

<b>DISTRICT COURT, ARCHULETA COUNTY, COLORADO</b> Address: 109 Harmon Park Ct, Pagosa Springs, CO 81147 Telephone: (970) 264-8160	
<b>Plaintiffs: Alpha Property Owners Association of Archuleta County, Colorado, a Colorado Nonprofit Corporation and Arnold Stokol as trustee of the Arnold and Barbara Stokol 1994 Family Trust</b>  <b>v.</b>  <b>Defendants: Valerie Del Principe Simpson, Christopher Simpson, The Alpha Subdivision Committee, Inc., a Colorado Nonprofit Corporation, Cameron Lund Gabrel, Dawn Langdon, Dave Minkel, Branton Eric Porter, and Patrick West</b>	DATE FILED March 20, 2025 4:35 PM FILING ID: F36340929838B CASE NUMBER: 2024CV30053  <p style="text-align: center;"><b>⚡FOR COURT USE ONLY⚡</b></p>
Attorney for Committee Defendants: Joshua W. Mack (Reg. #37858) Goldman, Nicholson & Mack, P.C. 679 E. 2 <sup>nd</sup> Avenue, Suite C PO Box 2270 Durango, CO 81302 Telephone: (970) 259-8747 Fax: (970) 259-8790 Email: <a href="mailto:mack@gnm-law.com">mack@gnm-law.com</a>	<b>Case Number: 2024CV30053</b>  Div.: 3      Ctrm.:
<b>RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION</b>	

**COME NOW**, Defendants the Alpha Subdivision Committee, Inc., a Colorado Nonprofit Corporation (the “Committee”), Cameron Lund Gabrel, Dawn Langdon, Dave Minkel, Branton Eric Porter, and Patrick West (collectively, “Committee Defendants”) through their attorneys Goldman, Nicholson & Mack, P.C., by Josh W. Mack, and file this Response to Motion for Preliminary Injunction, and in support thereof, state as follows:

**I. PROCEDURAL HISTORY**

On August 28, 2024, Plaintiff Alpha Property Owners Association of Archuleta County, Colorado (“APOA”) filed its Complaint alleging that: (1) the APOA has the power to revoke the authority of the Alpha Subdivision Committee, Inc. to undertake architectural review for the Pagosa Alpha Subdivision (“Alpha Subdivision”) under the recorded Declaration of Restrictions (“Declaration”), and that it had revoked such authority, (2) that Valerie Del Principe Simpson and Christopher Simpson (the “Simpson Defendants”) violated the Declaration by constructing a modular home on their property, (3) that the Simpson Defendants violated the Declaration by constructing their home without architectural approval, (4) that all Defendants breached the covenants when the Committee approved the plans for the Simpson Defendants’ home, and (5) that the individual directors of the Committee acted in bad faith when they approved the plans for the Simpson Defendants’ home. As set forth in the Motion for Preliminary Injunction (“Motion”), in September of 2024, after filing this case, the APOA unilaterally created an APOA Architecture Committee, and revised the website for the Alpha Subdivision to instruct members that the APOA Committee on Architecture was the architectural review authority for the Alpha Subdivision. The Simpson Defendants and Committee Defendants filed motions to dismiss arguing that the APOA did not have standing and was not a real party in interest. In response to these motions, Plaintiffs amended their Complaint to include Arnold Stokol as trustee of the Arnold and Barbara Stokol 1994 Family Trust as another Plaintiff. The Court denied the motions to dismiss, reasoning that even though the APOA is not a real homeowners’ association, it is a non-profit corporation that could be used by one group of neighbors to bring litigation against others. Plaintiff APOA filed the Motion seeking an injunction that would bar the Committee, who has performed architectural review in the Alpha Subdivision for the past 30 years, from continuing this function. The Motion should be denied for the reasons set forth herein.

## **II. STANDARD FOR PRELIMINARY INJUNCTION**

In *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982), the Colorado Supreme Court set forth the standard for grant or denial of a preliminary injunction under C.R.C.P. 65 (internal citations omitted):

The grant or denial of a preliminary injunction is a decision which lies within the sound discretion of the trial court. However, injunctive relief should not be indiscriminately granted. Rather, it should be exercised sparingly and cautiously and with a full conviction on the part of the trial court of its urgent necessity. Therefore, once the trial court has determined that the threshold requirement has been met for the issuance of a preliminary injunction ..., it must then determine whether the moving party has established the prerequisites for preliminary injunctive relief pursuant to C.R.C.P. 65(a). In exercising its discretion, the trial court must find that the moving party has demonstrated:

- (1) a reasonable probability of success on the merits;
- (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief;
- (3) that there is no plain, speedy, and adequate remedy at law;
- (4) that the granting of a preliminary injunction will not disserve the public interest;
- (5) that the balance of equities favors the injunction; and
- (6) that the injunction will preserve the status quo pending a trial on the merits

“[E]ach prerequisite must be established by the moving party before a preliminary injunction will issue...” *Wakabayashi v. Tooley*, 648 P.2d 655, 657 (Colo. 1982). “Preliminary injunctive relief is an extraordinary remedy designed to protect a plaintiff from sustaining irreparable injury and to preserve the power of the district court to render a meaningful decision following a trial on the merits.” *Rathke*, 648 P.2d at 651.

### **III. PLAINTIFFS CANNOT DEMONSTRATE A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS.**

Plaintiffs offer two communications, one from 1992 and one from 1995, to support their contention that the Declarant of the Declaration delegated architectural review authority to the APOA. These letters taken alone are difficult to decipher, and leave many questions about the entities referenced, and their relationship to one another. However, with added context of other

events from this time period, it becomes abundantly clear that the APOA does not possess the authority that it claims to have.

On May 1, 1992, Jim Beckham, Jr. Executive Vice President and General Manager of Fairfield Pagosa sent a letter to which is addressed to both the “Alpha Property Owner’s Association” and “Alpha Property Owner’s Committee” c/o Alvin Cannady in which he states that Fairfield Pagosa relinquishes its’ authority as Declarant for the purposes of architectural review and resigns all Fairfield Pagosa members of the Architectural Review Committee (“1992 Letter”). Motion, Exhibit 1.

The following year, on April 26, 1993, the Alpha Environmental/ Architectural Committee, along with Alvin Cannady, James J. Sawicki, and Guy McCoy, attempted to exercise architectural review authority in Archuleta County District Court and failed in dramatic fashion. These Plaintiffs brought an action against owners Dennis and Paula Yerton, who had begun construction on what the Complaint described as a “prefab metal barn” after being denied architectural approval by the Alpha Environmental/ Architectural Committee. *See* 93CV33 Complaint, attached hereto as Exhibit 1. After the litigation was filed, a group of eighteen other Alpha owners filed a Motion to Intervene seeking a declaration that the Alpha Environmental/ Architectural Committee was not legitimately formed, not a legally constituted unincorporated association, and not authorized to administer the Declaration. *See* 93CV33 Motion to Intervene and Request for Relief on Motion to Intervene, attached hereto as Exhibits 2 and 3. The Defendants filed a Motion to Dismiss similarly asserting that Alpha Environmental/ Architectural Committee was not properly formed, and that it was not a legally constituted unincorporated association. *See* 93CV33 Motion to Dismiss, attached hereto as Exhibit 4. The Court issued orders on these motions on the same day. It granted the Motion to Dismiss, holding that the Alpha Environmental/ Architectural Committee had not established any legal right to maintain the action. The Court denied the Motion to Intervene because the defendants adequately represented the would-be intervenors’ interests (presumably



because the relief they sought with respect to the Alpha Environmental/ Architectural Committee was granted contemporaneously). *See* 93CV33 Orders, attached hereto as Exhibits 5 and 6. The parties circulated a draft Stipulation and Order that would have resulted in the dismissal of the case and formation of a new architectural committee by the intervenors, but since the Motion to Intervene had been denied, this stipulation was never filed. *See* Draft Stipulation for Dismissal and Order, and correspondence from Mary Deganhart-Weiss, Esq. attached hereto as Exhibits 7 and 8. The remaining parties filed a Stipulation for Dismissal and Order whereby Plaintiffs not only dismissed all of their remaining claims but also surrendered the bond that they had posted in connection with the preliminary injunction initially granted by the Court. *See* Stipulation for Dismissal and Order, attached hereto as Exhibit 9. This order ended the case on November 19, 1993.

After the notion that the Alpha Environmental/ Architectural Committee had any legitimacy or authority to enforce the Declaration had been conclusively debunked by the Archuleta County District Court, a group of owners consisting largely of the would-be intervenors in Case No. 93CV33 incorporated the Alpha Subdivision Committee, Inc., a Defendant in this action, on January 20, 1994. *See* Committee Articles of Incorporation, attached hereto as Exhibit 10. The Committee Articles state that the purposes of the corporation are to provide for enforcement of the Declaration, and for the maintenance of a high standard of architecture in the Alpha Subdivision. *Id.* On August 25, 1994, the Committee circulated a letter explaining the architectural review process going forward. *See* Committee letter, attached hereto as Exhibit 11. On March 7, 1994, another group of owners incorporated the Alpha Property Owners Association, Inc., the Plaintiff in this case. *See* APOA Articles of Incorporation, attached hereto as Exhibit 12. The attachment to the Articles state that the APOA would be a voluntary membership association (not a real homeowners association), and stated several purposes of the organization, none of which relate to covenant enforcement or architectural review. *Id.* On May 28, 1994, the APOA

sent a letter to its members (only those Alpha owners who had voluntarily paid dues to the APOA) which stated its intent to form an Architectural Control Committee, an act which the APOA eventually attempted over thirty (30) years later after filing this case. *See* Exhibit 13. In 1995, Keith Newbold Esq., attorney for Fairfield Communities, Inc., was tasked with adjudicating the competing claims of the Committee and APOA. On February 17, 1995, after meeting with representatives from both entities, he sent a letter stating that the Committee should be designed to enforce the Declaration, subject to: (1) Two designated representative from the Alpa Property Owners Association Inc. being appointed to fill vacant positions, and (2) John Schornborn being appointed to fill a third vacancy (“1995 Letter”). Motion, Exhibit 3.

Based on the foregoing, the 1992 Letter is irrelevant to this case. It was directed to an entity that never existed as a legally constituted unincorporated association, and whose sole attempt at judicial enforcement of the Declaration was conclusively denied by the Archuleta County District Court. The Articles of Incorporation of the Committee and APOA respectively are also instructive. The Committee Articles state that the purposes of the corporation include covenant enforcement and architectural review. The APOA articles do not recite any such purposes. Finally, the 1995 Letter simply does not state what the APOA claims that it states. The Committee is designated as the entity with authority of enforcement of the Declaration and the APOA is not. The 1995 Letter is not an agreement between the APOA and the Committee and the APOA did not give the Committee permission to act as the architectural review authority. Rather, the successor the Declarant chose the Committee as the architectural review authority subject to conditions that were fulfilled immediately, and were not continuing in nature.

The Committee has acted as the architectural review authority for the Alpha Subdivision and has been recognized by Archuleta County as the architectural review authority from the time of its inception until this case was filed. Exhibit 14, Affidavit of Dave Minkel, at ¶5-7. The APOA has not designated representatives to serve on the Committee Board. Exhibit 14, Affidavit of Dave

Minkel, at ¶8-10. As such, the APOA not only cannot show a reasonable probability of success on the merits. It cannot show any probability of success on the merits.

#### **IV. PLAINTIFFS HAVE NOT DEMONSTRATED ANY DANGER OF IRREPERABLE INJURY.**

“Preliminary injunctions protect plaintiffs from sustaining irreparable injury while preserving the trial court's ability to render a meaningful decision following a trial on the merits.” *Phoenix Cap., Inc. v. Dowell*, 176 P.3d 835, 839 (Colo. App. 2007). Plaintiff APOA argues that the irreparable injury that they seek to prevent is the uncertainty and for owners wishing to build arising out of the existence of two separate architectural review committees. Motion, at ¶20. First, the Committee Defendants note that the irreparable injury prong of the preliminary injunction analysis requires a showing of irreparable injury to Plaintiff. The injury alleged by Plaintiff would be suffered by persons not parties to this case. Second, this sort of uncertainty does not constitute irreparable injury to anyone. Owner John Els, whose situation is cited as reasoning for the requested injunction, has submitted applications to the newly formed APOA Architecture Committee and the original Committee, and plans to recover his application fee from the non-prevailing entity. Motion, at ¶11. This hardly constitutes irreparable injury. Finally, the uncertainty that the APOA claims irreparable injury is entirely the APOA’s own fault. Rather than allowing this Court to decide which entity is responsible for architectural review under the relevant documents, the APOA unilaterally declared itself the prevailing party only days after filing this case and formed a competing architectural review committee. The awkward situation that the APOA intentionally created hardly qualifies as irreparable injury that would entitle it to injunctive relief.

