

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

Plaintiffs:

CHRISTOPHER HATTON; KENT ODELL; KAHL
FORINGTON; and SCOTT MARX

v.

Defendants:

RORY HALE, Director of Public Works of Elbert
County; SEAN O’HEARN; and ELBERT COUNTY,
COLORADO ACTING BY AND THROUGH THE
BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF ELBERT.

Attorneys for Plaintiffs:

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Case No: 2021CV30044

Div: 1

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs file this Complaint and allege the following:

PARTIES

1. Plaintiff Christopher Hatton resides at 1483 Carlson Road, Parker, Elbert County, Colorado which is within 500 feet of the proposed County Road 178.
2. Plaintiff Kent Odell resides at 10501 N. Delbert Road, Parker, Douglas County Colorado which is within 1000 feet of the proposed improvements to Delbert Road.
3. Plaintiff Kahl Forington resides at 536 Meadow Station Circle, Elbert County Parker, Colorado which is within 500 feet of the proposed County Road 178.
4. Plaintiff Scott Marx resides at 371 Buckskin Court, Elbert County, Parker, Colorado which is within 500 feet of the proposed County Road 178.
5. Defendant Rory Hale is the Director of Public Works of Elbert County and approved the plans for County Road 178 and the associated plans for Delbert Road.
6. Defendant Sean O'Hearn is the Elbert County engineer responsible for approving the plans for County Road 178 and the associated plans for Delbert Road.
7. Defendant Board of County Commissioners of the County of Elbert ("BOCC") is a body corporate and politic operating at 215 Comanche Street, Kiowa, Colorado.
8. Defendant Elbert County, Colorado is named per C.R.C.P. 57(j) and C.R.S. § 13-51-115.
9. Plaintiffs are all taxpayers and property owners of real property in Elbert County or in Douglas County and directly impacted by proposed improvements.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the action pursuant to Article VI, Section 9 of the Colorado Constitution; C.R.C.P. 57; C.R.S. § 13-51-106 et seq.
11. Venue is proper per C.R.C.P. 98 because the BOCC is located in Elbert County, Colorado, and because the action concerns real property situated in Elbert County, Colorado.
12. This matter challenges Defendants' administrative action and a lack of enforcement of County regulations and other applicable laws. Accordingly, C.R.C.P. 106(a)(4) is inapplicable.

GENERAL ALLEGATIONS

13. In conjunction with development of the Spring Valley Ranch subdivision, the developer (“Developer”) submitted to Defendants a proposed Third Amendment to the Spring Valley Ranch Development Guide Agreement.

14. Per Resolution 21-10, the BOCC approved the Third Amendment to Spring Valley Ranch Development Guide Agreement, as amended (“the Development Guide”).

15. Per Section 6.2.7 of the Development Guide, the Developer “shall either construct or cause to be constructed County Road 178 in conformance with County Regulations existing at the time of construction, and the construction plans approved by Elbert County from Delbert Road east to County Road 13. . . .”

16. The regulations titled “Public Works Road & Bridge Department Elbert County Construction Standards & Specifications” are referenced as “Construction Standards and Specifications.” (See § 110.00). They “shall apply to the construction, enlargement, alteration, moving, removal, conversion, demolition, repair, and excavation of public and private improvements or common facilities specifically regulated herein except where an approved Planned Urban Development Plan (P.U.D.) or Final Plat specifically states otherwise.” Such regulations “apply to Elbert County contracts, developers contracts and private contracts.” Additionally, “[a]lterations, additions, or repairs to existing improvements shall comply with all requirements” of these regulations unless specifically exempted by the DPW Director or his designee. See § 120.00.

17. Per section 120.01 of the Construction Standards and Specifications, road contractors must comply with all current federal and state laws, and must obtain all necessary permits prior to commencement of the work.

18. In addition, Delbert Road is partly owned by Douglas County. Elbert County is required to comply with Douglas County, Colorado Roadway Design and Construction Standards (“DougCo Standards”) for the improvements to Delbert Road being made in conjunction with the construction of County Road 178.

19. Section 700 of the Construction Standards and Specifications is titled Roadway Design, Traffic Control Devices and Street Lighting. Section 700 is applicable to the construction of County Road 178 and to the improvements to Delbert Road being made in conjunction with this project.

20. The Design Guide requirement that County Road 178 conform to county regulations is necessary for the health, safety, and welfare of those driving on the road, those using the road for other purposes, and those with property adjacent to or nearby the road.

