

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO REPEALING ORDINANCE NO. 96-19 BY
LIFTING THE MORATORIUM ON ISSUANCE OF BUILDING PERMITS FOR
DEVELOPMENT OF REAL PROPERTY ACCESSED BY THE SHIELD O' ROAD
AND APPROVING A ROAD AGREEMENT WITH THE SHIELD O'TERRACE
HOMEOWNERS ASSOCIATION**

ORDINANCE No. 035 -2000

RECITALS

1. In the summer of 1996, the Board of County Commissioners passed Emergency Resolution 96-145, followed by Ordinance No. 96-19, establishing a moratorium on the issuance of building permits for development on real property accessed by the Shield O' and Mesa roads and modifying road standards for Shield O' and Mesa roads. The necessity for the moratorium is recited in Ordinance 96-19.

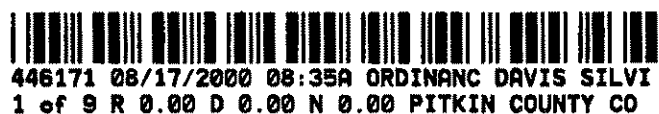
2. The moratorium affecting properties accessed by the Mesa Road was lifted by Ordinance No. 97-33.

3. Various property owners whose property is accessed by the Shield O' Road have met with the Board of County Commissioners in work sessions from time to time, worked with County Staff and the Basalt Rural Fire Protection District and have developed a plan to improve Shield O' Road to acceptable standards, and to install water storage facilities as required by paragraph 12 of Ordinance 96-19.

4. This plan includes the incorporation of the previously unincorporated homeowners association, as a non-profit corporation named the Shield O'Terrace Homeowners Association, the establishment of By-Laws for the Association, the preparation of a consent form whereby property owners whose property is accessed by Shield O' Road may voluntarily join the Association, and thus become members of the Association, the submission of an excavation permit to the County in order to undertake the road improvements required by Ordinance 96-19 as modified herein, and a road maintenance agreement for the Shield O' Terrace Homeowners Association, between the Association and Pitkin County.

5. There are existing protective covenants for the Shield O'Terrace properties, pursuant to which the Homeowners' Association has for years improved, maintained, repaired and plowed the Shield O' Road and assessed the property owners. The incorporated Association is the successor to the previously unincorporated association.

6. Ordinance No. 96-19 provides the following for the Shield O' Road (a/k/a Terrace Road): "The Terrace Road shall be widened to a minimum of 18 feet wherever possible, pull offs shall be provided at 500 foot intervals and switchback curves shall have a minimum 50 foot inside radius, with a "bubble" outside radius of 90 foot, whenever possible."

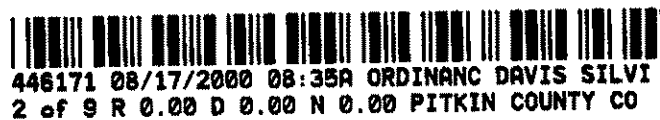


7. Both Steve Howard from the Basalt Rural Fire Protection District and Bud Eylar, the County Engineer, have agreed that the following standards for Shield O' Road provide sufficient ingress and egress for emergency services.

- a. Minimum road width of 18 feet, 16 feet of road width, a 1 foot shoulder on each side.
- b. The road shall be sloped at a minimum of 1½% to allow for drainage to be collected in the inside ditch; culverts will be installed as necessary to eliminate water from flowing across the road.
- c. All downhill vegetation shall be kept mowed below the elevation of the outside shoulder.
- d. Street signs shall be installed at all road intersections.
- e. All improved property owners shall have a property address at the intersection of each driveway and road pursuant to County standards.
- f. For the purpose of wild fire suppression, the Association will install two 10,000 gallon water storage tanks at the locations approved by the Basalt and Rural Fire Protection District.
- g. Improvements to curves 1-5 shall comply as closely as possible to the minimum standard of 50.0 feet radius at centerline. The improvements shall range between 35 feet to 50 feet at centerline and shall be set in the field at the direction of Steve Howard of Basalt Rural Fire Protection District and Bud Eylar, Pitkin County Engineer.
- h. There shall be a minimum of 2 pull offs on the Shield O' Road at locations to be determined by Steve Howard of the Basalt Rural Fire Protection District. Said pull offs shall be a minimum of 10 feet wide and 50 feet long."