#### **V. THERE IS A PLAIN, SPEEDY AND ADEQUATE REMEDY AT LAW.**

With respect to the “remedy” element of the preliminary injunction analysis, the Committee Defendants first note that the APOA is not entitled to any remedy. As explained above,

it has no probability of success on the merits. Procedurally, the APOA does have a path to a remedy, and it has already been pursued. This Court will decide which entity has architectural review authority. The APOA is not entitled to any other remedy.

**VI. THE PRELIMINARY INJUNCTION SOUGHT BY PLAINTIFF APOA  
WOULD DISSERVE THE PUBLIC INTEREST.**

The APOA is seeking an injunction to solve a problem that it created by unilaterally declaring that it has authority that it does not have. The APOA not only sought a declaratory judgment on the issue of which entity has architectural review authority, it also sued all Committee board members individually, sought the demolition of another owner's home, created its own architectural review committee, and then waged a public relations battle with other owners to try to legitimize its new committee. The Court should not reward owners who appoint themselves to positions of power without legal basis and then pursue hyper-aggressive litigation to punish their neighbors.

**VII. THE BALANCE OF EQUITIES DOES NOT FAVOR AN INJUNCTION.**

For all of the reasons set forth above, a balance of the equities does not favor the injunction sought by Plaintiff APOA. The uncertainty created by the existence of two architectural review authorities is entirely of Plaintiff APOA's own making. This situation would not exist but for APOA's insistence on immediately declaring victory in this case before the Court could hear any of the relevant facts or law. Regarding the APOA's contention that a majority of members supported an amendment to give the APOA architectural review authority, the Committee Defendants first note that neither the language of the proposed amendment nor the data on voting is included in Motion. Motion, ¶ 22. Perhaps more importantly, the fact that the APOA is trying to amend the Declaration to give itself architectural review authority highlights the weakness of its case. As for the APOA's contention that the majority of owners recognize their new committee as the architectural review authority, this is entirely speculative. Even if true, it would be the result

of the APOA conducting itself in a louder and more aggressive manner rather than a legitimate legal claim. This is not conduct that the Court should reward with a preliminary injunction.

**VIII. A PRELIMINARY INJUNCTION WOULD NOT PRESERVE THE STATUS QUO.**

The Committee has been the entity responsible for architectural review in the Alpha Subdivision since 1994. The APOA Architecture Committee was formed after this case was filed. The Motion describes precisely one application that it has reviewed to date. The applicant submitted to the APOA Architecture Committee first solely because it had control of the Alpha Subdivision website. *See* Motion, at ¶ 8; Exhibit 14, Affidavit of Dave Minkel, at ¶11. The status quo for decades has been architectural review by the Committee. The APOA cannot change the status quo through a unilateral power grab. The preliminary relief requested by Plaintiff would not preserve the status quo. Rather, it would completely overturn the status quo. Even if it were not for the merits of the case and the equities discussed above, the Motion must be denied for this reason alone.

**WHEREFORE**, Defendants the Alpha Subdivision Committee, Inc., a Colorado Nonprofit Corporation, Cameron Lund Gabrel, Dawn Langdon, Dave Minkel, Branton Eric Porter, and Patrick West respectfully request that the Court set a hearing on the Motion for Preliminary Injunction, and that following such hearing, that the Motion be denied.

**RESPECTFULLY SUBMITTED** this 20th day of March, 2025.

**Goldman, Nicholson & Mack, P.C.**

/s/ Josh W. Mack

Josh W. Mack, #37858

Post Office Box 2270

Durango, Colorado 81302

(970) 259-8747

*Attorney for Defendants the Alpha Subdivision Committee, Inc., a Colorado Nonprofit Corporation,*

*Cameron Lund Gabrel, Dawn Langdon, Dave  
Minkel, Branton Eric Porter, and Patrick West*

## CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of March, 2025, a true and correct copy of the foregoing **RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION** was filed and served via ICCES and email upon the following:

Douglas J. Reynolds  
The Reynolds Law Group  
1099 Main Ave., Suite 318  
Durango, CO 81301  
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Email: [doug@dreyllaw.com](mailto:doug@dreyllaw.com)

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Email: [bruce@jbakerlawgroup.com](mailto:bruce@jbakerlawgroup.com)

/s/ AnnaMarie Coriz  
AnnaMarie Coriz

*Original signatures on file at the offices of  
Goldman, Nicholson & Mack, P.C.*

**EXHIBIT 1**

Filed in District Court of  
Archuleta County, Colorado

APR 16, 1993

DISTRICT COURT, ARCHULETA COUNTY, COLORADO

CASE NO. 93CV33

DATE FILED

March 20, 2025 4:15 PM

FILING ID: F3634091688B

CASE NUMBER: 2024CV30053

**COMPLAINT**

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE,  
ALVIN R. CANNADY, James J. Sawicki and GUY D. McCOY,

Plaintiffs,

vs.

DENNIS YERTON and PAULA YERTON,

Defendants.

COME NOW, the Plaintiffs, by and through counsel, Floyd L. Smith, and for their complaint state as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff Alpha Environmental/Architectural Committee is an unincorporated association which has authority and responsibility for architectural review in the subdivision known as Alpha Section and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

2. All the property in Alpha Section as described on Exhibit "A" is subject to certain covenants, conditions and restrictions which are set forth in a Declaration of Restrictions recorded January 17, 1969 in Book 120, Pages 74 - 78 in the office of the Clerk and Recorder of Archuleta County, Colorado. A copy of the Declaration of Restrictions is attached hereto as Exhibit "B" and incorporated herein by reference. The Restrictions were intended to and did establish a general plan for development of all property in Alpha Section.

3. Alvin R. Cannady, James J. Sawicki and Guy D. McCoy are owners of property in Alpha Section which is subject to the Declaration of Restrictions. Any owner of property in Alpha Section is authorized under the Declaration of Restrictions to enforce the restrictions. The Declaration of Restrictions also authorizes the Committee to enforce the restrictions.

4. Dennis Yerton and Paula Yerton are the owners of property in Alpha Section which is described in the Declaration of Restrictions and is subject to the restrictions. Said property is more particularly described as follows:

Parcel 2, Section 21, Alpha Section  
T35N, R2W, N.M.P.M. Archuleta County, Colorado



5. On or about March 1, 1993 Defendants presented plans to Plaintiff Alpha Environmental/Architectural Committee for the construction of improvements on Defendants' property. On March 24, 1993 Plaintiff Alpha Environmental/Architectural Committee notified Defendants by letter that their building plans had not been approved. A copy of that notice is attached as Exhibit "C" and incorporated herein by reference. Additional notice has been given to the Defendants and their attorney that the plans were not approved and that they could not proceed with construction until approval was obtained as required by Paragraph 10 of the Declaration of Restrictions.

6. Following notification of denial of approval, Defendants commenced site improvements, including grading and excavation. Defendants were again advised by letter to their attorney that no further construction activity was to occur until approval had been obtained.

7. On or about April 22, 1993 Defendants commenced pouring the foundation and floor for the unauthorized structures.

#### FIRST CLAIM FOR RELIEF

8. Plaintiffs incorporate the allegations contained in Paragraphs 1 - 7 as if fully set forth herein.

9. Defendants construction on the property is in violation of the Declaration of Restrictions in that written approval has not been obtained as required in Paragraph 10 of the Declaration of Restrictions which states in part:

No building, fence, patio or other structure shall be erected, altered, added to, placed, or permitted to remain on any parcel until and unless the plans thereof showing floor area, external design, structural details, a section through the building, foundation plans, and a plot plan showing location of the proposed improvements, in proper scale to the dimensions of the property upon which it is being placed, shall have been first delivered and approved in writing by a majority of the Architectural Committee hereinafter sometimes called "Committee".

10. Such construction, if permitted, will destroy the general design or plan of the area for which purpose the Restrictions were imposed and will make the property in Alpha Section less valuable and less attractive.

11. The Plaintiff Alpha Environmental/Architectural Committee and the individually-named Plaintiffs will suffer damages if Defendants are allowed to construct improvements on their property in violation of the Declaration of Restrictions.

WHEREFORE, Plaintiffs pray for relief as is more fully set forth below.

#### SECOND CLAIM FOR RELIEF

12. Plaintiffs incorporate the allegations contained in Paragraphs 1 - 11 as if fully set forth herein.

13. Defendants proposed structure violates the set back requirements in the Declaration of Restrictions set forth in Paragraphs 7 and 8.

14. The Declaration of Restrictions prohibit structures of any kind for the housing <sup>of animals</sup> or fowl to be located closer than 100' from any property line. Defendants' plans and presentation to the Committee on March 1, 1993 indicated that the structure would be a "barn" and part of the structure would be used for keeping horses. Defendants' structure is located approximately 12' feet from one boundary line and approximately 10' from another boundary line.

15. Plaintiff Alvin R. Cannady is the owner of a parcel which adjoins the Defendants' property. Construction of the Defendants' improvement approximately 12' from the boundary line between property owned by Plaintiff Cannady and the Defendants will damage Plaintiff Cannady and cause irreparable harm.

WHEREFORE, Plaintiffs pray for relief as set forth below.

#### THIRD CLAIM FOR RELIEF

16. Plaintiffs incorporate the allegations contained in Paragraphs 1 - 15 as if fully set forth herein.

17. Defendants propose to utilize the structure for business or commercial activity which is prohibited by the Declaration of Restrictions.

18. Defendant Dennis Yerton is the owner of a business known as Yerton Plumbing Company. Defendant Dennis Yerton has advised the Committee that he intends to utilize the structure for storage of plumbing supplies. Such storage constitutes commercial or business activity which is prohibited by the Declaration of Restrictions.

19. The Plaintiffs will suffer irreparable injury if Defendants are permitted to operate a business on their property in violation of the Declaration of Restrictions.

WHEREFORE, Plaintiffs pray for relief as set forth below.

#### FOURTH CLAIM FOR RELIEF

20. Plaintiffs incorporate the allegations contained in Paragraphs 1 - 19 as if fully set forth herein.

21. Plaintiff Alvin R. Cannady is the owner of Parcel 3B, Section 21, Alpha Section, T35N, R2W, N.M.P.M., Archuleta County, Colorado, which parcel adjoins Defendants' property.

22. Plaintiff Alvin R. Cannady has constructed substantial residential improvements on his property at substantial cost. All improvements were reviewed and approved by the Environmental/Architectural Committee and conform to the general design and scheme for development in Alpha Section. The general standard for construction are set forth in the Declaration of Restrictions, Paragraph 10, to-wit:

It shall be the general purpose of the Committee to provide for the maintenance of a high standard of architecture and general construction in such a manner as to enhance aesthetic property and structural soundness. . .

23. Defendants' proposed structure is a prefab metal barn which has not been approved by the Committee, is located within 12' of Plaintiff Cannady's property line and which is intended to be used by Defendant Dennis Yerton for business purposes. Such construction, if permitted, is in violation of the restrictions, will destroy the general plan of development for the subdivision and will make the property in the area less valuable. Such construction will also cause irreparable injury to Plaintiff Alvin R. Cannady by substantially reducing the value of Plaintiff's property.

WHEREFORE, Plaintiffs pray for relief as set forth below.

#### GENERAL PRAYER CLAUSE

WHEREFORE, Plaintiffs pray for relief as follows:

1. For issuance of a preliminary injunction as is more fully set forth in the Motion for Preliminary Injunction filed herewith.

2. For issuance of a permanent injunction barring and enjoining Defendants from erecting, installing or constructing any building, fence, patio or other structure without written approval of the Alpha Environmental / Architectural Committee and ordering the Defendants to remove all structures which have been installed in violation of the Declaration of Restrictions.