21. Per Section 710.00 of the Construction Standards and Specifications, the construction of County Road 178 and the associated improvements to Delbert Road must comply with AASHTO: A Policy on Geometric Design of Highways and Streets (“AASHTO”), the Construction Standards and Specifications, and any other requirements determined by Elbert County. Use of the word “and” means that when there are inconsistent requirements in AASHTO and in the Construction Standards and Specifications, the most stringent requirement applies.

22. Developer designed County Road 178. As discussed below, those designs materially fail to conform with County regulations and AASHTO.

23. Nonetheless, Defendants approved and/or failed to prevent construction of County Road 178 and the associated improvements to Delbert Road based on Developers’ materially deficient road designs.

24. Per section 122.00, modifications to the Construction Standards and Specifications can be obtained. However, “[t]he specified procedure shall be demonstrated to be practical and that the modification conforms to the intent and purpose of the specified procedure. The requested modification shall not lessen any design requirement.” No such modification was obtained with regard to County Road 178.

25. Based on the materially deficient designs, construction on County Road 178 and the associated improvements to Delbert Road has begun.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment: Posted Speed and Design Speed)

26. Plaintiffs incorporate all previous allegations.

27. Per the approved road designs, County Road 178 was designed as an Elbert County Rural Major Collector road.

28. Per the approved road designs, County Road 178 is to have a posted speed of 40 miles per hour.

29. Per the approved road designs, County Road 178 was designed for 45 miles per hour.

30. However, the Construction Standards and Specifications § 724.04 provides that Rural Major Collector roads are to have a posted speed limit of 35 miles per hour. Accordingly, to the extent that County Road 178 is to be a Rural Major Collector road, a speed limit of 40 miles per hour is inconsistent with County regulations.

31. Additionally, County Road 178 as planned for future development fits the description of a Minor Arterial Road based on anticipated traffic volume in the Construction Standards and Specifications § 723.01. As such, the design speed must be at least 10 miles per hour greater than the posted speed, or, in this case, the design speed needed to be 50 miles per hour. Accordingly, County Road 178 with a posted speed for 40 miles per hour and a design speed of 45 miles per hour is inconsistent with County regulations.

32. Additionally, AASHTO § 6.2.1.1 provides that rural collector roads over rolling terrain with over 2,000 vehicles per day must be designed for 50 miles per hour, and such roads over level terrain must have a design speed of 60 miles per hour.

33. Plaintiffs are entitled to a declaratory judgment providing that the posted speed and design speed for County Road 178, as approved by Defendants, are inconsistent with County regulations and AASHTO.

34. Per the approved road designs, Delbert Road was designed as an Elbert County Minor Arterial Road and a Douglas County Rural Arterial Road.

35. Delbert Road has a posted speed of 40 to 45 miles per hour. Accordingly, per the Construction Standards and Specifications § 723.01, the improvements to Delbert Road need to have a Design Speed of at least 50 to 55 miles per hour.

36. Pursuant to the DougCo Standards Table 4-1, the design speed for a Rural Arterial Road such as Delbert Road is to be 70 miles per hour, and the design speed for a Minor Arterial Road is to be 55 miles per hour (DougCo Standards § 4.3.7).

37. The plans for the improvements to Delbert Road, as approved by Defendants, indicate a design speed of only 45 miles per hour.

38. Plaintiffs are entitled to a declaratory judgment providing that the posted speed and design speed for Delbert Road, as approved by Defendants, are inconsistent with County regulations for both Elbert County and Douglas County.

39. Plaintiffs are legally interested, per C.R.C.P. 57(b) and C.R.S. § 13-51-106, per the deeds to their property within Elbert County and within 500 feet of proposed County Road 178, per the Elbert County Subdivision Regulations, per the Construction Standards and Specifications; per Resolution 21-10 and the Development Guide; and per state and federal law.

40. Plaintiffs are seeking a determination of construction or validity arising out of the approval of Resolution 21-10 and, specifically, whether the plans for County Road 178 and Delbert Road as approved by Defendants are in conformance with Resolution 21-10, the Development Guide, County regulations, and state and federal law.

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

SECOND CLAIM FOR RELIEF
(Declaratory Judgment: Intersection Spacing)

42. Plaintiffs incorporate all previous allegations.

43. Per the approved road designs, the intersection with Delbert Road and Wallen Road would be approximately 800 feet from the intersection with Delbert Road and County Road 178.

