

MOUNTAIN SPRINGS HOMEOWNERS ASSOCIATION

RESOLUTION OF THE MOUNTAIN SPRINGS RANCH HOMEOWNERS ASSOCIATION ADOPTING A POLICY AND PROCEDURES CONCERNING SNOW REMOVAL FROM THE ROADS

PURPOSE: To facilitate snow removal and winter access to property within Mountain Springs Ranch this policy establishes these rules and guidelines.

AUTHORITY Colorado Common Interest Ownership Act (CCIOA), C.R.S. §38-33.3-302(a) and the Second Revised and Restated Protective Covenants (2023) for the Mountain Springs Ranch Homeowners Association.

RESOLUTION: The Board of Directors (BOD) on behalf of the MSR Homeowners Association (HOA) hereby adopts the following policy regarding the removal of snow from roads within the Mountain Springs Ranch. The term "snow removal" shall include snow plowing, snow blowing or any other method of removing snow from the roads:

1. MSR Priorities.
 - a. Funds approved by the HOA at the annual meeting for snow removal shall be used only for snow removal arrangements for Mountain Springs Road from the end of pavement on County Road 127 to the intersection of Black Bear Road; and on Saddle Drive from the intersection of Mountain Springs Road to the switchback on Saddle Drive (the "Access Road").
 - b. Property owners may arrange, at their own expense, private snow removal of all other roads, defined as "secondary roads," including: Mountain Springs Road beyond the intersection with Black Bear Road, Saddle Drive beyond the parking area at the switchback on Saddle Drive, Black Bear Road, Forest Glen, Hidden Glen, North Marsh Lane, South Marsh Lane and Hidden Springs, provided they meet the requirements below.
 - c. This policy is intended to support member operators and contractors in utilizing a reasonable and consistent universal protocol for snow removal on all roads to ensure safe ingress/egress for property owners and to protect the road surface, utilities and surrounding vegetation within the road easement. The Board of Directors acknowledges that there are many variables when removing snow including but not limited to: amount of traffic, undulations in the road surface, weather/temperature variations, snow moisture and aspect, all of which can result in dirt and gravel being exposed and displaced. Snow removal operators should make every reasonable effort to minimize surface exposure and protect the surface of the road, utility vaults, boxes and vegetation in the road easement.
 - See attached MSR HOA attorney's memo outlining the scope of the road easement and utility easement within MSR HOA.
2. Except in the case of an emergency, no member may independently plow or contract for snowplowing on Mountain Springs Ranch roads without first receiving written approval

to do so from the Board of Directors of their intentions and plans for plowing to provide ingress/egress to their property on secondary roads.

3. Snow removal operators (employed/contracted by the HOA or private owner and/or contracted operators) should adhere to these rules and guidelines with respect to both the Main Road and the Secondary Roads.
 - a. The member and/or its contractor shall at all times observe and comply with all existing policies of the Association and all applicable federal, state and local rules and regulations.
 - b. Reasonable effort should be made such that snow shall not be removed in a manner that would unreasonably impede ingress/egress to any property, without such property owner's consent. Any snowbank in front of a driveway or road intersection must be cleared by the operator if it is of a size that would unreasonably prevent ingress/egress.
 - c. All snow removal vehicles shall at all times remain within the boundaries of the road with the exception of designated parking and passing pullouts that need to be cleared. Existing parking and passing pullouts may be maintained within the road easement without requiring owner's permission. If the creation of a parking area or passing pullout must extend beyond the easement, the owner's permission must be obtained in writing. Snow shall be deposited so as to not cause unreasonable damage to private property within the road easement unless prior arrangements have been made with individual property owners and the Board notified of such arrangements (eg: Lots 15 & 31 allow certain operators to create snow drift rows on Saddle Drive to reduce snow drifts across road).
 - d. Contractors must provide a certificate of insurance that meets or exceeds State limits for General Liability, Automobile Liability and Workers' Compensation.
 - e. It is recommended that Member operators carry insurance policy that lists coverage in an amount:
 - a. General liability: \$ 500,000 occurrence
 - b. Automobile liability: \$250,000 occurrence
 - f. The operator may not unreasonably impede other vehicles, snowmobiles or pedestrians. However, when approaching snow removal equipment, pedestrians and vehicles should yield right of way and use extreme caution.
 - g. Within reason, the member/operator is responsible for any excessive or non-routine damage to the road or to private property within the road easement or injury arising from the operation of snow removal equipment, including, but not limited to damage to the road grade, ditches, culverts, and trees. The BOD recognizes that the act of snowplowing always causes some damage. The road easement is 60 feet in width, which exceeds the width of the driving surface of the road; although any operator should keep equipment within the driving surface, members understand that snow may be tossed and stored within the road easement. The member/operator agrees to notify the BOT and/or the owner of the damaged property as soon as possible of becoming aware of damage due to snow removal and to work with the property owner to find a satisfactory resolution to compensate for the damage if such is beyond the

