

DISTRICT COURT, SUMMIT COUNTY, COLORADO		DATE FILED: October 3, 2019 4:35 PM FILING ID: 1B6DA06748761 CASE NUMBER: 2019CV30126
501 N. Park Avenue P.O. Box 269 Breckenridge, CO 80424		
<hr/> Plaintiffs: PAPPAS FAMILY TRUST; MELISSA SNELL and ELI SNELL; and SHARON HENKELS		▲ COURT USE ONLY ▲
Defendant: BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY		<hr/> Case No.: 19 CV Div.:
<hr/> Attorneys for Plaintiffs: Meredith A. Quinlivan (No. 38016) West Huntley Gregory PC P.O. Box 588 Breckenridge, CO 80424 Phone Number: (970) 453-2901 E-mail: meredith@brecklaw.com		
SUMMONS		

THE PEOPLE OF THE STATE OF COLORADO TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to file with the clerk of this court an answer or other response to the attached complaint. If service of the summons and complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 21 days after such service upon you. If service of the summons and complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 35 days after such service upon you.

If you fail to file your answer or other response to the complaint in writing within the applicable time period, judgment by default may be entered against you by the court for the relief demanded in the complaint without further notice.

Dated October 3, 2019.

WEST HUNTLEY GREGORY PC

s/ Meredith A. Quinlivan

By: _____
Meredith A. Quinlivan (No. 38016)

In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signature(s) is maintained by West Huntley Gregory PC, and will be made available for inspection by other parties or the Court upon request.

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<hr/> Attorneys for Plaintiffs: Meredith A. Quinlivan (No. 38016) West Huntley Gregory PC P.O. Box 588 Breckenridge, CO 80424 Phone Number: (970) 453-2901 E-mail: meredith@brecklaw.com		Div.:
DECLARATORY ACTION, COMPLAINT AND JURY DEMAND		

Plaintiffs, Pappas Family Trust, Melissa Snell and Eli Snell, and Sharon Henkels, by their counsel, West Huntley Gregory PC, state their Complaint against Defendant, Board of County Commissioners of Summit County, as follows:

PARTIES AND VENUE

1. Plaintiff Pappas Family Trust, by and through Mark Pappas, Trustee, is a property owner of 958 American Way, Breckenridge, Colorado, which is located within the Peak 7 Neighborhood.
2. Plaintiff Melissa Snell and Eli Snell, is a property owner of a 163 Lone Hand Way, Breckenridge, Colorado, which is located within the Peak 7 Neighborhood.
3. Plaintiff Sharon Henkels, is a property owner of a 37 Protector Circle, Breckenridge, Colorado, which is located within the Peak 7 Neighborhood.

4. The Peak 7 Neighborhood comprises approximately 338 assessable units consisting of homes and undeveloped residential parcels in unincorporated Summit County (collectively, the “Peak 7 Neighborhood”).

5. Defendant Summit County Board of County Commissioners (“BOCC”) is a governmental body and politic in the state of Colorado with powers especially conferred by law pursuant to C.R.S. § 30-11-101.

6. Plaintiffs are proper parties to bring this action pursuant to, inter alia, Condiotti v. Board of County Com’rs of County of La Plata, 983 P.2d 184, 187 (Colo. App. 1999).

7. Venue is proper pursuant to Colo. R. Civ. P. 98(a). All of the parties and the property at issue are located in Summit County, Colorado and all of the events described herein occurred in Summit County, Colorado.

GENERAL ALLEGATIONS

8. A county is not an independent governmental entity; it is a political subdivision of the state, existing only for the convenient administration of the state government.

9. The County Public Improvement District Act, C.R.S. § 30-20-501 et seq. (“County PID Act”), authorizes counties to organize public improvement districts and/or local improvement districts having the purposes and powers provided in the Act.

10. C.R.S. § 30-20-603(1)(a) authorizes organization of local improvement districts for various purposes, including constructing, grading, paving, pouring, curbing guttering, lining or otherwise improving the whole or any part of any street. Maintenance is not included in this authorization. The Local Improvement District Act, C.R.S. § 30-20-601 et seq. (“LID Act”), requires that, in local improvement districts, the cost of improvements must be assessed against property specially benefited by the improvements.

