

## **Oberlander Litigation Statement of Case**

In early 2021, it came to the Board's attention that Mr. Oberlander, who owns Tract 25a of the HVR subdivision, has been using the HVR private roads to access the agricultural land he leases from the State of Montana located on the opposite side of his Tract. That State land already has access to a county road from Dry Gulch. However, Oberlander uses the HVR private roads because they are more convenient to his commercial agricultural operation on the State land.

When confronted with the issue, Mr. Oberlander refused to cease use of the HVR private roads to access the State land. He also refused to contribute any funds for road maintenance costs in connection with use of the roads to access the State land. A geotechnical engineering firm was retained to determine the impact of Mr. Oberlander's use of the HVR roads to access the State land. Their analysis, which was based in part upon Oberlander's own reported use of the roads, determined that the roads used to access the State land, which are a portion of Hidden Valley Road South and Fescue Slope Road, are under-designed for the traffic and vehicles Mr. Oberlander uses to access the State land. According to their analysis and evaluation, the engineers estimate that the traffic accessing the State land contributes approximately 12% of the total traffic loads and impact on the used portion of Hidden Valley Road South and approximately 37% of the total traffic loads and impact on Fescue Slope Road.

As it stands, the HOA members are covering the road maintenance costs for Mr. Oberlander to access his commercial agricultural operation on the State land. Given Mr. Oberlander's refusal to cease use of the HVR roads or contribute to the road maintenance costs for the added burden to the roads, the Board decided to file a lawsuit against Mr. Oberlander. The lawsuit claims that Mr. Oberlander's use of the HVR roads to access the State land violates

the Covenants and that the State land does not have an easement over the HVR roads. The lawsuit requests that Mr. Oberlander cease using the HVR roads to access the State land, or alternatively, that he compensates the HOA for the road maintenance costs associated with added burden to the roads.

In response to the lawsuit, Mr. Oberlander sued each property owner along Fescue Slope Road and the impacted portion of Hidden Valley Road South claiming that the State land has an easement over their properties. Since that claim involves the HVR private roads, the HOA is assisting several of those property owners in defending Mr. Oberlander's easement claim.

Early in the case, the District Court determined that Mr. Oberlander did not have legal standing to claim a prescriptive easement for the State land when the State itself, as the owner of the land, does not claim an easement. The State of Montana has not expressed any interest in the claimed easement. The Court dismissed Oberlander's easement claim and issued a preliminary injunction in the case that ordered Oberlander to cease use of the HVR roads to access the State land. Mr. Oberlander appealed that decision. On appeal, the Montana Supreme Court recognized that the claimed easement would attach to the State land and run with the title to property, which means the easement would exist long after Oberlander's lease. However, the Supreme Court also determined that Oberlander, as a lessee of the State land, does have legal standing to claim the existence of a prescriptive easement over the HVR lots, even though the State does join him in that claim. The preliminary injunction was lifted, and the case was sent back to the District Court. At that time, Oberlander requested a new judge for the case and that request was granted.

Efforts were made to join the State of Montana in the case given that the claimed easement, if awarded, would benefit and attach to the State's ownership of the land, and continue

in perpetuity even after Mr. Oberlander's lease ends. For reasons that we disagree with, the new judge in the case denied our motions and will not allow us to bring the State into this case as an additional party. On the other hand, Mr. Oberlander filed a motion to dismiss the HOA's claim that his use of the roads to access the State land violates the Covenants. The new judge denied Oberlander's motion and determined that his use of the roads to access the State land could be considered a violation of the residential use restriction and commercial use prohibition in the Covenants.

Recently, Oberlander's initial attorneys withdrew from representing him in the case and he has obtained new attorneys to represent him. The HOA's attorney has met with Oberlander's new attorneys to discuss a possible resolution of the case. It is the Board's hope that an acceptable settlement can be reached and further legal fees on this matter can be avoided. However, the Board also wants to make sure the HOA members are not paying for road maintenance costs attributable to Oberlander's use of the roads to access the State land, and that a permanent easement is not recognized through HVR to access the State land. There was a recent scheduling conference with the attorneys and the court to determine the remaining case schedule and the trial dates. We should have the details of the case schedule shortly.

Given that there is pending litigation on this matter, the HOA Board is not able to share specifics about the case strategy and its communications with the HOA's attorney without waiving its attorney-client privilege and other privileges and protections afforded to parties to a lawsuit. If you still have questions about the case, you can contact a Board member after the meeting or you may contact the HOA's attorney, Joseph Houston, with the law firm Jones & Houston in Missoula.