normal wear and tear which results from snowplowing a dirt-surfaced road.

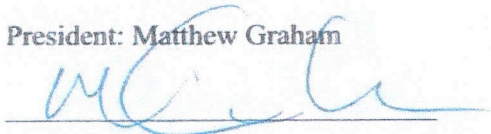
- h. The member agrees to defend, indemnify and hold harmless the HOA against any claim, liability, demands and expenses including reasonable court costs and attorney's fees, claims, liability, demands and expert consultants fees on account of injury, loss or damage arising from the operation of snow removal equipment by the member or the member's contractor or agent, except with respect to, and to the extent that such claims, liabilities, demands and expenses arise, in whole or in part, from the actions of the HOA, its contractors or agents.
- i. The Member agrees to coordinate snow removal of secondary roads with the Road Committee, other homeowners and the contractor employed by the HOA.

4. Complaints.

- a. Member complaints or comments about snow plowing may be brought to the attention of the Board by email to msrhoabot@gmail.com.
- b. Member complaints and comments should be reasonable and guided by this policy.
- c. Enforcement shall be subject to the MSR HOA 2022 Resolution on Adopting Policies Concerning Enforcement of Covenants and Rules Including Notice of Procedures and a Schedule of Fines and Collection of Unpaid Assessments.

CERTIFICATION: The undersigned, being a member of the Board of Directors of Mountain Springs Ranch Homeowners Association, a Colorado nonprofit corporation, and being authorized by the Board of Directors of the Association to do so, hereby certifies that the foregoing Resolution was adopted by the Board of Directors at a duly called and held meeting of the Board of Directors and, in witness thereof, the undersigned has subscribed his name.

President: Matthew Graham



Policy adopted on March 20, 2023

GLENWOOD SPRINGS OFFICE
901 Grand Ave., Suite 201
Glenwood Springs, Colorado 81601
Telephone (970) 947-1936
Facsimile (970) 947-1937

GARFIELD & HECHT, P.C.
ATTORNEYS AT LAW

Since 1975

www.garfieldhecht.com

September 30, 2021

Mary Elizabeth Geiger
megeiger@garfieldhecht.com

TO: Mountain Springs Ranch Homeowners Association
Board of Directors

FROM: Mary Elizabeth Geiger, Esq.

RE: Road and Utility Easements

You had requested a memo outlining the scope of the road easement and utility easement as such are defined in the Mountain Springs Ranch Covenants (as amended) and various other recorded easement documents and agreements. This memo is not privileged and the sharing of the same does not constitute a waiver of attorney-client privilege.

Background on Easements

ROW = right-of-way

All of the following referenced documents are recorded in the Garfield County Clerk and Recorder's office and should appear in each lot owner's title work.

Mountain Springs Ranch is located in Sections 19, 20, 29, 30 and 32.

Fitzgerald (Glenwood Mountain Ltd. developer) conveyed to Charles Stewart (1971, Rec. # 249107) an easement and ROW over a constructed road up Three Mile for access to property in Sections 19, 20, 29, 30 and 32.

Fitzgerald, Stewart and Scarrow (Rec. #249108) enter into an Agreement March 1, 1971, about the road, that it will be 16 feet wide driving surface and that the surface shall be maintained to Garfield County Road Standards as adopted by the BOCC. At this point Scarrow owns the land *at the bottom part of the road, Fitzgerald and Stewart above.*

2543711

On August 19, 1974, Fitzgerald records a Declaration (Rec. #264393) that he has constructed a road from the end of CR 127 and provides the legal description of the centerline of the same, and that the ROW is 50 feet wide for the first part, then 60 feet wide for the Mountain Springs Ranch.