11. C.R.S. § 30-20-603(3)(b) states “that if the owners of property [are] to be assessed for more than one-half of the entire costs estimated by the board to be assessed shall petition for any particular kind of improvement and for any particular materials to be used in the same, the improvement must be ordered in accordance with the petition, and the materials so designated shall be used, except as otherwise provided in this section.” (emphasis added). As such the

implementation of the assessment as stated in the Resolution 2019-55 is not in accordance with petition.

12. In the County PID Act, C.R.S. § 30-20-504(1)(a) authorizes acquisition, construction, installation, operation or maintenance of improvements. Public improvement districts must be approved by a majority vote of the electors in the proposed district.

13. On or about December 1, 2018, the BOCC announced the process for the formation of the local improvement district to be known as the Peak 7 Local Improvement District, Summit County Colorado (the “District”), pursuant to the provisions of the LID Act.

14. The District proposed construction of certain public infrastructure improvements within unincorporated Summit County, to be financed through the issuance of special assessment bonds.

15. The District was required to provide clear evidence of support to the BOCC in the form of petitions from 60% or more of those owners within the Peak 7 Neighborhood. Upon information presented by the BOCC, Plaintiffs were advised that the total cost of the assessment was estimated at \$5,528,305.11. Plaintiffs signed the petition based on this representation along with the representations of the LID Representative of a lower cost.

16. The petition presented to Plaintiffs stated, “[w]e, the undersigned, who are owners of real property in Summit County, Colorado do hereby petition the Honorable Board of County Commissioners of the County of Summit, State of Colorado, for the formation of a local improvement district pursuant to CRS 30-20-601, et seq. Such improvement district is for the purpose of paving the following roads at an estimated total cost of \$5,600,000.00.” Petition to Support the Creation of a Local Improvement District, attached as Exhibit 1.

17. The petition presented to Plaintiffs also contained material misrepresentations as to the ultimate total cost of the improvements. The LID Representatives stated that, based on the analysis of five prior Summit County paving LIDs, the total cost of the Peak 7 LID should be from 58%-63% of the projected \$5,600,000 cost. In fact, the LID Representatives included a table that illustrated how much each Homeowner should expect to pay assuming the total cost ended up at 70% of the projected cost. Per the Table, the total cost per Homeowner should be closer to \$11,771.77 and not the \$16,816.82 as stated in the petition. *See, Exhibit 1.*

18. C.R.S. § 30-20-602, defines “owner” in part, as the person holding record fee title to real property.

19. The BOCC failed to obtain the approval or signature of each person holding record fee title to real property in the Peak 7 Neighborhood as required. As such only 156 signed petitions comply with the statutory requirements of all owners’ approval, which is less than the requisite 50% approval. Furthermore, all the said petitions were electronic and unverified.

20. On or about July 15, 2019, CTL Thompson provided an engineer’s estimate of probable construction costs that exceeded \$6,655,222.50, an increase in the County’s original petition estimate by over twenty percent or more than one million dollars. The pro rata cost to be assessed to Plaintiffs’ property and 335 others, is estimated at \$19,704.14. The assessment presented by the BOCC is inconsistent with the petitions, as it increases the per property assessment by nearly \$5,000.00.

21. On July 23, 2019, the BOCC passed Resolution 2019-55 approving the order to adopt preliminary plans and specifications for the potential establishment of a local improvement district to pave the roads in the southern portion of the Peak 7 Neighborhood. The Resolution materially misrepresented the improvements and or the properties listed in the proposed District.

22. On August 23, 2019, the LID Representative sent an email to Plaintiffs, wherein the County requested that the LID Representative limit communication with the residents of the Peak 7 Neighborhood as it related to the result of the July 23, 2019 BOCC meeting and the increased cost of over twenty percent (20%) in the project. The LID Representative is obligated to pass along information from the County to all the Homeowners in the District, so the process is open and transparent. This was clearly not the case with the Peak 7 LID.

23. Article X, Section 20 of the Colorado Constitution requires voter approval of any multiple fiscal year obligation of a local government, unless adequate funds for the payment thereof are irrevocably pledged for the purpose of paying such obligation.