3. For damages to the Plaintiffs for diminution in property value in an amount to be proven at trial.

4. For attorney fees for the cost of this action.

5. For such other and further relief as the Court deems just and equitable.

DATED: 4-24-93

Respectfully submitted



Floyd L. Smith, #8477  
Attorney for Plaintiffs  
P. O. Box 9  
Bayfield, CO 81122  
(303) 884-9531

Address of Plaintiffs:  
P. O. Box 4391  
Pagosa Springs, CO 81147

**EXHIBIT "A"**

**ALPHA SECTION**

**The following described property situate in Archuleta County,  
Colorado, to-wit:**

**In Township 35 North, Range 2 West, N.M.P.M.**

**Section 15: S $\frac{1}{2}$  S $\frac{1}{2}$**

**Section 21: S $\frac{1}{2}$  SW $\frac{1}{2}$  SW $\frac{1}{2}$ ,  
E $\frac{1}{2}$  SW $\frac{1}{2}$  and that part of the E $\frac{1}{2}$  NW $\frac{1}{2}$  lying South  
of U.S. Highway No. 160  
S $\frac{1}{2}$  NE $\frac{1}{2}$ ,  
NE $\frac{1}{2}$  NE $\frac{1}{2}$**

**Section 22: N $\frac{1}{2}$ , E $\frac{1}{2}$  SW $\frac{1}{2}$ ,  
W $\frac{1}{2}$  SE $\frac{1}{2}$ , and SE $\frac{1}{2}$   
SE $\frac{1}{2}$**

**Section 23: W $\frac{1}{2}$**

**In Township 35 North, Range 2 $\frac{1}{2}$  West, N.M.P.M.**

**Section 25: SE $\frac{1}{2}$  SW $\frac{1}{2}$ , S $\frac{1}{2}$  SE $\frac{1}{2}$**



EXHIBIT "B"

When Recorded Mail to: Transamerica Title Ins. Co.  
P. O. Box 13078  
Phoenix, Arizona Mr.  
(Osborn)

STATE OF COLORADO } ss. 7-7-8 7/78  
ARCHULETA COUNTY.

I hereby certify that this instrument was filed

in my office at 2:22 o'clock P.

on July 7, 1978, and is correct.

Recorded Book 1-2 Page 7478

DECLARATION OF RESTRICTIONS

TRANSMERICA TITLE INSURANCE COMPANY, a California corporation, as Trustee, hereinafter called Declarant, being the owner of all of the following described property situated within the County of Archuleta, State of Colorado:

In Township 35 North, Range 2 West NMPM

Sec. 15: S 1/2 S 1/2  
Sec. 21: S 1/2 SW 1/4 SW 1/4,  
S 1/2 SW 1/4 and that  
part of the E 1/2 NW 1/4  
lying South of U.S. Hwy.  
No. 130 S 1/2 NE 1/4,  
NE 1/4 NE 1/4

Sec. 22: N 1/2, E 1/2 SW 1/4,  
W 1/2 SW 1/4, and SE 1/4  
SE 1/4

Sec. 23: W 1/2

In Township 35 North, Range 2 1/2 West NMPM

Sec. 25: SE 1/4 SW 1/4, S 1/2 SE 1/4

and desiring to establish the nature of the use and enjoyment of said property, hereby declares that the following covenants, conditions, restrictions and reservations, hereinafter sometimes referred to as "restrictions" shall attach to said real property, and shall form a general plan, and shall constitute covenants running with the land. Declarant anticipates selling and conveying, from time to time, portions of the above described property, and any such portion shall hereinafter be referred to as "parcel" and these restrictions shall apply to any and all parcels on the same basis regardless of size.

1. Said parcels are hereby restricted to single family residential dwellings for single family residential use; agricultural type structures and improvements, including barns, for agricultural use; ranching type structures and improvements for ranching use. All buildings or structures erected, placed or permitted upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises. No structure of a temporary character, trailer, tent or shack shall be allowed on any parcel, nor shall any basement, garage, barn or other outbuilding be used at any time as a residence either temporarily or permanently without express written permission from the "Committee of Architecture", hereinafter provided for.

2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for a builder, or Declarant or its designee, to maintain in an orderly condition during the period of construction (not to exceed 130 days) upon such portion of the parcel as such builder or Declarant or its designee may choose, such facilities as may be reasonably required, convenient or incidental to the construction of the improvements.

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COMPLIMENTS OF  
COLORADO LAND TITLE CO.  
7012 MAIN AVE., P.O. Box 197  
DURANGO, CO 81301  
(303) 777-5454

3. No pigs or swine shall be bred, raised or allowed on any parcel; not more than two goats or sheep shall be bred, raised or allowed on any parcel; not more than 25 horses for each 10 acres owned shall be bred, raised or allowed thereon; no chickens, other than as domestic pets, shall be allowed to run at large.

4. No advertising signs (except one of not more than two square feet "for rent" or "for sale" sign per parcel) shall be erected, placed or permitted on any parcel without the express written consent of the said Committee of Architecture. No billboards, unsightly objects or nuisances shall be erected, placed, allowed or permitted to remain on any parcel, nor shall any parcel be used in any way for any purpose which may endanger the health or unreasonably disturb the buyers or owners of any parcel. The Declarant or its designee shall have the right to inspect any and all outbuildings which house either fowl or animals to determine if such is being maintained in a sanitary condition. If such conditions are not deemed to be clean and sanitary, then the Declarant or its designee shall so inform the owner of such premises, in writing, of the conditions to which it objects, and the owner shall have a period not to exceed fifteen (15) days, from date of such notice in writing, to remedy and correct the unclean or unsanitary condition of the premises to the full and complete satisfaction of the Declarant or its designee. Further no business or commercial activity, other than the conducting of a farm, ranch, dude ranch or horse stables shall be permitted. Nothing herein contained shall be construed to prohibit the conducting of a medical, dental or legal office on any parcel, provided, further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of the Declarant or its designee.

5. All rubbish, trash, garbage or other waste material shall be removed forthwith and shall not be allowed to accumulate on any parcel. Failure to comply with this provision automatically grants a right to Declarant or its designee to enter upon any parcel for purposes of removing said rubbish, trash, garbage, or other waste material and all expenses so incurred by Declarant or its designee shall be a charge against the parcel and until paid shall constitute a lien upon the parcel which may be foreclosed pursuant to the laws governing mechanics' liens. Unless evidence of said lien is properly recorded in the Archuleta County Recorder's office, third parties shall have no duty to make inquiry as to the existence of any such lien.

6. When, as and if, any central water and/or sewage system comes into existence, all buildings required to have plumbing, as provided herein, shall be connected to said system(s) at buyer's or owner's expense within six months of the date the system(s) is respectively available for hook-up. After such facilities are available, no construction shall commence unless and until arrangements for hook-up and any connection charge has been paid to the appropriate owners of the system.

BOOK 120 PAGE 75  
7/18



7. No structure of any kind for the housing of animals or fowl shall be located closer than 100 feet from any parcel boundary line; no structure of any kind for the housing of animals or fowl shall be located closer than 25 feet to any residential dwelling even though a residential dwelling shall be located upon the same parcel and under the same ownership as a structure for the housing of animals or fowl.

8. Not more than three residential dwellings shall be erected, placed or permitted per acre; no residential dwelling shall be located closer than 55 feet from any parcel boundary line; no residential dwelling shall be located closer than 20 feet to any other residential dwelling. No residential dwelling shall contain less than 1,000 square feet of actual living area. No structure of any kind shall exceed 25 feet in height.

9. No parcel shall be divided into any subparcels by a subdivision plat thereof, or otherwise, until the purchase price due Declarant, its successors or assigns, has been paid in full.

10. No building, fence, patio or other structure shall be erected, altered, added to, placed, or permitted to remain on any parcel until and unless the plans thereof showing floor area, external design, structural details, a section through the building, foundation plan, and a plot plan showing location of the proposed improvement, in proper scale to the dimensions of the property upon which it is being placed, shall have been first delivered and approved in writing by a majority of the Architectural Committee hereinafter sometimes called "Committee". If the plans and specifications are not disapproved in writing within 45 days from the date of their submittal to the Committee, said plans and specifications shall be deemed to be approved. The Committee may require a reasonable fee prior to checking and approving said plans and specifications. Declarant or its designee shall appoint the Committee of Architecture. The Committee is to consist of not less than three persons, the initial members of which shall be: GORDON BENEDICT, CALVIN C. PERKINS and RAYMOND L. LANUUM; and Declarant or its designee shall have the power to expand the Committee and fill any vacancy on the Committee caused by death, resignation, disability or the election of Declarant or its designee. The Committee shall adopt reasonable rules and regulations concerning its conduct, hours of availability to each person requiring its service and it shall provide for such meeting as may be necessary in the orderly pursuit of its tasks. Such rules and regulations may be changed from time to time by a majority vote of the Committee but none of such rules and regulations or amendments thereto are to be construed or deemed a part of these restrictions. It shall be the general purpose of the Committee to provide for the maintenance of a high standard of architecture and general construction in such a manner as to enhance aesthetic properties and structural soundness and the Committee's decision to allow or deny the construction of any building, fence, patio or other structure shall be final. All appropriate structures shall conform to the requirements of the Uniform Building Code as published by the International Conference of Building Officials and the National Electrical Code, as published by the National Fire Protection Association,



current editions. In the event the County of Archuleta, or other governmental type body having jurisdiction, has a code in conflict with the provisions hereof, the code shall prevail when by complying with these restrictions a violation of minimum standards as set forth in the code would occur. Notwithstanding any other provisions hereof it shall remain the prerogative and in the jurisdiction of the Committee to review applications and grant approval for exceptions to these restrictions. Variations from these restrictions may be made when and only when such exceptions, variances and deviations do not in any way detract from the appearance of the parcels and are not in any way detrimental to the public welfare, value or to the property of other persons located in the vicinity thereof, all in the sole opinion of the Committee.

11. Any permanent structure designed for human habitation must contain at least one bathroom installed within the confines of the permanent structure; said bathroom is to contain at least one water closet, lavatory, bathtub and/or shower stall facilities. All structures for human habitation must have a water supply which complies with the State of Colorado and County of Archuleta regulations, if any, and approved by the Committee. No outside toilets or privies shall be allowed to service any permanent structure for human habitation.

12. The restrictive covenants, conditions, limitations and agreements herein contained shall run with the land for a term of twenty (20) years from the date these restrictions are recorded, after which time said restrictions shall, unless terminated by the record owners, automatically be extended for successive periods of ten (10) years and shall be binding upon all persons purchasing, leasing, owning or occupying any lot or lots. Provided, however, that the violation or breach of any covenant, restrictions, reservation and/or condition, or any right of re-entry by reason thereof, shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value upon said parcel or portion thereof. Each and all of said covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustor's sale, or otherwise, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or remedied by appropriate legal proceedings, notwithstanding the existence of any lien, deed of trust or mortgage instrument. These restrictions may be enforced by any person, whether natural or corporate, who has a legal or equitable interest in any parcel; further these restrictions may be enforced by Declarator or its designee whether or not it has a legal or equitable interest in any parcel. Failure to enforce any restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any and all instruments of conveyance of any interest in all or part of any parcel shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein set forth as fully as though said terms and conditions of this instrument were therein set forth in full; provided, however, that the restrictive covenants, terms and conditions of this instrument shall be binding upon all persons affected by the same whether express reference is made to this instrument or not.

13. These restrictions may be amended by an instrument signed by the owners of record title of not less than 75% of the land described on the first page hereof. Any amendment must be properly recorded.

14. The invalidity of any one of the covenants, restrictions, reservations or conditions herein contained by judgment, decree or court order, shall in no wise affect the validity of the remaining provisions of this instrument and the same shall remain in full force and effect.

15. The provisions herein contained shall be binding upon and inure to the benefit of all parties and parcels affected by these restrictions.

DATED this 16th day of January, 1969.

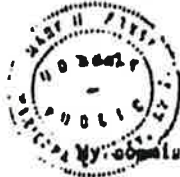
TRANSAMERICA TITLE INSURANCE COMPANY,  
a California corporation, as Trustee

STATE OF <sup>ARIZONA</sup> ~~ARIZONA~~ }  
County of Maricopa } ss.

By John E. Griffith  
Vice President  
and Donald B. McIntyre  
Assistant Secretary

This instrument was acknowledged before me this 16th day  
of January, 1969 by John Griffith & Donald B. McIntyre as  
Vice President & Ass't. Secretary of Transamerica Title Insurance  
Company.

