

Dear Mount Dallas Neighbor:

The Board thought it would be a good idea to share with you Derek Mann's (our attorney) clarification of the October 30th ruling from Judge Eaton:

The plaintiffs were indeed asking the Court to rule that the Association had no authority under the Buck Mt decision to collect for road maintenance: The plaintiffs' first argument in their "Motion for Summary Judgment" (page 10, lines 20-26) is that the Association lacks the authority "it has claimed to possess... under the Buck Mountain decision." Mr. Brain's September 29 email to me states that the summary judgment motion is necessary to prove that "the Buck Mountain case does not authorize this voluntary association to take... (the collection) action... (described in the Association's April 8 letter to the owners)."

That would have been a nearly complete defeat for the Association, depriving it of the right in this case to assert that it may: (a) recoup any costs for road maintenance; (b) maintain the roads during the pendency of the lawsuit; (c) argue in the case on behalf of owners; or (d) assert that it should be the road maintenance administrative entity going forward.

However, contrary to Ms. Swin's conclusion, the Judge firmly upheld the Association's right to recover for reasonable road maintenance costs under the Buck Mt case. The Order denies the plaintiffs' request that the Association be found to lack the right "to enter into contracts on behalf of benefitted property owners...", and the Judge said during his ruling that the Association may continue to maintain the roads as reasonably necessary during the lawsuit and seek recovery for its costs at trial.

Confusion arises, because the plaintiffs couched their motion in terms of the Association's "legal" rights (which only may arise from an agreement in writing), and the Judge was very careful to distinguish those from "equitable" rights (which usually arise among individuals without a written agreement). This distinction is natural in a case about landowners' rights and obligations in the absence of a written covenant. As has always been clear, as the Association has always admitted, and as the Judge ruled, the Association has no rights that arise from a written agreement.

However, as the Association argued on Friday, and as the Judge's ruled, the Association does in fact have "equitable" rights which include the right to continue to participate in the lawsuit on behalf of owners and to continue to maintain and be reimbursed for road maintenance.

In the Summary Judgment Hearing, Judge Eaton told us that we can continue doing what we have done in the past. Lawsuit or no lawsuit, the chipsealed road will probably need to be re-coated by 2019, so 2015 invoices are being prepared and will go out shortly. They will reflect the results of the early summer surveys where administrative costs and weed whacking expenses are shared equally and reserve funds for future repaving will be based upon "area of road traversed". Because the Court has told us we have no legal authority, these dues are strictly voluntary. However, both the Welker's and the Association are in agreement that dues should be mandatory for all users of the road, so change is coming and will be confirmed at trial.

If you would like to read a copy of the transcription from the hearing, it is on the Mount Dallas Association website, www.mountdallas.com select the Documents Tab, enter the password sanjuanisland. A big thanks to Sandra Hawley and Flo McAlary for taking the time to transcribe the audio file. A few portions of the recording were inaudible. Please contact San Juan County Superior Court if you would like to obtain the original audio file.

The Board is working on a Road Maintenance Agreement that includes the information from our surveys and your petitions. We'd like to make the trial as quick and simple as possible by submitting a Road Maintenance agreement signed by a supermajority of owners. Once this is complete, we will send it to you for your review and acceptance.

As always, the Board is happy to speak with you if you have any suggestions, questions or concerns. We appreciate your continued support.

Kindly,

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