



Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

Jon Hotaling <[redacted]>
To: Sky Tallman <stallman@huerfano.us>, Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[redacted]>

Mon, Nov 28, 2022 at 11:40 AM

Hi Sky and Lisa,

Below and attached, please see the title attorney's clarification. Please let me know if you need anything else.

Best,

Jon Hotaling
[redacted]

----- Forwarded message -----
From: **Perlstein, Janet E.** <[redacted].com>
Date: Mon, Nov 28, 2022 at 10:38 AM
Subject: FW: [EXT] HOA papers for Cuchara Mountain Park Estates?
To: Jon Hotaling <[redacted]up>
Cc: Bohara, Stephen F. <[redacted]m>

Jon,

The deed restrictions were granted to the Cuchara Mountain Park Estates Master Homeowners Association ("HOA"). The Declaration of Covenants Conditions and Restrictions for the HOA was terminated pursuant to the attached termination document, after such termination was voted on by the requisite percentage of owners at a duly called meeting of the owners association. At that same meeting, you were appointed as the president of the HOA and were delegated the authority to file all documents necessary to effect the resolutions adopted at the HOA meeting. As part of the termination, the owners agreed to relinquish any interest in the deed restrictions. In following the resolutions adopted by the owners at the meeting of the HOA, the HOA conveyed the deed restricted property to you and Jennifer pursuant to the attached Bargain and Sale Deed, relinquishing all rights title and interest of the HOA in and to the deed restrictions. Since the deed restrictions were relinquished by the HOA, which was the party holding the interest therein, the deed restrictions no longer exist and are of no further force or effect. Please let me know if you need any additional information.

Janet Perlstein
Partner
Fox Rothschild LLP
1225 17th St.
Suite 2200
Denver, CO 80202
[redacted] direct
[redacted] - cell
[redacted] - fax
[redacted].com
www.foxrothschild.com

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

--
Liberty Service Group
[redacted]

2 attachments

- 112251363_1_TERMINATION OF CCRS FOR CUCHARA MOUNTAIN PARK ESTATES MASTER HOA RECORDED JULY 13, 2020, HUERFANO COUNTY, CO-C1-C.PDF
238K
- 112251440_1_BARGAIN AND SALE DEED - CUCHARA MOUNTAIN PARK ESTATES MASTER HOA TO JONATHAN AND JENNIFER HOTALING - RECORDED JULY 13, 2020, HUERFANO COUNTY, CO-C2-C-C.PDF
73K



Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

Jon Hotaling <[redacted]>

Mon, Nov 28, 2022 at 12:01 PM

To: Sky Tallman <stallman@huerfano.us>, Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[redacted]>

Also, fyi, to your question about asking if the HOA had the right to relinquish the restrictions, Janet wrote:

No, the county does not have a point. All easements are granted in perpetuity, unless they specifically state that they are limited to a particular period of time. That does not prohibit the beneficiary of the easement from relinquishing its interest, and by doing so, extinguishing the easement, as occurred in this situation. The HOA is the beneficiary of the deed restriction. The HOA, as the beneficiary of the deed restriction, by vote of the requisite percentage of owners, resolved to relinquish any interest in the deed restriction (which relinquishment occurred both in the termination of Declaration of Covenants, Conditions and Restrictions and also in the Bargain and Sale deed, which conveyed any interest owned by the HOA in the deed restricted property to you and Jennifer) and to dissolve the HOA (which dissolution occurred on July 20, 2020). Let me know if you have any other questions.

Janet Perlstein

Partner

Fox Rothschild LLP

1225 17th St.

Suite 2200

Denver, CO 80202

[redacted] direct

[redacted] cell

[redacted] fax

[redacted]schild.com

www.foxrothschild.com

[Quoted text hidden]



Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

Sky Tallman <stallman@huerfano.us>

Thu, Dec 1, 2022 at 1:30 PM

To: Jon Hotaling <j[REDACTED]@huerfano.us>

Cc: Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[REDACTED]>

Jon,

I have discussed this with the County Attorney and have two outstanding concerns which do not appear to be addressed in the response above:

1. The deed restrictions grant use to owners, tenants, and guests of grantee or Cuchara Mountain Resort. Cuchara Mountain Resort refers to the Panadero subdivision, not just to the members of the Cuchara Mountain Park Master Homeowners Association, therefore the restrictions apply to more than just the grantee.
2. Section 2.02.11 of our Land Use Code requires BOCC action to remove deed restrictions. It reads: *The type of dedication, reservation or conveyance required in a given case shall be determined by the Board of County Commissioners in consultation with the Planning Commission, depending on the proposed size, use(s) and other characteristics of the subdivision. A reservation or dedication of areas for the use of owners or users of lots within the subdivision may be acceptable. Such areas shall be restricted to their intended use by plats, deed restrictions and/or recorded covenants which run with the land in favor of the future owners of property within the subdivision and which cannot be defeated or eliminated without the consent of the Board of County Commissioners. In the event of a reservation or dedication for the use of owners of lots within a subdivision, the applicant shall provide for the creation of a homeowners' association or similar organization with powers of assessment for maintenance, improvements and upkeep of such areas and the provisions contained within the homeowners' association bylaws or similar governing document shall receive approval from the Board of County Commissioners prior to acceptance of a final plat.*