IN WITNESS WHEREOF, I hereunto set my hand and official



My commission expires: May 11, 1972

Walter H. Frost  
Notary Public

STATE OF CHANDLER  
ARCHULETA 11-7788  
I hereby certify that the foregoing instrument was duly  
recorded in Book 17, Page 120, and is a true and  
correct copy of the original as the same appears in the  
records of the County of Maricopa, Arizona.  
Debra A. Barber  
Recorder

120

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EXHIBIT "C"  
ALPHA  
ENVIRONMENTAL/ARCHITECTURAL  
COMMITTEE  
P O BOX 4391  
PAGOSA SPRINGS, CO 81157

March 24, 1993

Mr. and Mrs. Dennis Yerton  
P O BOX 876  
Pagosa Springs, CO 81147

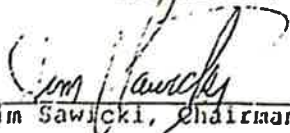
Dear Mr. and Mrs. Yerton:

The Alpha Environmental/Architectural Committee has submitted your building plans to extensive review. It was the decision by majority vote of the seated five (5) members of the committee that metal pre-fab structures are not in keeping with the spirit of the Declaration of Restrictions for the Alpha Development, which states, "It shall be the general purpose of the Committee to provide for the maintenance of a high standard of architecture and general construction in such a manner as to enhance aesthetic properties.....". Therefore, the undersigned Committee is disapproving your building intentions as they were presented to the Committee on March 1, 1993.

We thank you for your understanding in this matter and look forward to assisting you in the future.

Most sincerely,


ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE

  
Jim Sawicki, Chairman

DATE 3/26/93

  
Dorothy Eichvalds

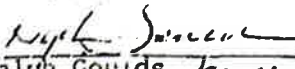
DATE 3/26/93

  
Allen Ecker *non consenting*

DATE 3-30-93

  
Ed Kaumeier

DATE 3/27/93

  
Ralph Gouids. *non consenting*

DATE 3-30-93



Filed in District Court of  
Archuleta County, Colorado

DISTRICT COURT, ARCHULETA COUNTY, COLORADO

CASE NO. 93 CV 33

DATE FILED SEP 27 1993  
March 20, 2025 4:35 PM  
FILING ID: F36340929838B  
CASE NUMBER: 2024CV30053

**MOTION TO INTERVENE**

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE,  
ALVIN R. CANNADY, JAMES J. SAWICKI and GUY  
D. McCOY,

Plaintiffs,

vs.

DENNIS YERTON and PAULA YERTON,

Defendants.

COME NOW the following property owners of the Pagosa Alpha Section and move this Court for an Order approving their intervention in the within action pursuant to Rule 24 of the Colorado Rules of Civil Procedure, as follows:

1. On or about April 24, 1993, the within action was filed in this Court naming as a Plaintiff the Alpha Environmental/Architectural Committee ("Committee").

2. The Complaint alleges that the Alpha Environmental/Architectural Committee is an unincorporated association which has authority and responsibility for architectural review in the subdivision known as Pagosa Alpha Section.

3. The following individuals are property owners in the Alpha Section:

Don Anderson  
Susan F. Angelo  
Wallace L. Bruce  
B&B Producing Company  
Bennie Edwards, Trustee for the Edwards Children Trust  
Peggy J. Ellis  
William Mack Gaudet  
JoAnn Jacober  
Shirley Ann Mateer  
Richard M. Miller  
Liza Papadopoulos  
Clifton Allen Stratton  
Nancy Stratton  
Jerry E. Tekell  
Pamela N. Tekell  
Eulys E. Woods

Charles L. Wyndham  
Sylvia J. Wyndham

Collectively referred to as the "Alpha Property Owners."

4. Rule 24 of the Colorado Rules of Civil Procedure provides that anyone shall be permitted to intervene in an action:

When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

5. All of Alpha Property Owners, as owners of real property in the Pagosa Alpha Section, have an interest in the pending litigation as the actions of the Alpha Environmental/Architectural Committee will impact their property.

6. The Alpha Property Owners believe that the Committee is not a legitimately formed Committee and are not acting in the best interests of the majority of the property owners in the Pagosa Alpha Section, and therefore the Alpha Property Owners are not being adequately represented by the existing parties in this action.

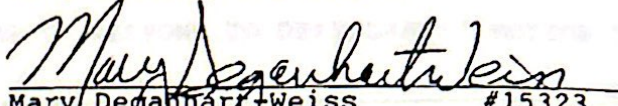
7. Intervention shall be allowed if the representative parties represent an interest adverse to that of the petitioner and those seeking to intervene will be bound by any judgment in the case. *Roosevelt v. Beau Monde Co.*, 384 P.2d 96 (Colo. 1963). As is set out more fully in the Request for Relief filed herewith, the actions of the Committee in this action will impact all future construction in the Pagosa Alpha Section. Because it appears that the Committee is not a valid entity, its actions in this case and any other actions it may take are adverse to the Petitioners.

WHEREFORE, the Alpha Property Owners respectfully request that the Court enter an Order allowing their intervention in this action, and for such other and further relief as to the Court may seem just and proper.



DONE this 27<sup>th</sup> day of September, 1993.

Respectfully Submitted,

  
Mary DeGanhart-Weiss #15323  
Attorney for Intervenors  
P.O. Box 129  
Pagosa Springs, CO 81147  
303-264-2118

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the **MOTION TO INTERVENE**, by placing same in the U.S. Mail, first class postage prepaid, this 27<sup>th</sup> day of September, 1993, addressed as follows:

Jim Denvir  
Attorney at Law  
P.O. Box 668  
Pagosa Springs, CO 81147

Floyd L. Smith  
Attorney at Law  
P.O. Box 9  
Bayfield, CO 81122

**INTERVEN**



DATE FILED

March 20, 2025 4:35 PM

FILING ID: F36340929838B

CASE NUMBER: 2024CV30159

Filed in District Court of  
Archuleta County, Colorado

DISTRICT COURT, ARCHULETA COUNTY, COLORADO

CASE NO. 93 CV 33

SEP 27 1993

P.T.  
CLERK

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REQUEST FOR RELIEF PURSUANT TO MOTION TO INTERVENE

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ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE,  
ALVIN R. CANNADY, JAMES J. SAWICKI and GUY  
D. McCOY,

Plaintiffs,

vs.

DENNIS YERTON and PAULA YERTON,

Defendants.

---

COME NOW the, Don Anderson, Susan F. Angelo, Wallace L. Bruce, B&B Producing Company, Bennie Edwards, Trustee for the Edwards Children Trust, Peggy J. Ellis, William Mack Gaudet, JoAnn Jacober, Shirley Ann Mateer, Richard M. Miller, Liza Papadopoulos, Clifton Allen Stratton, Nancy Stratton, Jerry E. Tekell, Pamela N. Tekell, Eulys E. Woods Charles L. Wyndham, and Sylvia J. Wyndham, ("Alpha Property Owners"), by and through counsel, Mary Deganhart-Weiss, and for this Request for Relief Pursuant to Motion to Intervene, pursuant to Rule 24 of the Colorado Rules of Civil Procedure, state as follows:

1. This action was originally filed by the named Plaintiffs seeking an injunction against the Defendants to enjoin the Defendants from erecting, installing or constructing any building, fence, patio or other structure without written approval of the Alpha Environmental/Architectural Committee ("Committee").

2. The Complaint filed by the Plaintiffs represents that the Committee is an unincorporated association having authority and responsibility for architectural review in the subdivision known as Pagosa Alpha Section ("Subdivision").

3. All of the property in the Pagosa Alpha Section as described in the maps filed for record with the Archuleta County Clerk and Recorder's Office is subject to certain covenants, conditions and restrictions which are set forth in a Declaration of Restrictions recorded January 17, 1969 in Book 120, at Page 74, in the Office of the Clerk and Recorder of Archuleta County, Colorado.

4. Upon information and belief, the Committee is not a legitimately formed committee, and is therefore not authorized to act in the capacity represented to the Court.



5. Upon information and belief, the Committee was largely self-appointed at a meeting of the Alpha-Rockridge Metropolitan District Committee. (See Exhibit "A" attached hereto and incorporated herein by this reference.) Upon information and belief, property owners of the Subdivision were not given prior notice that the meeting of the Alpha-Rockridge Metropolitan District Committee would take up the issue of an Architectural and Environmental Committee for the Subdivision or that an election would be held for members to serve on such a Committee. Upon information and belief, property owners of the Subdivision were not even notified of the existence of this Committee until at least 8 months after they had elected themselves.

6. Upon information and belief, the Committee is acting without Bylaws or other documents setting forth its process and procedure, including how the members of the Committee are elected, how long their terms are, and providing for continuity of the Committee though membership on the Committee may change.

7. Because of the flaws in the organization of the Committee, the Alpha Property Owners do not believe the Committee is representing their best interests.

8. Because an Architectural Committee as provided by the Declaration of Restrictions is such an integral part of the Subdivision with respect to new buildings and additions to existing buildings, the Alpha Property Owners are concerned that the actions of the alleged Committee will detrimentally affect property values in the Alpha Subdivision. Current and future property owners of the Alpha Subdivision must be able to determine from the Declaration what they can and cannot do with their property, and if the Committee unilaterally expands upon the terms of the Declaration of Restrictions, all property owners are uncertain as to what uses they may make of their property.

9. The Declaration of Restrictions does not provide a method for how a Committee should be selected, nor is there provision in the Declaration of Restrictions for a property owners association. The relief which the Alpha Property Owners are seeking is that the current Committee be disbanded and that this Court sanction a process for the organization of a new Committee, incorporated as a non-profit organization under the laws of the State of Colorado, having Bylaws describing its organization and operation with a Board elected by all of the property owners in the Alpha Subdivision.

10. The Colorado Supreme Court has set forth what criteria is necessary to determine whether an unincorporated association is legally constituted. Because Colorado has no statutes pertaining to such associations, common law must govern their existence:



It is usually characterized by having Bylaws governing its organization and operation, a stated purpose for its existence, and providing for its continuity though its membership may change. There should also be responsible officers elected according to the Bylaws, whose duties and responsibilities may be ascertained and upon whom valid process may be had.

*Hidden Lake Development Company v. Adams County District Court*, 183 Colo. 168; 515 P.2d 632 (Colo. 1973).

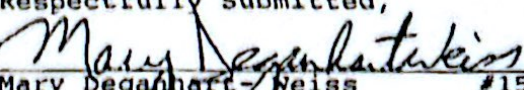
In the *Hidden Lake* case, the Court determined that the unincorporated association was not legally constituted and, therefore, had no capacity to sue.

11. The Committee is simply a loosely formed organization of 5 property owners who have taken it upon themselves to become the Committee as required in the Declaration of Restrictions. Although their initiative may be admired, the Committee must have the items set forth by the Colorado Supreme Court in the *Hidden Lake* case in order to be legally constituted. Because the alleged Committee has no real organization, property owners are left being uncertain as to the Committee's rights and interests, as well as the Committee's effect on their property.

WHEREFORE, the above-referenced Alpha Property Owners respectfully request that this Court prohibit the Alpha Environmental/Architectural Committee from taking any further action because they are not a valid Committee, that the Alpha Environmental/Architectural Committee be ordered to be disbanded, and that a process be determined for the organization of a legitimate, incorporated Committee or Association as required by the Declaration of Restrictions and for such other and further relief as to the Court may seem just and proper.

DONE this 27<sup>th</sup> day of September, 1993.

Respectfully Submitted,

  
Mary Degannhart-Weiss #15323  
Attorney for Intervenors  
P.O. Box 129  
Pagosa Springs, CO 81147  
303-264-2118

REQUEST

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy of the **THE REQUEST FOR RELIEF PURSUANT TO MOTION TO INTERVENE**, by placing same in the U.S. Mail, first class postage prepaid, this 27<sup>th</sup> day of September, 1993, addressed as follows:

Jim Denvir  
Attorney at Law  
P.O. Box 668  
Pagosa Springs, CO 81147

Floyd L. Smith  
Attorney at Law  
P.O. Box 9  
Bayfield, CO 81122

MaryJune Stone





EXHIBIT "A"

ALPHA-ROCKRIDGE METROPOLITAN DISTRICT COMMITTEE

Minutes of the Meeting  
Monday, June 29, 1992  
Alvin Cannady's house

Alvin Cannady opened the meeting with the information that there are 18 qualified voters in Rockridge, potentially 66 qualified voters in Alpha Section, and 26 qualified voters legally required for the Special District to pass. It is the County Commissioners' responsibility to determine the number of qualified voters and the number needed to go on the petition to the judge.

Alvin Cannady reported that the County Commissioners have said they will help until we are up and going.

