two-thirds of the members of the Association owning unimproved vacant land whose access is impacted by the

proposed future improvements or major maintenance, under such procedures as are defined in Bylaws to be adopted. If any such charge is not paid within sixty (60) days of billing, the Association may file a lien upon the property of the member failing to pay same. Such lien shall be subject to foreclosure in the same manner as a mortgage lien. The prevailing party in any such foreclosure shall be entitled to recover its costs, including attorney's fees.

Landowners who do not elect to join the Association shall nevertheless be personally liable for their fair share of expenses related to that portion of the Sampson and Ridge Road which they use. The Association shall have the right to sue, on behalf of its members, such non-member Landowners for such contribution, and to seek reimbursement of costs and attorneys fees incurred in connection with such action.

d) The Association shall adopt Bylaws providing for temporary maintenance, road relocation, repair and snow plowing for emergency situations.

5. The plaintiffs herein, in pursuing the orders of this court have incurred certain expenses or costs. Such costs respecting survey costs and title search shall be allocated as shown on Exhibit G. In addition to costs as shown on Exhibit G:

a) The cost of incorporating the Association shall be assessed by the Association.

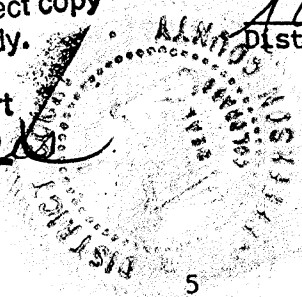
b) Plaintiffs have expended attorneys fees to obtain and confirm easement rights for Landowners. A number of Landowners have retained independent counsel or otherwise represented their own interest. These are Ebers (attorney Moyle), Prior (attorney Brockmeier), Bishop (attorney Lutz), Claussen (attorney Fox), Near (attorney Silverstein), PYG Ltd., Plymouth Mtn. Ltd., and John & Edna Havens. Attorneys fees relative to the confirmation of easement rights shall be allocated equally to such Landowners, excepting those listed above who have born their own fees.

IT IS SO ORDERED this 14 day of May, 1986.

BY THE COURT:

*[Handwritten Signature]*  
District Court Judge

DISTRICT COURT  
County of Jefferson, Colorado  
Certified to be full, true and correct copy  
of the original in my custody.  
Jaclyn Senese  
Clerk of the District Court  
By *[Handwritten Signature]*  
Deputy Clerk



The foregoing Findings of Fact and Order are hereby approved  
as to form by the undersigned.

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