Original Covenants recorded February 8, 1980 (Rec. #301477) reserving the ROW for the all roads (the "Road Easement"). The HOA is an unincorporated association at this point. This document also reserves to the HOA utility easements 8 feet in width around all perimeter boundaries of all lots for electric, water, sewer, gas, etc., pipes, wires, ditches, trails and bridle paths – specifying that no fences can be constructed within these easements.

Amended Covenants recorded July 28, 1980 (Rec #305979, reserving 60 foot wide Road Easement for all improved and unimproved roads to Glenwood Mountain Ltd, successors and assigns. This also expands the utility easement to HOA to include 8 feet on either side of all roads. As with the Original Covenants, the HOA is charged with maintenance of the roads, which maintenance "shall include arrangements for snowplowing" and may include plowing private driveways as agreed to between owners and the HOA. These provisions (road and utility easement reservations and maintenance responsibilities in the HOA) have remained throughout the various amendments to Covenants.

It is important to note that the HOA's road maintenance responsibilities specifically included snowplowing, for *all roads*, from 1980 until the 6th Amended Covenants adopted in 2006 which changed the language to "can be arranged at the owners expense." However, such change does not prohibit the HOA from snowplowing.

The HOA is incorporated 8/28/80. Colorado Revised Statutes (CRS) 38-34-105 provides that when a conveyance occurs to an entity prior to its formation, title passes once the entity is formed and no other conveyance is needed. Based upon this provision, which I had not reviewed previously, the conveyance in the Original Covenants of the Road Easement to the HOA couldn't vest until 8/28/80. This means that the Amended Covenants conveying the Road Easement to "successors and assigns" was the valid conveyance.

Summary of Obligations of Easement Holders and Use of Easements

In sum, the lot owners own the easements for the roads in Mountain Springs Ranch. However, the HOA is clearly charged with maintaining the roads – acting as an agent of the easement holders. This means it, like all easement holders, has the right to do what is necessary, within the 60 foot Road Easement, to maintain the Road Easement for road purposes, which a Court would likely uphold as including removal of brush/trees, creation of borrow ditches, snow storage from snowplowing, etc. *There is no specific "right or wrong" list for what can be done for road maintenance.* The HOA is the owner, user and maintainer of the Utility Easements. *The 8 foot on either side of the driving surfaces Utility Easement is completely separate and different from the 60 foot wide Road Easement and is for utility purposes.* As specifically set forth in the Covenants lot owners cannot have fences within 8 feet of the driving surface of the Roads per the Utility Easement. Colorado law does not create specific limitations on what an easement holder (or, in

the case of the HOA with regard to the Road Easement, the agent of the easement holders) can or cannot do within the easement but rather balances what is reasonably necessary for the enjoyment and use of the easement and the purpose for which it was granted with the underlying landowners use and enjoyment of their land – which cannot “unreasonably interfere” with the easement.

The question of landscaping becomes more difficult, but if the HOA’s contractors are doing work necessary for maintaining the Road then improvements of any kind located within the ROW are at risk. For example, the Basalt Sanitation District owns and operates the sewer system within the Town of Basalt. It, of course, has easements for its sewer lines. Landowners, of course, have landscaping and potentially other improvements over the easement. However, if the District has to dig to access its sewer line, such improvements and landscaping may be removed and the District is not obligated to replace them.

In the AMENDED AND RESTATED COVENANTS, I recommend that the HOA choose a road standard, as Fitzgerald, et al., did in their original agreement (Garfield County? USFS?) for maintenance as such standards maybe amended from time to time – remembering that a Road requires blading, borrow ditches, brush removal, maintenance of sight lines, etc., and have clear language about the HOA’s snowplowing responsibilities. The HOA needs to give consideration to maintaining the road as passable for emergency vehicles, even in the winter. Whether a lot owner uses their lot seasonally or year round, it is a health and safety issue if someone is snowmobiling or cross-country skiing and hurts themselves, or suffers a stroke or heart attack, and emergency vehicles cannot reach them. I understand there is a helipad but that is not a feasible option for general emergencies.