44. Per the approved road designs, the intersection with Delbert Road and Buckskin Road would be approximately 1150 feet from the intersection of Delbert Road and County Road 178.

45. This design is inconsistent with the Construction Standards and Specifications §§ 723.01(i) and 724.04(j), and DougCo Standards § 4.3.7, all of which require intersection spacing to be ¼ mile apart.

46. Plaintiffs are entitled to a declaratory judgment providing that the intersection spacing design of Delbert Road, as approved by Defendants, is inconsistent with County regulations.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment: Acceleration and Deceleration Lanes)

47. Plaintiffs incorporate all previous allegations.

48. Per the approved road designs for County Road 178, there will not be an acceleration lane or a deceleration lane on Delbert Road or County Road 178 at the intersection of those two roads.

49. This design is inconsistent with the Construction Standards and Specifications §§ 723.01(m) and 728.01.

50. Plaintiffs are entitled to a declaratory judgment providing that the lack of such acceleration and deceleration lanes on County Road 178 and on Delbert Road is inconsistent with County regulations.

FOURTH CLAIM FOR RELIEF
(Declaratory Judgment: Entering Sight Distance)

51. Plaintiffs incorporate all previous allegations.

52. Both passenger vehicles and multi-unit trucks are expected to use County Road 178.

53. Construction Standards and Specifications § 728.04 addresses the minimum sight distance required for vehicles turning either left or right from County Road 178 onto Delbert Road. Delbert Road has a posted speed of 40 to 45 miles per hour, the minimum sight distance for passenger vehicles is 400-450 feet, and for multi-unit trucks is 680-765 feet.

54. Traffic studies have shown that despite Delbert Road's posted speed of 40 to 45 miles per hour, approximately 15% of vehicles using the road travel at speeds in excess of 51 miles per hour. Accordingly, to protect the safety of vehicles turning from County Road 178 onto Delbert Road, the entering sight distances should be significantly longer.

55. The AASHTO entering sight distance requirements are more stringent. Per Table 9-7, the entering design sight distance for passenger cars turning left from County Road 178 onto Delbert Road is 555 feet and for multi-unit trucks is 845 feet. Furthermore, that sight distance calculation assumes—contrary to the facts—that Delbert Road has a grade of 3% or less. Given Delbert Road's actual grade (-3.28%), the sight distance would have to be longer.

56. Per AASHTO Table 9-9, the entering design sight distance for passenger cars turning right from County Road 178 onto Delbert Road is 480 feet. For trucks, the entering design sight distance would have to be at least 770 feet. That sight distance calculation assumes—contrary to the facts—that Delbert Road has a grade of 3% or less. Given Delbert Road's actual grade (-3.28%), the sight distance would have to be longer.

57. Per AASHTO § 9.5.3, given the specific characteristics of Delbert Road, it must be designed so that the sight distance for vehicles turning left from County Road 178 is at least 843 feet, and for vehicles turning right from County Road 178 is at least 770 feet.

58. The planned and approved improvements to Delbert Road do not satisfy these minimum entering sight distance requirements.

59. Plaintiffs are entitled to a declaratory judgment providing that the entering sight distances, as approved by Defendants, are inconsistent with both County regulations and AASHTO guidelines.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment: Decision Sight Distance)

60. Plaintiffs incorporate all previous allegations.

61. The term “decision sight distance” relates to the distance necessary for a driver to make an appropriate driving decision and act accordingly in the event of a road impediment.

62. In the event of a road impairment at the intersection with County Road 178, it is reasonable to expect a driver on Delbert Road to attempt either Avoidance Maneuver C or Avoidance Maneuver E, as identified in AASHTO § 3.2.3.

63. Per AASHTO § 3.2.3 and Table 3-3, the minimum decision sight distance for cars travelling either direction on Delbert Road to make Avoidance Maneuver C is 750 feet and to make Avoidance Maneuver E is 1030 feet.

64. Because either maneuver might be attempted, Delbert Road must be designed with a decision sight distance of 1030 feet.

65. Per Douglas County's own calculations, the decision sight distance for cars travelling north on Delbert Road to the intersection with County Road 178 is 583 feet. As Matt Williams, Assistant Director Development Review & Stormwater of Douglas County, stated in an email to Rory Hale, there were safety concerns with Delbert Road before the County Road 178 project. Adding the proposed intersection with County Road 178 only exacerbates those safety problems.