He suggested that the Special District and the Board of Directors be voted on at the same time. He said Attorney Bud Smith had suggested that we need at least a "Gentlemen's Agreement" to have representation on the Board from both Rockridge and Alpha.

There was discussion among the attendees that there be a minimum of one Board member from Rockridge. A motion was made to that effect by Monte Mallet and seconded by Ralph Goulds; the motion carried with no dissenting votes.

Alvin Cannady said he would be withdrawing as chairperson on the Board but offered "volunteer service." Alden Ecker also said he would refrain from serving on the Board because of a possible conflict of interest. The following people volunteered to serve on the Board of Directors:

Ralph Goulds (Alpha)  
Dean Gray (Rockridge)  
Monte Mallet (Alpha)  
Ed Kaumeyer (Alpha)

Sherri Sawicki (Alpha)  
Victoria McCoy (Alpha)  
Alvin Byrd (Rockridge)

The Board of Directors will be responsible for preparing the budget, making the decisions as to what is needed, calling for the mill levy (10 mills maximum), etc.

A series of questions followed. The answers were:

- No revenues will come from the city of Pagosa Springs.
- In order to complete the required federal, state and county reports, Cathy Ruth will help the Board get the maps and documents, etc., needed.
- We have just enough money to pay Bud Smith's fees. He is paid up to date, and there is \$970 in the Metro District account. When the petition is approved, our \$600 bond will be refunded.

Marion Cannady moved that we accept seven volunteers on the first Board of Directors. The motion was seconded and carried unanimously.

Ralph Goulds proposed that the Board of Directors now take over the Steering Committee's responsibilities. Alden Ecker seconded the motion, which carried, and the Steering Committee was officially disbanded.

Alvin Cannady informed the property owners that Fairfield had legally transferred the Architectural and Environmental function to the Alpha Property Owners Committee by letter from Jim Beckham, Fairfield executive. In order to enforce the covenants and restrictions, the following residents were elected to serve Alpha as the Environmental and Architectural Committee: James Sawicki, Dorothy Eichwalds, Ralph Goulds and Alden Ecker.

Alden Ecker explained that any new roads to go in will be at the property owners' expense; the only monies available at present are for maintenance of existing roads. (50% of the mill levy goes into a capital reserve fund.)

Alvin Cannady said we need to send a letter to property owners letting them know where we are in this effort and that we need donations.

The meeting adjourned at 8 30 pm.

MOTION TO DISMISS

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE, ALVIN R. CANNADY,  
JAMES J. SAWICKI AND GUY D. MCCOY,

Plaintiff,

vs.

DENNIS YERTON and PAULA YERTON,

Defendants.

DATE FILED

March 20, 2025 4:35 PM

FILED ID: E36340929838B

CASE NUMBER: 2024CV30053

Filed in District Court of  
Archuleta County Colorado

SEP 20 1993

CLERK

Defendants, Dennis and Paula Yerton, by and through their attorney of record, Jim Denvir, and pursuant to Rule 17 of the Colorado Rules of Civil Procedure hereby move this Court for an Order dismissing the Alpha Environmental/Architectural Committee as a Plaintiff in this matter. As grounds therefore, Defendants state:

1. Rule 17(b) of the Colorado Rules of Civil Procedure provides in pertinent part that "a partnership or other unincorporated association may sue or be sued in its common name for the purposes of enforcing for or against it a substantive right."

2. Rule 17 is procedural, providing how a legally constituted entity may bring its action; it does not, however, grant the right to sue to a loosely formed group. Thomas v Dunne, 131 Colo 20, 279 P. 2nd 427 (1955).

3. To sue as an unincorporated association in name only is insufficient. Ivanhoe Grand Lodge A.F. & A.M. of Colorado v Most Worshipful Grand Lodge of Ancient Free and Accepted Masons of Colorado, 126 Colo. 515, 251 P. 2nd 1085 (1952).

4. The common law test of an unincorporated association is that it have by-laws governing in its organization and operation, a stated purpose for existence and providing for its continuity though its membership may change. There should also be responsible officers elected according to the by-laws whose duties and responsibilities may be ascertained and upon whom valid process may be had. Hidden Lake Development Company v District Court in and for the County of Adams, 183 Colo 168, 515 P. 2nd 632 (1973).



Combined Court, County of Archuleta  
State of Colorado  
Sixth Judicial District  
Certified to be a full, true and correct  
copy of the original in my custody.  
Date 3/2/25  
Clerk Cheryl Mulbery  
Deputy Shue



5. Plaintiff Alpha Environmental/Architectural Committee, though alleged to be an unincorporated association, in fact is not. It was formed at a meeting of property owners within the Alpha Section Subdivision and the Rock Ridge Subdivision at which the owners of only 14 or 15 lots were in presence, though there are approximately 156 lots within the Alpha Subdivision. No by-laws of said "unincorporated association" have ever been passed and, though a purportedly democratic election among the owners of 14 lots was conducted, none had any authority to act on behalf of other property owners. No terms for officers or directors were adopted, no notices of subsequent meetings have been given, and no method presently exists for either recall of the present Committee or for any sort of election regarding their continuing in office. No document exists setting forth any stated purpose for existence or providing for its continuity. No document exists by which the duties and responsibilities of the officers or directors has been stated.

6. The above stated facts are established as follows:

a. At the hearing on Plaintiff's Motion for a Temporary Restraining Order, Plaintiff Sawicki testified that the Committee was formed at a meeting at which only property owners living in the Alpha Subdivision were invited and of this group only 30 property owners out of the owners of 168 lots attended. No by-laws were adopted because most of the discussion was about setting up a road district. See Reporters Transcript of the testimony of James J. Sawicki, pages 28-31, attached hereto as Exhibit "A" and incorporated herein by reference.

b. In response to Defendants' First Set of Interrogatories and Request for Production of Documents, it is established that the Committee was elected at a meeting of the "Alpha Property Owners Committee", a short-lived group of property owners from both the Alpha Subdivision and the adjoining Rockridge Subdivision working on the formation of a Metropolitan District to which only the Alpha property owners residing in the Pagosa Springs area were invited by phone. Non-resident property owners were neither invited nor voted. The sign-in sheet for this meeting of June 29, 1992 indicates that only 18 property owners from Alpha attended, of which 6 were married couples. This would suggest that the rights of the owners of only 15 lots were represented out of the 168 lots in the Subdivision. It is not clear whether the owners of property in the Rockridge Subdivision in attendance voted. See Interrogatory 18 and answer, Request for Production No. 2 and response in form of handwritten sign-in sheet and minutes of meeting of June 29, 1992 of the Alpha-Rockridge Metropolitan District Committee, attached hereto as Exhibit "B" and incorporated herein by reference.

c. The lack of any of the elements stated in Hidden Lake, supra, is further established by Request for Production No. 2 which stated, "Please produce all notices of general or special meetings, by-laws, procedural rules, minutes of all meetings and

all correspondence of the committee or of any of the individual plaintiffs relating to the formation, conduct of business and training, legal advice and education of the committee from its inception until the present", and which was responded to by Plaintiffs by the production of minutes of meetings of the Committee and correspondence but with no by-laws, no document setting forth a stated purposes, no document providing for its continuity though its membership may change, no procedure for election of officers, no document from which the duties and responsibilities of responsible officers may be ascertained and no document designating upon who valid process may be had.

7. As such, the alleged Committee is remarkably similar to the loosely formed association of land owners discussed in Hidden Lake, supra. It simply does not have legal capacity to sue or be sued.


8. "The right of Plaintiff to maintain this action having been challenged, the burden of proof was upon it to establish its position" Ivanhoe Grand Lodge, supra at 517.

9. Defendants are substantially prejudiced by the Committee's continued involvement in this action due to the fact that by calling themselves a Committee the loosely formed association of land owners take on a mantel of legitimacy to which they are not entitled.

10. On the other hand, the Plaintiffs would not be substantially prejudiced by the dismissal of the Committee from this action due to the fact that the individual Plaintiffs admittedly have standing under the declaration of restrictions involved herein to maintain the action.

WHEREFORE, Defendants would respectfully move for the dismissal of the Alpha Environmental/Architectural as a Plaintiff in this action.

Dated: September 29, 1993

  
\_\_\_\_\_  
JAMES E. DENVIR #10179  
Attorney for Defendants  
P.O. Box 668  
Pagosa Springs, CO 81147  
(303) 264-2776

OCT 28 1993

CLERK

DISTRICT COURT, ARCHULETA COUNTY, STATE OF COLORADO

Case No. 93CV33, Division 2

DATE FILED

March 20, 2025 4:35 PM

FILING ID: F36340929838B

CASE NUMBER: 2024CV30053

## FINDINGS and ORDER - MOTION TO INTERVENE

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE, ALVIN R. CANNADY,  
JAMES J. SAWICKI and GUY D. MCCOY,

Plaintiffs,

vs

DENNIS YERTON and PAULA YERTON,

Defendants.

This is an action concerning enforcement of protective covenants on the use of real estate in a subdivision in Archuleta County. Plaintiff Alpha Environmental/Architectural Committee is allegedly the committee with authority to review and approve or deny requests for construction of improvements within the subdivision, pursuant to the covenants. Plaintiffs seek an injunction barring defendants from constructing certain improvements on a particularly described property owned by defendants within the subdivision. The injunction is sought because the committee denied defendants' request for construction of those improvements and because the construction violates certain of the covenants.

A motion to intervene has been filed by eighteen individual property owners within the subdivision. They allege the committee's actions will impact the value of their property which, although it is not a subject of this action, is within the



subdivision; and the committee is not legally formed and has no authority to act. Intervenor's seek relief from this Court in this action prohibiting the committee from acting, disbanding the committee, and determining a process to organize and incorporate a new improved committee.

Intervenor's base their Motion upon C.R.C.P. Rule 24(a)(2), Intervention of Right. An applicant for intervention under that rule must show both: that the representation of his interest by existing parties is or may be inadequate, and the applicant is or may be bound by the judgment in the action. Neither element alone is sufficient; if either is missing, there is no absolute right of intervention. Denver Chapter Colorado Motel Assn. v. Denver, 150 Colo. 524, 374 P.2d 494 (1962).

Intervenor's allege that plaintiff committee is not adequately representing their interests. While that may be true, it is misfocused. In their answer, defendants raise the same issues that intervenor's seek to raise. The question then is whether representation of intervenor's interests by defendants is or may be inadequate. Intervenor's have made no demonstration that the interests of defendants are or may be adverse to those of intervenor's, or that defendants are inadequately representing those common interests.

In addition, the subject of this action is the specific property of defendants and the denial of approval of defendants' construction by the committee. In their Request for Relief Pursuant to Motion to Intervene, intervenor's request the Court to disband the committee and fashion a procedure to set up a new




committee.

It is the duty of courts to respect the integrity of the issues raised by the pleadings between the original parties and to prevent the injection of new issues by intervention. Crawford v. McLaughlin, 172 Colo. 366, 473 P.2d 725 (1970). Intervenor's request for relief goes way beyond the bounds of the present action. Intervenor's are merely eighteen property owners who disagree with the committee, as do defendants. There are at least 156 lots in the subdivision. The Court is uninformed as to how many of the other property owners may agree with the committee. Allowing this intervention will invite the entire subdivision into the litigation concerning defendants' specific property. While it may or may not be proper to reorganize the architectural committee, that is not the subject matter of this lawsuit.

Intervenor's have failed to demonstrate they may intervene as of right. The motion is denied.

DATED this 28th day of October, 1993.

BY THE COURT:

  
\_\_\_\_\_  
Timothy A. Patalan

TAP/wmb

cc Floyd Smith  
Mary Deganhart-Weiss  
Jim Denvir

Filed in District Court of  
Archuleta County, Colorado

DATE FILED

March 20, 2025 4:35 PM

FILING ID: F36340929838B

CASE NUMBER: 2024CV30053

OCT 28 1993

CLERK

DISTRICT COURT, ARCHULETA COUNTY, STATE OF COLORADO

Case No. 93CV33, Division 2

-----  
FINDINGS and ORDER - MOTION TO DISMISS-----  
ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE, ALVIN R. CANNADY,  
JAMES J. SAWICKI and GUY D. MCCOY,

Plaintiffs,

vs

DENNIS YERTON and PAULA YERTON,

Defendants.  
-----

Plaintiff Alpha Environmental/Architectural Committee is alleged to be an unincorporated association with authority and responsibility for architectural review in a certain subdivision in Archuleta County, Colorado. Defendants have filed a motion to dismiss challenging the right of plaintiff to maintain this action. Plaintiff committee has not responded to that motion.