8. The Association has agreed to provide, prior to final approval of this Ordinance, except as indicated, the following information:

- a. Within 60 days following completion of improvements, the Association will provide easements from the property owners whose land is affected by increases in the turn radii or by the installation of water tanks, giving permission for the improvements.



- b. The Association will advise the Board concerning the time frame for the completion of the road improvements, and will update the Board on the number of property owners who have joined the Association.
- c. The Association shall provide an updated list of property owners who could become members of the Association, and shall report to the BOCC on membership in either the Terrace or the Mesa Association.
- d. The Association shall provide proof of incorporation, approved By-Laws and Consents recorded for those property owners who have already joined.

9. The Board of County Commissioners has indicated its willingness to require, to the extent permitted by law, any other property owners who use the Shield O' Road and who are not yet members of the Association to join the Association as a condition of any land use approval or building permit requested from the County, and to pay a pro-rata share of the assessments and interest as provided for in the protective covenants.

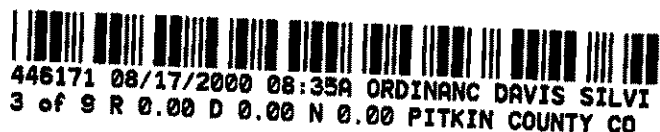
10. The Association has agreed to keep the Community Development Department advised of a contact person, address, and telephone number for the Association, in order for the County to determine, in connection with any building permit or development approval requested from an affected property owner, that the property owner has joined the Association, and if not, to require membership in the Association and payment of past due amounts as a condition of approval or a condition of issuance of any building permit.

11. The Board of County Commissioners is satisfied that the plan established by the property owners in the Shield O'Terrace area, as recited herein, does adequately address the health and safety concerns expressed in Ordinance 96-19, and that the lifting of the moratorium on building permits for that area is appropriate at this time.

NOW, THEREFORE, BE IT ORDAINED:

1. The moratorium on building permits for property accessed by the Shield O' Road, as established by Ordinance No. 96-19, is hereby repealed.

2. Prior to the issuance of any building permit or development approval for properties accessed by the Shield O' Road, the applicable County department shall contact the Shield O' Terrace Homeowners Association, at such address and phone number as may be provided by the Association from time to time, to determine whether or not the applicant has joined the Association or of the Mesa Road Improvement and Maintenance Association (only for those lots who can access without using Shield O' Road).



3. To the extent permitted by law, any property owners who use the Shield O' Road and who are not yet members of either Association shall be required to join the Association as a condition of any land use approval or building permit requested from the County, and to pay a pro-rata share of the assessments and interest as provided for in the Protective Covenants.

4. The Chair is authorized to sign the Road Improvement Agreement with the Shield O' Terrace Homeowners Association, in substantially the form submitted at the public hearing, and to execute such other documents as may be necessary to accomplish the purposes of this Ordinance.

INTRODUCED, FIRST READ, AND SET FOR PUBLIC HEARING ON THE 12th DAY OF JULY, 2000.

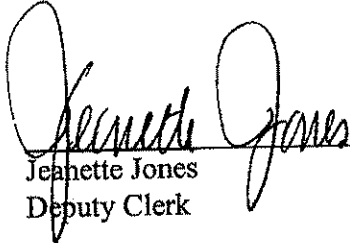
NOTICE OF PUBLIC HEARING PUBLISHED IN THE WEEKEND EDITION OF THE ASPEN TIMES ON 15th DAY OF JULY, 2000.

APPROVED UPON SECOND READING AND PUBLIC HEARING ON THE 26th DAY OF JULY, 2000.