66. As designed, the decision sight distance is unsafe and inconsistent with County regulations and AASHTO.

67. Plaintiffs are entitled to a declaratory judgment providing that the decision sight distance, as approved by Defendants, is inconsistent with both County regulations and AASHTO guidelines.

SIXTH CLAIM FOR RELIEF
(Declaratory Judgment: Shoulder Widths and Surface)

68. Plaintiffs incorporate all previous allegations.

69. Per Construction Standards and Specifications § 723.01(k), a 6-inch vertical curb and gutter is required for all Minor Arterial Roads.

70. Per the Construction Standards and Specifications § 724.04(k), no curb is required, but a 4-foot paved shoulder, plus a 4-foot gravel shoulder is required for Rural Major Collector roads.

71. Per the DougCo Standards, Table 4-1, a 2-6 foot paved shoulder, plus a 2-6 foot gravel shoulder, is required for rural arterial roads.

72. Per the DougCo Standards, Table 4-1, a 2-4 foot paved shoulder, plus a 2-4 foot gravel shoulder, is required for rural collector roads.

73. Per AASHTO Table 7-3, arterial roads in rural areas designed for over 2,000 vehicles per day must have at least an 8-foot shoulder and should be paved, except in certain limited situations inapplicable here.

74. Plans for Delbert Road, as approved by Defendants in conjunction with this project, do not satisfy these shoulder requirements.

75. Plans for County Road 178, as approved by Defendants, do not satisfy these shoulder requirements.

76. Plaintiffs are entitled to a declaratory judgment providing that the plans for Delbert Road and County Road 178, as approved by Defendants, are inconsistent with both County regulations and AASHTO guidelines with regard to the shoulder widths and surface.

SEVENTH CLAIM FOR RELIEF
(Declaratory Judgment: Shoulder Slope)

77. Plaintiffs incorporate all previous allegations.

78. Per the Construction Standards and Specifications § 613.01(B): “Side slopes shall be as flat as practical. Side slopes of 4:1 (run:rise) shall be considered a normal minimum. Under special conditions, slopes of 3:1 may be utilized with written approval of the DPW Director or designee. The practical slope for mowing equipment is 4:1 or less.” However, **“IN NO CASE SHALL SLOPES OF SODDED OR SEEDED AREAS EXCEED FOUR (4) HORIZONTAL TO ONE (1) (4:1).”** See Construction Standards and Specifications § 1023.00 (emphasis in original).

79. This slope requirement also helps to reduce erosion.

80. Plans for Delbert Road, as approved by Elbert County in conjunction with this project, and for County Road 178 do not satisfy these shoulder requirements in some locations.

81. No “special conditions” justify a deviation from the 4:1 slope requirement.

82. Defendants approved the road plans deviating from the 4:1 slope requirement without written approval from the DPW Director or designee.

83. Per the plans approved by Defendants, the shoulders are going to be seeded.

84. Plaintiffs are entitled to a declaratory judgment providing that the plans for Delbert Road and County Road 178, as approved by Defendants, are inconsistent with County regulations with regard to shoulder slope.

EIGHTH CLAIM FOR RELIEF
(Declaratory Judgment: Culvert Size)

85. Plaintiffs incorporate all previous allegations.

86. The proper size of culverts is required to prevent flooding on nearby lands.

87. Per Construction Standards and Specifications § 613.03, the culvert, must be designed to avoid sedimentation, undermining of culvert, or erosion of downstream channels. Outlets shall be provided with either flared end sections or headwalls, with wingwalls and riprap. Projecting ends are not acceptable. Additional outlet control in the form of riprap channel shaping, etc. may be required. As such, the culvert, including inlet and outlet structures, shall properly convey water and debris at all stages of flow. An overflow path must be provided in case the culvert becomes plugged.

88. Per Construction Standards and Specifications § 613.03, culverts must be sized to have sufficient capacity to pass all of the runoff from the major storm if twenty (20) percent of the pipe is plugged. A major storm is a 100-year storm. See Construction Standards and Specifications § 611.02.

89. Per the Drainage Report approved the Defendants, County Road 178 will not accommodate a 20% pipe plug.

90. Plaintiffs are entitled to a declaratory judgment providing that the plans for Delbert Road and County Road 178, as approved by Defendants, are inconsistent with County regulations with regard to culvert size.