Although plaintiff committee alleges it is an unincorporated association, that status must be founded on more than a bald allegation. Hidden Lake v. District Court, 183 Colo. 168, 172, 515 P.2d 632 (1973). Challenge to the right of the committee to maintain this action having been made, the burden of proof is upon the committee to establish its position. Ivanhoe Lodge v. Grand Lodge, 126 Colo. 515, 517, 251 P.2d 1085 (1952). Plaintiff committee has made no attempt whatever to establish any legal right



to maintain its action, beyond the bald allegation in the complaint.

The motion to dismiss the Alpha Environmental/Architectural Committee as a plaintiff in this matter is granted.

DATED this 28th day of October, 1993.

BY THE COURT:

  
Timothy A. Patalan

TAP/wmb

cc Floyd Smith  
Mary Deganhart-Weiss  
Jim Denvir

OCT 28 1993 *P.T.*  
CLERK

DISTRICT COURT, ARCHULETA COUNTY, STATE OF COLORADO

Case No. 93CV33, Division 2

ORDER - MOTION TO DISMISS FOR FAILURE TO JOIN INDISPENSABLE PARTIES

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE, ALVIN R. CANNADY,  
JAMES J. SAWICKI and GUY D. MCCOY,

Plaintiffs,

vs

DENNIS YERTON and PAULA YERTON,

Defendants.

Defendants have moved to dismiss or in the alternative for an order to join Marvin Cannady and Sharon Sawicki as plaintiffs and Victoria McCoy as defendant. Plaintiffs have filed their consent to joinder. IT IS THEREFORE ORDERED that plaintiffs effect the joinder of parties as requested, within seven days of this order.

DATED this 28th day of October, 1993.

BY THE COURT:

*Timothy A. Patalan*  
Timothy A. Patalan

TAP/wmb

cc Floyd Smith  
Mary Deganhart-Weiss  
Jim Denvir



DISTRICT COURT, ARCHULETA COUNTY, COLORADO

CASE NO. 93 CV 33

DATE FILED

March 20, 2025 4:35 PM

FILED ID: F36340929838B

CASE NUMBER: 2024CV30053

STIPULATION FOR DISMISSAL AND ORDER

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE,  
ALVIN R. CANNADY, JAMES J. SAWICKI AND GUY  
D. MCCOY,

Plaintiffs,

vs.

DON ANDERSON, SUSAN F. ANGELO, WALLACE L. BRUCE,  
B&B PRODUCING COMPANY, BENNIE EDWARDS, Trustee  
for the Edwards Children Trust, PEGGY J. ELLIS,  
WILLIAM MACK GAUDET, JOANN JACOBBER, SHIRLEY ANN  
MATTER, RICHARD M. MILLER, LIZA PAPADOPOULOS,  
CLIFTON ALLEN STRATTON, NANCY STRATTON, JERRY E.  
TEKELL, PAMELA N. TEKELL, EULYS E. WOODS, CHARLES  
L. WYNDHAM and SYLVIA J. WYNDHAM,

Intervenors.

COME NOW the above-named parties, by and through their  
respective attorneys of record, and stipulate as follows:

1. The Plaintiffs and Defendants, by and through their  
respective attorneys of record, stipulate to the intervention of  
those individuals named above as Intervenors.

2. The Intervenors agree to promptly take all steps  
necessary to form a legitimate incorporated Architectural Review  
Committee. Plaintiff, Alpha Environmental/Architectural Committee,  
agrees to fully cooperate during the formation of a new committee  
and agrees to resign as soon as the new committee has a  
group/entity in place to take over architectural review and to  
delegate architectural review authority to the new committee.

3. The parties, for themselves and to the extent they are  
legally authorized to do so, hereby approve, grant a variance for,  
or waive any objection to all existing structures in Alpha Section  
and Defendants' proposed structure including, but not limited to,  
the structures on lots within the Alpha Section Subdivision owned  
by Defendants Dennis Yerton and Paula Yerton, Plaintiffs James J.  
Sawicki and Sharon Sawicki and Intervenors Jerry E. Tekell and  
Pamela N. Tekell.

4. All parties agree that Plaintiffs' Complaint may immediately be dismissed with prejudice and the cash bond posted by Plaintiffs at the time of issuance of the Temporary Restraining Order will be delivered by the Clerk of the Court to the Defendants or their attorney.

5. To the extent necessary to insure compliance with the provisions of this stipulation, the Court shall retain jurisdiction of this matter and the parties may seek appropriate orders when necessary to compel the parties to carry out the acts required hereunder. Unless a party seeks such an order within 90 days of the date this stipulation is approved by the Court, the case shall be closed.

6. All parties will pay their own respective costs and attorney's fees.

\_\_\_\_\_  
Mary Deganhart-Weiss  
Attorney for Intervenors

\_\_\_\_\_  
Floyd L. Smith  
Attorney for Plaintiffs

\_\_\_\_\_  
James E. Denvir  
Attorney for Defendants

ORDER

IT IS SO ORDERED this \_\_\_\_ day of November, 1993.

BY THE COURT:

\_\_\_\_\_  
Judge of the District Court

11-18-93 115

EXHIBIT

Exhibit 8

exhibitstickers.com

MARY DEGANHART-WEISS  
Attorney at Law  
(303) 264-2118  
Telecopier (303) 264-2998

818 Rosita Street  
P.O. Box 129

Kathleen M. Sullivan

Pagosa Springs  
Colorado 81147

DATE FILED  
March 20, 2025 4:35 PM  
FILING ID: F36340929838B  
CASE NUMBER: 2024CV30053

November 18, 1993

Floyd L. Smith  
Attorney at Law  
P.O. Box 9  
Bayfield, CO 81122

Re: Alpha Environmental Committee

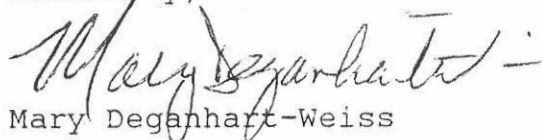
Dear Bud:

I met with several of the individuals on November 11, 1993 who were named as Intervenor in the Dennis Yerton lawsuit. After talking with them and reviewing with them the Orders entered by Judge Patalan in the Dennis Yerton lawsuit, it was their decision that they would proceed with forming a new committee to be incorporated with the Secretary of State, however, they were not interested in entering into an agreement with your clients. I am currently awaiting some additional information from Ms. JoAnn Jacober, an Alpha property owner, in order to finalize Articles of Incorporation to file with the Secretary of State. Once I have that information, we will be proceeding to finalize the formation of the new committee.

My clients are certainly interested in cooperating with your clients in any way necessary, and once the new committee is formed we would ask that the existing committee delegate the functions to the new committee.

Should you have questions or need anything further, please feel free to contact me. I will keep you apprised as we progress with the formation of the new committee.

Sincerely,

  
Mary Deganhart-Weiss

MDW/mas

cc: Wallace Bruce



DISTRICT COURT, ARCHULETA COUNTY, COLORADO  
CASE NO. 93 CV 33

DATE FILED  
March 20, 2025 4:35 PM  
FILING ID: F36340929838B  
CASE NUMBER: 2024CV30053

STIPULATION FOR DISMISSAL AND ORDER

ALPHA ENVIRONMENTAL/ARCHITECTURAL COMMITTEE, ALVIN R. CANNADY, JAMES  
J. SAWICKI AND GUY D. McCOY,

Plaintiffs,

vs.

DENNIS YERTON and PAULA YERTON,

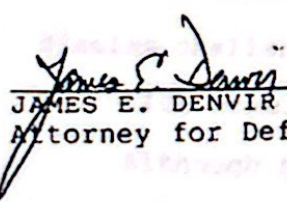
Defendants.

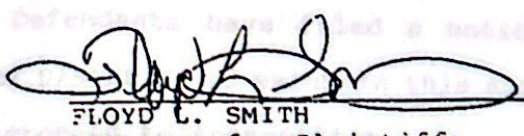
COME NOW the above-named parties, by and through their  
respective attorneys of record, and stipulate as follows:

1. All parties agree that Plaintiffs' Complaint may immediately  
be dismissed with prejudice and the cash bond posted by Plaintiffs at  
the time of issuance of the Temporary Restraining Order delivered by  
the Clerk of the Court to the Defendants or their attorney.

2. All parties will pay their own respective costs and  
attorney's fees.

Dated: November 5, 1993

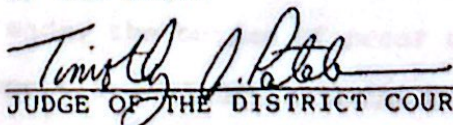
  
JAMES E. DENVER  
Attorney for Defendants

  
FLOYD L. SMITH  
Attorney for Plaintiffs

ORDER

IT IS SO ORDERED this 19<sup>th</sup> day of November, 1993.

BY THE COURT

  
JUDGE OF THE DISTRICT COURT

NONPROFIT

EXHIBIT 10

ARTICLES OF INCORPORATION

OF

THE ALPHA SUBDIVISION COMMITTEE, INC.

DATE FILED

MARCH 20, 2025 4:35 PM

FILING ID: F36340929838B

CASE NUMBER: 2024CV03003

The undersigned persons acting as incorporators of a corporation under the Colorado Non-Profit Corporation Act, sign, and acknowledge the following Articles of Incorporation for such corporation:

ARTICLE 1  
NAME

The name of the Corporation is THE ALPHA SUBDIVISION COMMITTEE, INC.

ARTICLE 2  
DURATION

The period of duration is perpetual.

ARTICLE 3  
PURPOSES

The purposes for which the Corporation is organized are:

(a) To provide for the enforcement of the subdivision's Declaration of Restrictions.

(b) To provide for the maintenance of a high standard of architecture and general construction in such a manner as to enhance aesthetic properties and structural soundness of the Alpha Subdivision as a whole.

(c) To adopt reasonable rules and regulations concerning committee conduct, hours of availability and necessary meetings.

(d) To do such other things as are incidental to the purpose of the Corporation or necessary or desirable in order to accomplish them.

(e) And any other lawful purpose necessary to comply with the Declaration of Restrictions.

ARTICLE 4  
NOT FOR PROFIT

The Corporation is a nonprofit corporation under the laws of the State of Colorado. The Corporation is not formed for pecuniary profit. No part of the income or assets of the Corporation is distributable or for the benefit of its Members, Directors, or Officers, except to the extent permissible by law.

COMPUTER UPDATE COMPLETE

JM

TR

**ARTICLE 5  
NONSTOCK BASIS**

This Corporation is organized on a nonstock basis. This Corporation shall not issue shares of stock.

**ARTICLE 6  
LIMITATION**

The Corporation shall have no power to declare dividends, and no part of its net earnings shall inure to the benefit of any Member of, Officer of or Director of the Corporation or to any other private individual. The Corporation shall have no power or authority to engage in activities which consist of carrying on propaganda or otherwise attempting to influence legislation or to participate in, or intervene in, any political campaign on behalf of any candidate for public office.

**ARTICLE 7  
DISTRIBUTION UPON DISSOLUTION**

Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

**ARTICLE 8  
INITIAL REGISTERED OFFICE AND AGENT**

The post office address of the principal office of the Corporation in this State is P.O. Box 1330, Pagosa Springs, Colorado 81147. The name and post office address of the Registered Agent of the Corporation in this State are Mary Deganhart-Weiss, 818 Rosita Street, P.O. Box 129, Pagosa Springs, CO 81147.

**ARTICLE 9  
MEMBERS**

The number of qualifications for and other matters relating to Members shall be as set forth in the Bylaws of the Corporation.