PUBLISHED AFTER ADOPTION IN THE WEEKEND EDITION OF THE ASPEN TIMES ON THE 5TH DAY OF AUGUST, 2000.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO




Jeanette Jones
Deputy Clerk

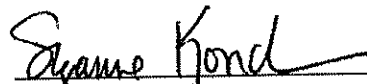


Shellie Roy Harper, Chair
Date: August 14, 2000

APPROVED AS TO FORM:



Deborah Quinn
Assistant County Attorney
7/27/00



Suzanne Konchan
County Manager

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**ROAD AGREEMENT
PITKIN COUNTY AND SHIELD- O-TERRACE HOMEOWNERS
ASSOCIATION**

This Agreement is made this 27 day of June, 2000 by and between Pitkin County, Colorado, a Colorado Home Rule County (the "County") and the Shield-O-Terrace Homeowners Association, (the "Association"), a Colorado non-profit corporation.

RECITALS

Ordinance 96-19 requires that Shield- O- Terraces Road meet standards as specified therein, and that wildfire suppression and emergency evacuation plans be implemented.

As a result of input from the Basalt & Rural Fire Protection District, the County is willing to modify the standards contained in said Ordinance and lift the moratorium, once it has been assured that the standards, as modified, will be met and that the road will be properly maintained by the Association.

The Association considers the Road to be a private road with use limited to property owners in the Shield- O-Terraces subdivision.

The Association is willing at its sole cost and expense to make the mandated improvements, to improve, maintain, repair and plow the Road on a continuing basis, and to permit emergency access and use of the Road to all concerned parties in the event of fire or other emergency.

NOW THEREFORE, in consideration of the above and the promises and covenants herein contained, the parties agree as follows:

1. The Association agrees to improve and maintain the road, establish and maintain water storage facilities for wildfire suppression, and implement an emergency evacuation plan as set forth in the Minutes of the January 25, 2000 meeting of the Association's Board of Directors a copy of which is attached hereto as Exhibit "A."
2. The Association agrees that the Road may at all times be used by concerned parties during the period of any emergency.
3. The Association represents that it has the authority to enter into this agreement under its Articles of Incorporation and Bylaws. Section IX of its Bylaws which describes the Road, its privacy and the authority of Association with regard to the Road is attached hereto as Exhibit B and by this reference made a part hereof.
4. For the purposes of this agreement "concerned parties" shall include Basalt & Rural Fire Protection District personnel, owners and operators of emergency vehicles including fire vehicles and ambulances and all persons seeking emergency access to or egress from the subdivision and mesa area including other mesa residents normally served by Mesa Road.
5. Should the County, based on information received from the County Engineer, find that the Association has failed to properly improve or maintain the roads or improve and maintain water storage facilities, the County shall give the Association written notice thereof, together with the right for a period of sixty days to cure such default, which time period may be extended where weather, seasonal conditions or similar circumstances would prevent a cure of such default within the time period. Should the Association fail or refuse to cure the default within the time provided, the County shall be entitled to obtain compliance by injunctive, mandatory, or other relief, and the recovery of such monetary damages, as may be appropriate. In regard to this Agreement, the liability of the owners of the individual parcels

within the Association shall be limited to compliance with the provisions of the Protective Covenants, the Bylaws of the Association and payment of assessments relating thereto. The County reserves all other rights and remedies it has against the Association and the individual members and properties to assure Shield-O-Terraces Road and the wildfire suppression facilities are properly maintained.

6. The Association agrees not to modify or amend any provisions of its Bylaws or Protective Covenants relating to road maintenance, wildfire suppression or emergency evacuation, without first obtaining the written consent of the County.

7. All notices relative to this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid to the addresses of the parties herein set forth. All notices given by certified mail shall be deemed received two business days following the date of certification. Either party by notice so given may change the address to which future notices shall be sent.

Notice to County: Pitkin County Board of County Commissioners
506 East Main Street
Aspen, CO 81611

With Copies to: Pitkin County Attorney
530 East Main Street
Aspen, CO 81611

Notice to Association: Shield-O-Terrace Homeowner's Association
c/o Larry Leonaitis
0727 Shield O Road
Snowmass, CO 81654

8. The County agrees, to the extent permitted by law, to require any other property owners who use Shield- O- Terraces Road and who are not yet members of the Association to join the Association as a condition of any land use approvals or building permits requested from the County as set forth by Ordinance _____, and to pay a pro rata share of the initial improvements and maintenance assessments with compounded interest dating back to the inception of the Association.