NINTH CLAIM FOR RELIEF
(Declaratory Judgment: Traffic Analysis Report)

91. Plaintiffs incorporate all previous allegations.

92. The Construction Standards and Specifications § 162.02 requires the completion of a Traffic Analysis Report that must accompany all site development plans and final plat applications.

93. In construction of a road, planning must assume the development being served by the road is fully developed. See Construction Standards and Specifications §§ 722.00-724.00; 162.01.03 (requiring consideration of existing and projected traffic volumes).

94. Pursuant to the Development Guide, as approved by Defendants, full development is to include a density cap of 1,786 units.

95. Developer was required to complete a Traffic Analysis Report assuming full development of 1,786 units.

96. Developer, through LCS Transportation Consultants, Inc., completed a Traffic Analysis Report dated April 27, 2020 and provided in the Spring Valley Ranch PUD. This report addresses only 676 building units, while ignoring the impact of full development (1,786 units). Accordingly, the Traffic Analysis Report approved by Defendants is materially deficient.

97. Per the Construction Standards and Specifications § 162.02.03(L), (P), and (Q), the Final Traffic Analysis Report must include, among other things, “[t]raffic accident investigations of existing conditions and what effect proposed development shall have[;]” “[c]ompliance/deviations from Elbert County’s most current transportation master plan[;]” and “[s]ight obstructions, visibility, and line of site analyses[.]”

98. The Traffic Analysis Report that was approved by Defendants is also materially deficient in that it does not address the matters identified in the Construction Standards and Specifications § 162.02.03(L), (P), and (Q).

99. Plaintiffs are entitled to a declaratory judgment providing that the Traffic Analysis Report, as approved by Defendants, is materially deficient and unfit for its purpose.

TENTH CLAIM FOR RELIEF
(Declaratory Judgment: Immunity Inapplicable)

100. Plaintiffs incorporate all previous allegations.

101. Plaintiffs are entitled to a declaratory judgment providing that the Defendants Hale and O’Hearn and other Defendants who approved the plans for County Road 178 and the associated improvements with Delbert Road would not enjoy immunity and could be held personally liable in tort for injuries resulting from approval of plans in violation of County regulations, AASHTO, and/or any other applicable local, state, or federal law. See, e.g., C.R.S. § 24-10-118(1).

ELEVENTH CLAIM FOR RELIEF
(Declaratory Judgment: Mandamus Relief)

102. Plaintiffs incorporate all previous allegations.

103. Defendants had a duty to review the plans for County Road 178 and the associated improvements to Delbert Road, and to approve them only if they are in compliance with County regulations, AASHTO, and other applicable state and federal regulations.

104. Plaintiffs have a clear right to mandamus relief under C.R.C.P. 106(a)(2).

105. Defendants' duty is purely ministerial involving no exercise of judgment or discretionary right to dispense with County regulations, AASHTO, or other applicable state and federal regulations.

106. Plaintiffs have no other available remedy to ensure compliance with County regulations, AASHTO, and other applicable state and federal regulations.

107. Plaintiffs are entitled to mandamus relief compelling Defendants [and, specifically, the person who approved the plans] to reject plans for County Road 178 and the associated improvements to Delbert road unless and until those plans comply with County regulations, AASHTO, and other applicable state and federal regulations, including, but not limited to, those matters discussed in the paragraphs above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

A. A declaration the plans for County Road 178 and Delbert Road, as approved by Defendants, are inconsistent with County regulations and/or AASHTO with regard to:

- 1) Posted speed and design speed;
- 2) Intersection spacing;
- 3) Acceleration and deceleration lanes;
- 4) Entering sight distance;
- 5) Decision sight distance;
- 6) Shoulder widths and surface;
- 7) Shoulder slope;
- 8) Culvert size; and
- 9) The Traffic Analysis Report.

B. A declaration that the individuals responsible for approving the plans for County Road 178 and the associated improvements to Delbert Road would not enjoy immunity and could be held personally liable in tort for injuries resulting from approval of plans in violation of County regulations, AASHTO, and/or any other applicable local, state, or federal law.

C. Mandamus relief compelling Defendants [and, specifically, the person who approved the plans] to reject plans for County Road 178 and the associated improvements to Delbert road unless and until those plans comply with County regulations, AASHTO, and other applicable state and federal regulations, including, but not limited to, those matters discussed in the paragraphs above.

D. For costs and fees as allowed by law.

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

Respectfully submitted this 18th day of June, 2021.

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

By:

Donald M. Ostrander, No. 12458

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