24. Voter approval for the issuance of special assessment bonds by Summit County is also required by C.R.S. § 30-20-618.

25. C.R.S. § 30-20-619, permits the BOCC to provide by resolution for the submission of the question regarding issuance of special assessment bonds to the registered electors eligible to vote

on the question and to further provide that only registered electors who are property owners of property within or residents of the District shall be eligible to vote on the question.

26. Upon information and belief, on July 26, 2019, the BOCC published a Notice of the BOCC's intention to create the local improvement district in the Summit County Journal.

27. BOCC Resolution 2019-55 stated that the County intended for the residents in the District to be notified by mail on or about July 26, 2019 when the Resolution was published in the Summit County Journal.

28. On August 14, 2019, the BOCC mailed a Notice of the August 27, 2019 hearing to the property owners to be assessed for the cost of the improvements. Plaintiffs received the Notice on or about August 19, 2019. Plaintiffs immediately rescinded their petition approval.

29. On August 27, 2019 at the BOCC hearing, fifteen or more owners also rescinded their approval of the petition, due to the material misrepresentation of the improvements, costs and inconsistent application. No additional owners voted on the petition affirmatively.

30. On August 27, 2019, the BOCC approved the creation of the local improvement district despite the increased probable construction costs to \$6,655,222.50. The final probable cost is more than twenty percent (20%) higher than the probable costs reflected in the original petition and there were significant modifications to the scope of work, significantly increasing the per property assessment by approximately \$5,000.00, as contained in the original petition. Significant material differences exist between the original petition and the final design and probable costs; however, a revised petition was not circulated for approval by affected owners in the Peak 7 Neighborhood.

31. C.R.S. § 30-20-603(1)(a) authorizes organization of local improvement districts for various purposes, including constructing, grading, paving, pouring, curbing guttering, lining or otherwise improving the whole or any part of any street, but it does not provide for the County to use "bait and switch" methods to gain public support from residents in the District.

32. The special assessment does not include properties owned by the County, the Town of Breckenridge, or Vail Summit Resorts, Inc.

FIRST CLAIM FOR RELIEF
Constitutional Violation – Uniform Taxation

33. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

34. The Constitution of the State of Colorado, Article X, Section 3, requires that each property tax levy shall be imposed uniformly upon all non-exempt real and personal property located within the territorial limits of the authority levying the tax.

35. The creation of a local improvement district and inclusion of property within Summit County results in said district, has the effect of imposing a higher property tax levy on properties within the district.

36. Summit County maintains public roads that service other properties outside the district without collecting a similar tax levy from said properties, including property owned by the County, the Town of Breckenridge, and Vail Summit Resorts, Inc.

37. Summit County and the Town of Breckenridge own property within the District and have exempted their property from the additional tax levy, even though their property would enjoy the exact same benefits from the proposed improvements as all the other properties within the District.

38. The creation of the local improvement district therefore violates the principle of uniform taxation set forth in the Constitution of the State of Colorado, Article X, Section 3.

SECOND CLAIM FOR RELIEF
Due Process-Local Improvement District

39. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 38 of this Complaint.

40. The BOCC included Plaintiffs' property within the boundaries of the local improvement district by their actions in adopting the resolution creating said district.

41. Special benefits equal to or greater than the assessment imposed were not conferred upon Plaintiffs' property.

42. Collecting an unauthorized assessment from Plaintiffs effects a deprivation of Plaintiffs' property without due process in violation of Article II, Section 25, of the Colorado Constitution, and Article 14, Section 1, of the United States Constitution.

43. If no special benefit has been conferred upon the property subjected to an assessment, the assessment is a deprivation of property in violation of the Federal and Colorado state constitutions.

THIRD CLAIM FOR RELIEF

Declaratory Judgment-Local Improvement District

44. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 43 of this Complaint.

45. Plaintiffs are taxpayers and owners of property within the local improvement district whose rights, status, and legal relations are affected by the resolutions and actions of the BOCC in adopting the resolution creating the local improvement district.