9. The interpretation, enforcement, or any other matters relating to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado.

10. The Association, for itself and its successors and assigns, hereby declares that all of the lands which are the subject matter of this Agreement shall be held and used subject to the provisions of this Agreement and that the provisions thereof shall run with the land and be binding upon all persons who hereafter become the owner of any interest in said lands. Each provision contained in this Agreement shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any lands which are the subject matter of this Agreement is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument. In the event of any litigation arising out of the interpretation or enforcement of this Agreement, the prevailing party shall also be entitled to recover its reasonable attorneys' fees and costs incurred.

IN WITNESS WHEREOF, the parties have executed this Agreement this 14th day of August, 2000.

PITKIN COUNTY BOARD OF COUNTY COMMISSIONERS

By: Patti Kay Clapp
Shellie Roy Harper, Chairman





SHIELD O TERRACE HOMEOWNERS' ASSOCIATION

MINUTES JUNE 27 MEETING

The meeting was held at 7 P.M. at the home of Stewart and Sandy Holmes.

Attending were Sandy and Stewart Holmes, Katy and Larry Leonaitis, John LaSalle, Joanne Papenfuss, Lori and Russ Andrews, Eric Hansen, Lester Crain, Michal Brimm, Andrea Harris, Kevin Michaelson, and Nancy and Henry Lowe. By proxy - Jeffrey Day Lanier, Sherling Lauricella, Margaret Walker, and Susan Holliday.

The minutes of the February meeting were read and accepted.

Eric Hansen gave the treasurer's report.

Income: \$1065	Balance Checking \$1350
Plowing 1650	CD 9000
Mailing 26	Interest CD 80
Postage 13	Road Account 6000
Spray 128	

John LaSalle (Gerry Ogier's attorney) gave a report on incorporation. Larry Leonaitis was the incorporator and registered agent. The incorporation papers were sent to the Secretary of State on June 19 and stamped June 20. The association is now incorporated.

The Board of Directors was then elected - seven in all. Larry Leonaitis, Sandy Holmes, Joanne Papenfuss, Michal Brimm, Eric Hansen and Nancy Lowe, Larry will serve as President, Sandy Vice President, Eric Treasurer, and Nancy Secretary. They will conduct the business of the association, and an annual meeting will be held every summer for election of a new board.

The proposed bylaws were passed out and our attention was directed to Article IX as the most important part of the document. That article spells out the privacy of the road and the association's obligations in maintaining it.

The relationship of the bylaws to the present covenants of the association was outlined. The covenants still stand and cannot be changed until 2003 as is specified in the document. To change before then would require 100% approval of the membership. Meanwhile, the members and the board should be thinking about changes in the covenants. One change could be a different amendment procedure. Bylaws, however, can be changed by the Board at any time. Larry moved to approve the by laws, Russ Andrews seconded, and they were unanimously approved by and adopted by the Board.

John La Salle reported that the county should have taken up lifting the moratorium in a

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work session today (June 27) on recommendation of the staff. The first reading of the ordinance will be at the July 12 county meeting, and the second at the July 26 meeting, when lifting the moratorium becomes law. Then the county will issue building permits only to those who have paid their road assessment. The fees we have set are \$1200 for current homeowners and \$4800 for lot owners. A schedule showing options for payment is attached.

Twenty five affirmative consent forms were received for incorporation and lifting the moratorium.

Other items mentioned without resolution: need for a new snow plower; contractor responsibility for damage to the road during construction; and possibility of our own unmanned fire station with volunteers. Some people mentioned a lower water flow in this dry year, and there was discussion about letting the ditch run to help with the water. These will be taken up as the need arises. Next summer's meeting will be set by the Board.

The meeting adjourned at 8:51.

Respectively submitted,
Nancy J. Lowe, Secretary

Nancy J. Lowe