**ARTICLE 10  
BOARD OF DIRECTORS**

The number of Directors of the Corporation shall be seven (7), which number may be increased or decreased pursuant to the Bylaws of the Corporation, but shall never be less than three (3). Four (4) of the seven (7) shall be full time residents of Pagosa Springs, Colorado. The names and addresses of the initial Directors who shall act until the first annual meeting or until their successors are duly chosen and qualified, are:

Bennie Edwards	P.O. Box 287 Bee Branch, AR 72013
Mary Muller	P.O. Box 1418 Pagosa Springs, CO 81147
JoAnn Jacober	P.O. Box 1330 Pagosa Springs, CO 81147
Charlie Wyndham	P.O. Box 4338 Pagosa Springs, CO 81157
Alden Ecker	P.O. Box 178 Pagosa Springs, CO 81147
Wallace Bruce	P.O. Box 799 Pampa, TX 79065
Jerry Tekell	P.O. Box 279 Italy, TX 76651

**ARTICLE 11  
INCORPORATOR**

The name and address of the incorporator are:

Mary Deganhart-Weiss  
818 Rosita Street  
P. O. Box 129  
Pagosa Springs, Colorado 81147

**ARTICLE 12  
OFFICERS**

The Officers of the Corporation shall consist of a President, Secretary, Treasurer and such other officers and Assistant Officers as may be provided in the Bylaws. Each Officer shall be elected by the Board of Directors (and may be removed by the Board of Directors) at such time and in such manner as may be prescribed by the Bylaws. The names and addresses of the initial Officers of the Corporation are as follows:

Wallace Bruce P.O. Box 799  
Pampa, TX 79065

President

JoAnn Jacober P.O. Box 1330  
Pagosa Springs, CO 81147

Secretary/Treasurer

### **ARTICLE 13 BYLAWS**

The Bylaws of the Corporation are to be made and adopted by the Board of Directors, and may be altered, amended or rescinded by the Board of Directors. The Corporation may by its Bylaws make any other provisions or requirements for the arrangement or conduct of the business of the Corporation, provided that the same be not inconsistent with these Articles of Incorporation nor contrary to the laws of the State of Colorado or of the United States.

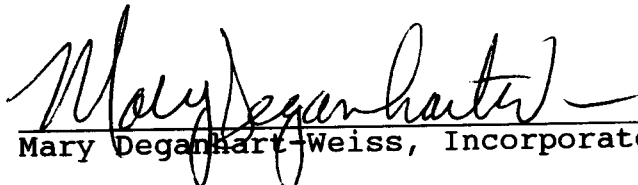
### **ARTICLE 14 AMENDMENT**

The Corporation reserves the right to amend or repeal any provision contained in these Articles of incorporation or any amendment to them, and all rights and privileges conferred upon the Members, Directors and Officers are subject to this reservation. The Articles of Incorporation may be amended in accordance with the provisions of the laws of the State of Colorado, as amended from time to time, unless more specific provisions for amendments are adopted by the Corporation pursuant to law.

### **ARTICLE 15 INDEMNIFICATION**

The Corporation shall indemnify each Officer and Director, including former Officers and Directors, to the fullest extent permitted by the laws of the State of Colorado.

**IN WITNESS WHEREOF**, I have signed these Articles of Incorporation this 1st day of February, 1994, and I acknowledge the same to be my act.

  
Mary Degankart-Weiss, Incorporator

NONPROFIT.ART



2/19

**ALPHA SUBDIVISION COMMITTEE, INC.**  
**P.O. BOX 2634**  
**PAGOSA SPRINGS, COLORADO 81147**

**EXHIBIT 11**

DATE FILED  
March 20, 2025 4:35 PM  
FILING ID: F36340929838B  
CASE NUMBER: 2024CV30053  
AUGUST 25, 1994

Dear Alpha Property Owner,

The Alpha Subdivision Committee, Inc. was formed to oversee and administer the covenants known as the Declarations of Restrictions of 1969 placed on the Alpha Subdivision by the developer in 1969.

This committee is pleased to announce the corporation received a vote of approval from the property owners and we want to thank all of you for supporting us with confidence.

This committee will do its utmost to serve the property owners of Alpha Subdivision in the most efficient and honorable way possible.

If an Alpha Property owner desires to build on his or her property, the owner must submit to Joann Jacober, secretary, a set of your proposed building plans or to any of the directors or officers of the corporation. The plans must be accompanied with a check for \$150.00 for processing and expenses.

The officers and directors of the Alpha Subdivision Inc. are as follows:

Wallace L. Bruce, P.O. Box 1817, Pampa, Tx. 79066-1817  
Telephone 806-669-2535

Joann Jacober, P.O. Box 1330, Pagosa Springs, Co. 81147  
Telephone 303-264-5330

Charlie Wyndham, P.O. Box 4338, Pagosa Springs, Co. 81157  
Telephone 303-731-4680

Alden Ecker, P.O. Box 178, Pagosa Springs, Co. 81147  
Telephone 303-731-4231

Mary Muller, P.O. Box 1418 Pagosa Springs, Co. 81147  
Telephone 303-731-4017

Jerry Tekell , P.O. Box 279, Italy , Tx. 76651  
Telephone 214-483-0736

Bennie Edwards, P.O. Box 287, Bee Branch AR. 72031  
Telephone 501-745-5222

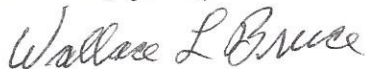
The plans will be reviewed by the board for approval or disapproval.

The board shall conduct business in a professional and business manner in administrating the existing covenants for the Alpha Subdivision and will examine the proposed plans and give you approval or non-approval to the owner in a timely manner.

All Alpha Property Owners should have a copy the Charter, By-Laws, and Covenants this committee will administer. However if for some reason you have not received your copy of these important papers, please contact the board and we will forward them to you immediately.

Trusting we can all be the best of neighbors.

Sincerely yours,



Wallace L. Bruce,  
President  
Alpha Subdivision Committee, Inc.



SS: Form D1 NP (Rev. 4/92)  
SUBMIT IN DUPLICATE  
Fee: \$50.00

MAIL TO:  
COLORADO SECRETARY OF STATE  
CORPORATIONS OFFICE  
1560 Broadway, Suite 200  
Denver, Colorado 80202  
(303) 894-2251

THIS DOCUMENT MUST  
BE TYPEWRITTEN

ARTICLES OF INCORPORATION  
OF A COLORADO NONPROFIT CORPORATION

PAID \$50.00  
March 20, 2025 4:55 PM  
FILING ID: F36340929838B  
CASE NUMBER: 2024CV30053

The undersigned person(s) acting as incorporator(s) of a corporation under the Colorado Nonprofit Corporation Act, execute the following Articles of Incorporation for such corporation.

FIRST: The name of the nonprofit corporation is: Alpha Property Owners Association  
of Archuleta County, Colorado

SECOND: The address of the initial registered office of the corporation in Colorado is 15 Walker Court,  
P.O.Box 4716, Pagosa Springs, Colorado, 81157

(Address must include Building number and suite number, Street [or rural route number], Town or City and Zip code.) and the  
name of its initial registered agent at such address is Edward F. Miller, P.E.

THIRD: The corporation (will/will not) Will have members.

FOURTH: Provisions regarding the distribution of assets on dissolution are:

Assets on dissolution will be made to :

50% to the Alpha-Rockridge Metropolitan District, Inc.

50% to the Upper San Juan Humane Society, Inc.

FIFTH: The corporation shall have 6 directors who shall serve as the initial board of directors and the name and  
address of each director is:

NAME OF DIRECTOR

ADDRESS (include zip code)

~~Chy~~ D. McCoy

PA-21-18, 56 Talisman Dr. #4073

Pagosa Springs, Colo. 81147-9368

Edward F. Miller,

PA-21-27N, 15 Walker Court, P.O.Box 4716

Pagosa Springs, Colo. 81157

Joan M. Slavinski

PA-15-9A, P.O.Box 4428, Pagosa Springs, Co. 81157

Hilliard M. Keeney

PA-22-4, Box 434A, RR3, Pella, Iowa 50219

SIXTH: The name and address of each incorporator is:

Edwin D. Woellner

PA-22-31, 3057 Redbud St., Culpepper, Va. 22701

James D. Caruso

PA-23-5, 7 Seminole Court E, Brunswick, N.J.

08816

See attached copy of

Edward F. Miller, P.E. 15 Walker Court, P.O.Box 4716, Pagosa Spgs, Colo

81157

~~Chy~~ D. McCoy

56 Talisman Dr. #4073, Pagosa Spgs, Colo.

81147-9368

The signature(s) of each incorporator:

Edward F. Miller, P.E.

D. McCoy

Supporting data:

copy of letter to Alpha Property Owners dated February 9, 1994

copies of letter and card responses from New Jersey, Virginia and Iowa  
property owners who have agreed to serve on our board.

15 Walker Court • P. O. Box 4716 • Pagosa Springs, Colo. 81157

February 9, 1994

Dear Fellow Alpha Property Owner:

In the years since the Alpha subdivision was created, it has remained largely undeveloped, and today only a few dozen of the many property owners have built or are now building homes on their property. Meanwhile, Archuleta County is now experiencing a significant building boom. These circumstances and recent events lead us to believe a property-owners' association would now be useful for the benefit of all property owners. We know that many of you have resisted such an organization in the past for various reasons. However, please consider the following, then use the enclosed addressed, postage-paid postcard to give us your opinion.

The recent events we refer to are:

- Annexation actions by the town of Pagosa Springs. In 1992, there was a movement by the Pagosa Lakes Property Owners Association (PLPOA) to incorporate as a separate town of Pagosa Lakes; a number of property owners — most notably the Pagosa Lodge (formerly Fairfield Lodge) — requested annexation by Pagosa Springs to avoid being included in a future "Pagosa Lakes." Incorporation failed, but the annexation effort continues. There is a possibility that Alpha Section could also be annexed. A property-owners' association could represent us in any such process.
- Another attempt to incorporate as "Pagosa Lakes" may legally be made in 1996; if it succeeds, there could be an effort to annex Alpha into "Pagosa Lakes." A property-owners' association could represent us in that event.
- A California-based company acquired approximately 185 acres of beautiful land from Fairfield. This tract lies generally south of the Pagosa Lodge, adjacent to the western boundary of Alpha. Plans call for construction of a commercial shopping center, luxury residences and a medical center, the last on land generously donated by the owner of the tract; water and sewer lines are already being installed, and one of Pagosa Springs' doctors is presently building a clinic across South Pagosa Boulevard from this tract. Circumstances could arise from such growth that could require representation of the Alpha subdivision.
- In 1992, we resident landowners in Alpha were instrumental in forming a Metropolitan District to maintain our roads after Fairfield ceased such activity. We are pleased to report that the new Metro District is doing a commendable job of road maintenance. In December 1993, the PLPOA contacted the Board of Directors of our Metro District at the request of the Archuleta County Commissioners, to ascertain if Alpha wished to join the PLPOA in the organization of a Local Improvement District (LID) which would facilitate the construction of roads left unbuilt by Fairfield's bankruptcy. The Metro District Board, after consulting an attorney and studying the law under which it is organized, came to the conclusion it had no jurisdiction to decide. Alpha still has the option of joining the LID, but without a property-owners' association, no vehicle exists for polling landowners to discover their wishes in the matter.
- The PLPOA is suing Fairfield in an attempt to recoup some of the losses occasioned by the corporation's bankruptcy. Alpha property owners have also sustained a loss (such as the unconstructed roads) and need an organization to represent them

(over)

and to interact with the PLPOA and, possibly, with Fairfield.

• Tax increases are being proposed by all levels of government. A property-owners' association can voice an opinion in opposition or agreement more effectively than single voices.

For these reasons (more are sure to arise as time passes), we believe a formal property-owners' association would be beneficial. Following is our idea of how we believe it could be organized initially:

Membership in the association would be voluntary. The cost would be minimal, to cover mailing expenses. The group would be governed by an elected Board of Directors who would serve without recompense. The association would incorporate to protect Board members from personal liability; ~~we believe we could accomplish incorporation without hiring an attorney.~~ This Board would establish by-laws. Each property owner who belonged to the association would be entitled to one vote; in the case of husband-and-wife owners, there would be one vote per family.

Therefore, would you please answer the following questions, as printed on the enclosed postcard:

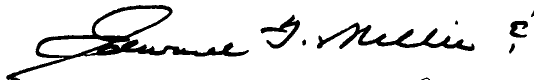
1. Do you agree to become a member of an Alpha property-owners' association?
2. Would you be willing to serve as a member of an unpaid Board of Directors?
3. What would you consider a fair annual membership fee?

We, Edward and Anna Miller, are both Coloradans who have been retired for over 20 years. Both of us attended the University of Colorado many years ago; more recently, we lived in another Fairfield community in Arizona. Neither of us has any aspirations to membership on the Board. We encourage each of you to include a brief history about yourself; this information could be included in the Board's first report, thus allowing us to get to know each other better.

We are paying for the mailing of this letter and the enclosed postcard, which we hope you will return promptly with your opinion. However, we cannot afford to fund this effort alone. If there is sufficient interest on the part of other property owners, we can proceed.

In conclusion, we trust that you will understand our feeling of need for an Alpha property-owners' association. If you have any questions, please call us at (303) 732-4437.