Sincerely,

[Quoted text hidden]

[Quoted text hidden]



Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

Jon Hotaling <[REDACTED]>

Mon, Dec 5, 2022 at 12:15 PM

To: Sky Tallman <stallman@huerfano.us>

Cc: Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[REDACTED]>

Hi Sky and Lisa,

Below is our attorney's response to your previous inquiry. The language of the documents appear to be straightforward and clear. If you or the BOCC are still unsure, please let me know if you have any additional questions or concerns that I/we can address....

Via Scott Ross:

The deed restriction set forth in the July 22, 1999 Warranty Deed grants access to the property for use to only the owners, tenants and guests of Grantee or Cuchara Mountain Resort. However, the deed restriction further provides that these owners, tenants, and guests may have access in accordance with the Declaration of Covenants on file for Cuchara Mountain Park Estates. The Declaration of Covenants for Cuchara Mountain Park Estates was terminated on July 13, 2020 by a Termination recorded at Reception No. 419220. Therefore, access for use of the property cannot occur in accordance with the Declaration of Covenants. Since the basis for having access has terminated, access is no longer available to such owners, tenants and guests, and their rights have effectively terminated.

Additionally, there are no owners, tenants or guests of Grantee or Cuchara Mountain Resort because neither Grantee or Cuchara Mountain Resort are entities that remain in existence. The Grantee under the Deed, the Cuchara Mountain Park Estates Master Homeowners Association, was dissolved in 2020. Further, in connection with the termination of the Declaration of Covenants and dissolution of the Master Homeowners Association, the members/owners of the Cuchara Mountain Park Estates Master Homeowners Association relinquished their rights under the Deed and that relinquishment is binding on the owners, tenants and guests of the Master Homeowners Association. Accordingly, the owners, tenants or guests of Cuchara Mountain Park Estates Master Homeowners Association have no rights under the Deed.

As for the owners, tenants, and guests of Cuchara Mountain Resort, the County asserts that Cuchara Mountain Resort refers to the Panadero subdivision but offers no explanation for this assertion. Cuchara Mountain Resort more likely appears to be a reference to a business entity, which business entity is now defunct. In that case, there would not be any owners, tenants or guests of the defunct entity. However, regardless of the status of the owners, tenants or guests of Grantee or Cuchara Mountain Resort, their rights for access for use of the property have terminated because the Declaration of Covenants which provided the basis for having access has been terminated.

As a practical matter, the rights have either been relinquished or terminated and to the extent that Section 2.02.11 of the County's Land Use Code requires BOCC action to remove deed restrictions, the removal of the 1999 deed restrictions by consent of the BOCC should be included as part of the land use application, review and approval.

Best regards,

Scott Ross

Partner

Fox Rothschild LLP

1225 17th St.

Suite 2200

Denver, CO 80202

(303) 833-7007 direct

[REDACTED] fax

[Quoted text hidden]



Sky Tallman <stallman@huerfano.us>

Cuchara Mountain Park Estates - L2 and L3 deed restrictions termination

Jon Hotaling <[redacted]>

Mon, Dec 5, 2022 at 12:25 PM

To: Sky Tallman <stallman@huerfano.us>

Cc: Lisa Powell-DeJong <lisa@huerfano.us>, BH2 Land Surveying <[redacted]>

From Janet, FYI....

"The county may be trying to argue that, based on its regulations, there is a public right of access that cannot be terminated without the board's consent. However, that is not what the documents say. Scott's explanation should be persuasive to cause the county board to agree to vacate the easements, but there is no guaranty that the board will agree. Please let us know if they raise any other arguments."

[Quoted text hidden]



Sky Tallman <stallman@huerfano.us>

Plat Amendment Deed Restrictions

Sky Tallman <stallman@huerfano.us>

Tue, Nov 22, 2022 at 2:03 PM

To: BH2 Land Surveying <[redacted]> Jon Hotaling <[redacted]>
Cc: Lisa Powell-DeJong <lisa@huerfano.us>


Bill and Jonathan,

I would like to let you know that your application for vacation and plat amendment are on the Planning Commission agenda for Dec. 8 at 1:30. In reviewing the application for the plat amendment, I have found that there are deed restrictions on lots L2 and L3 that have not been addressed. You may want to seek legal counsel on how to address these restrictions. Please see the deed attached.

Sincerely,

--

Sky Tallman, AICP
Huerfano County Land Use Director
o: 719-738-1220 ext. 108
c: 719-890-0047

 **1999 Warranty Deed L1 L2 L3 open space.pdf**
308K