Sincerely yours,



Edward F. Miller



Anna R. Miller

February 19, 1994

Dear Edward and Anna,

We recently purchased lot 5, section 23 on Golden Pond Place and a condo in the Racquet section of Pagosa Pines. Sometime in late 1994 or early 1995 we plan to move into the condo while we build a house and stable on our 10 acres in Alpha.

We now live in central New Jersey. Jim is a New Jersey licensed Gold Seal Engineer and will soon be retiring after 28 years with DuPont as an engineering supervisor and water system manager. After many years in Residential and commercial architecture and construction management, I now operate my own residential architecture firm and am also a New Jersey licensed building inspector.

Jim is a native New Jerseyan while I am from the Kansas City area, receiving my Bachelor of Architecture from the University of Kansas. We plan to design and construct our own home with the help of local merchants and contractors and eventually establish our own design/build firm in the Pagosa Springs area. So, yes, we definitely care and want a voice in the direction of, not only Alpha, but the surrounding areas as well. Count us in!

Sincerely,

*Maggi & Jim Caruso*

Maggi and Jim Caruso

1. Do you agree to become a member of the Alpha Property Owners' Assn?  
Yes ☒ No ☐
2. Would you be willing to serve as a member of an unpaid Board Directors?  
Yes ☒ No ☐
3. What would you consider a fair annual membership fee? 2  
WHATEVER IS APPROPRIATE FOR FUNCTION.
4. Comments: AGREED TO.

HOMEOWNERS ASSOC. WILL  
CERTAINLY BE NECESSARY IN  
BEST INTEREST OF OWNER.

HILLIARD KEENEY / [Signature]  
Please PRINT your name      Signature

Please PRINT your name

BREN E D WOELLNER  
8057 REDBUD ST  
CULPEPER, VA 22701-3915

Signature

[Signature]

1. Do you agree to become a member of the Alpha Property Owners' Assn?  
Yes ☒ No ☐
2. Would you be willing to serve as a member of an unpaid Board of Directors?  
Yes ☒ No ☐
3. What would you consider a fair annual membership fee? 49.00
4. Comments: ABSENTEE OWNERS MUST BE  
GIVEN EQUAL REPRESENTATION  
APPROPRIATE VOTE WEIGHTS.



15 Walker Court  
P.O.Box 4716  
Pagosa Springs, Colorado 81157  
3 March 1994

Ms. Natalie Meyer  
Secretary of State  
1500 Broadway - Suite 200  
Denver, Colorado 80202

Dear Ms. Meyer:

Transmitted herewith, in duplicate, is our application for Articles of Incorporation of a Colorado Non-Profit Corporation, submitted in accordance with the guidelines for filing for incorporation as provided by your offices.

Also attached is my check for \$50.00 to cover the filing fee.

Additionally, there are attached as supporting data the following:

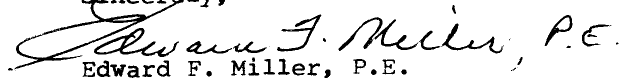
1. A copy of our letter to Alpha Property Owners dated Feb. 9, 1994.
2. A xerox copy of letter and card responses from Mr. Hilliard M. Keeney of Pella, Iowa, Brig. Gen. Edwin D. Woellner of Culpepper, Virginia and Mr. James D. Caruso of Brunswick, N.J., each of whom has agreed to serve on our Board of Directors, as absentee property owners.

In addition to the three named absentee property owners as members of our initial board of directors, we the proposed incorporators---Mr. Guy D. McCoy and myself--- have listed three present homeowners---ourselves and Mrs. Joan M. Slavinski.

We have read and understand the guidelines and reporting requirements as outlines by you in the Nonprofit Corporation Guide. If you need any additional information please contact either Mr. Guy D. McCoy at 1-303-731-4198 or myself at 1-303-731-4437.

With best wishes,

Sincerely,

  
Edward F. Miller, P.E.



**ALPHA PROPERTY OWNERS' ASSOCIATION**  
**P. O. Box 2585**  
**Pagosa Springs, CO 81147-2585**

May 28, 1994

Dear Member,

Thank you for your favorable response to our letter of April 15, 1994, including your check for annual dues. We heartily welcome you to membership in the Alpha Property Owners' Association, Inc. (APOA)

At this time, we wish to apprise you of the first serious matter to confront your interim Board of Directors: a challenge to our "Declaration of Restrictions." As you know, these restrictions were written by the Trustee of the original "Alpha Section-Pagosa" land owners and documented at the Archuleta County recorder's office on January 17, 1969. These restrictions constitute the covenants applying to all real property in the 1240 acres comprising the Alpha subdivision.

These restrictions call for the provision of a "Committee of Architecture" to enforce the covenants and state that the committee is to be composed of not fewer than three people. Furthermore, the Declaration of Restrictions states that the "restrictive covenants, conditions, limitations and agreements" shall run with the land for a term of 20 years (until 1/17/89), after which they will be automatically extended for successive periods of 10 years and shall be binding on all persons purchasing, leasing, owning or occupying any lot or lots.

On May 1, 1992, Fairfield, the successor to the previous owner, Eaton Corp., conferred on the Alpha Property Owners Committee, headed by Alvin Cannady, the responsibility to designate a "Committee on Architecture." A majority of then-resident property owners met in June 1992 and elected four among them to an "Alpha Environmental/Architectural Committee" (AA/EC). The committee held meetings, and enforcement of the covenants was begun.

All went well until one recalcitrant property owner began construction, unauthorized by the AA/EC, of a prefabricated metal storage structure in violation of the covenants in Summer 1993. The AA/EC obtained an injunction to halt construction at the foundation stage.

On September 27, 1993, a group of property owners filed with the District Court a request for removal of the injunction on the grounds that the AA/EC was an unincorporated association and thus was not legally formed. This group requested the court to dissolve the AA/EC and permit continued construction of the unauthorized metal building. The court concurred, and construction of the prefabricated warehouse was completed in November 1993. The AA/EC ceased operation.

Until receipt of a letter from Wallace Bruce, dated May 9, 1994, and an enclosed letter from Shirley Mateer, dated April 11, 1994, we were unaware of any substantive action by the aforementioned group of property owners to organize a Committee of Architecture. You have been asked to approve the so-called Alpha Subdivision Committee, including their articles and by-laws, and their committee as the Architecture Committee. (Not in the documents you received, but told to us by one of their proposed Board members, is the fact that they intend to charge \$150 for review of building plans — three times what the PLPOA charges!) They state that their proposed Architecture Committee "will result in increased property values for us all, due to the coordinated efforts of the committee to maintain the esthetic beauty of our subdivision." Due to their earlier action resulting in the construction of a prefabricated metal storage building, we doubt that this group is sincere in its stated defense of the Declaration of Restrictions. APOA recommends that you vote "NO" on both items of the ballot.

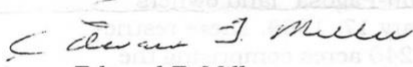
In order to ensure a democratic tabulation, the APOA has requested, in writing, permission to have at least one representative present at the counting of ballots received by Mr. Bruce's

organization.

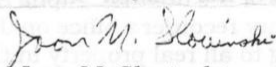
It is our intent ultimately to form a successor, duly and lawfully constituted, Architectural Control Committee under the aegis of the Alpha Property Owners' Association of Archuleta County, Colorado, Inc., reporting to your Board of Directors. In the interim, we believe that the court-documented Declaration of Restrictions will suffice to protect your interests and your property until we elect a permanent Board of Directors, whose first order of business should be to form an Architectural Control Committee to establish and maintain Alpha as "one of the more prestigious communities within the Pagosa area," which Ms. Mateer says is one of her concerns. It will not long remain a prestigious area if it becomes populated by prefabricated metal buildings, two of which are already highly visible and detract from the single-family esthetic nature intended by our Declaration of Restrictions.

You may expect to receive a newsletter from us this summer. Meantime, thanks again for your support.

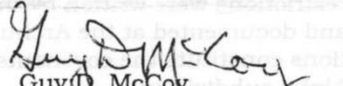
Sincerely,

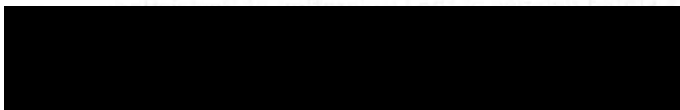
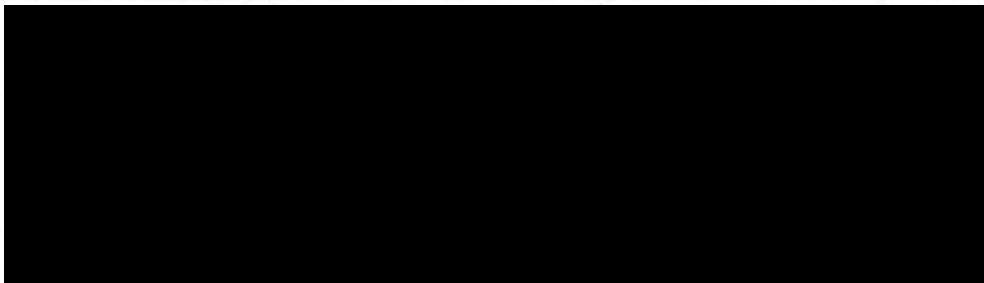
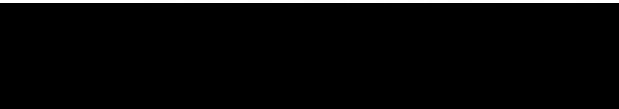
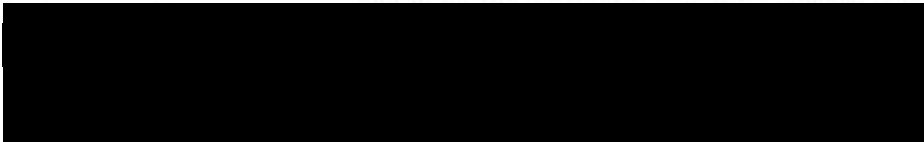
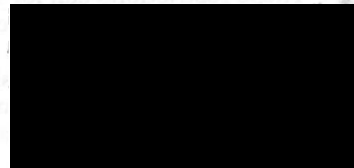


Edward F. Miller  
Acting Board Member



Joan M. Slavinski  
Acting Board Member

  
Guy D. McCoy  
Acting Secretary/Treasurer



## AFFIDAVIT OF DAVE MINKEL

I, Dave Minkel, state under oath and subject to penalty of perjury that I am over the age of eighteen, have first-hand knowledge of and am competent to testify as follows:

DATE FILED  
March 20, 2025 4:35 PM  
FILING ID: F36340929838B  
CASE NUMBER: 2024CV30053

1. I am a Defendant in Archuleta County Case No. 2024CV30053.
2. I am a member of the Board of Directors ("Board") of The Alpha Subdivision Committee, Inc., a Colorado Nonprofit Corporation ("Committee"). I have been a member of the Board since 2016.
3. I and my first wife purchased our property in the Alpha Subdivision in 1993.
4. I and my wife built our home on our property in the Alpha Subdivision in 2005.
5. To the best of my knowledge, the Committee has undertaken all architectural review responsibilities for the Alpha Subdivision between 1994 and the filing of Case No. 2024CV30053 in August of 2024.
6. The Committee undertook architectural review when I and my wife built our home in 2005.
7. The Archuleta County Land Use Department and Building Department have recognized the Committee as the architectural review authority for the Alpha Subdivision.
8. I am not aware of any designation by the Alpha Property Owners Association of Archuleta County, Colorado, a Colorado Nonprofit Corporation ("APOA"), of any of its members to serve on the Board of Directors of the Committee.
9. When I joined the Board of the Committee, no APOA designated representative served on the Board.
10. When I was President of the Board of the Committee in 2018, at my suggestion, the Committee reserved a seat on the Board for the President of the APOA. The President of the APOA did sit on the Board of the Committee pursuant to this invitation from September of 2018 through December of 2021.
11. After filing Case No. 2024CV30053, the APOA removed any reference to the Committee from the Alpha Subdivision website and revised the website to state that it was the architectural review authority for the Alpha Subdivision.
12. Further affiant sayeth naught.

  
Dave Minkel



State of Colorado                    )  
  ) ss.  
County of La Plata                )

The foregoing Affidavit was executed before me this 20<sup>th</sup> day of March, 2025 by Dave Minkel.

Witness my hand and seal.

  
\_\_\_\_\_  
Notary Public

My commission expires: January 4, 2027