46. A case and actual controversy exists between the parties as to whether the local improvement district created by the BOCC:

- a) exceeds the statutory authority of part 6 of Article 20, Title 30, C.R.S.;
- b) violates the requirements of Article X, Section 3 of the Colorado Constitution for a uniform tax; or
- c) violates constitutional due process.

47. Plaintiffs are entitled to a declaratory judgment pursuant to C.R.C.P. Rule 57 that the actions of the BOCC in creating the local improvement district and including Plaintiffs' property within said district were in violation of Colorado law, and therefore neither Plaintiffs nor their property are subject to the burdens, obligations, encumbrances, and provisions of said resolution.

FOURTH CLAIM FOR RELIEF

Injunctive Relief-Local Improvement District

48. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 47 of this Complaint.

49. Unless an injunction issues, Defendant will impose an encumbrance on Plaintiffs' property for the full tax burden of the local improvement district.

50. One or more Plaintiffs will suffer irreparable harm as a result of the assessment. Affidavit of Melissa Snell and Eli Snell and Affidavit of Sharon Henkels, attached as Exhibits 2 and 3, respectively.

51. Inclusion of Plaintiffs' property within the local improvement district will result in an immediate reduction in property value due to the additional tax burden, even though the improvements may not be completed for years in the future. Property owners will either have to pay the entire assessment within 30 days of the BOCC's final assessment resolution or be held to have consented to the assessment and to have waived their right to question the jurisdiction of the county, pursuant to § 30-20-613.

52. Plaintiffs lack an adequate remedy at law and will suffer irreparable harm unless an injunction issues because the existence of the tax lien during the pendency of this litigation, even if Plaintiffs ultimately prevail, will cloud title to their property in the interim, affect their credit, and have other tangible and intangible effects on their financial transactions. In addition, under current Colorado law, even if the taxes are ultimately found illegal and abated, Plaintiffs may become obligated to third party tax lien purchasers for interest and penalties paid to acquire the liens. Finally, Plaintiffs who are unable to pay their assessment in total will have been held to waive their rights.

53. The immediate and irreparable harm to Plaintiffs outweighs any damage to Defendant.

54. Granting an injunction is in the public interest because it protects the taxpayers from the likelihood that they will have no remedy or an inadequate remedy in the event the Court finds they are entitled to prevail, and protects taxpayer rights under the Colorado Constitution.

55. Plaintiffs are entitled to a preliminary injunction to maintain the status quo, followed by a permanent injunction, enjoining the BOCC from including property in the local improvement district.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against the Defendant, for damages in an amount to be determined at the time of trial, interest

from the date of the incident, costs, attorney fees, expert witness fees, and for such other and further relief as this Court deems just and proper.

Dated: October 3, 2019.

WEST HUNTLEY GREGORY PC

s/ Meredith A. Quinlivan

By: _____
Meredith A. Quinlivan (No. 38016)

Plaintiffs' Address:

c/o West Huntley Gregory PC

P.O. Box 588

Breckenridge, CO 80424

PETITION TO SUPPORT THE CREATION OF A LOCAL IMPROVEMENT DISTRICT

TO: Board of County Commissioners
Summit County, Colorado
PO Box 68
Breckenridge, CO 80424

DATE FILED: October 3, 2019 4:35 PM
FILING ID: 1B6DA06748761
CASE NUMBER: 2019CV30126

RE: A Local Improvement District to pave various roads in the Peak 7 neighborhood

We, the undersigned, who are owners of real property in Summit County, Colorado do hereby petition the Honorable Board of County Commissioners of the County of Summit, State of Colorado, for the formation of a local improvement district pursuant to CRS 30-20-601, et seq. Such improvement district is for the purpose of paving the following roads at an estimated total cost of \$5,600,000.00.

American Way (CR 906)
Lone Hand Way (CR 917)
Ski Hill Road (CR 3)
(from USFS Boundary to Discovery)
Ski Pole Court (CR 910)
Ski Tip Road (CR 909)
Glory Hole Drive (CR 921)
Thunderhead Road (CR 908)
Prospector Circle (CR 920)
Protector Circle (CR 907)
Quartz Circle (CR 905)

Pine Circle (CR 941)
Brook Street (CR 940)
Skicrest Lane (CR 904)
Burro Lane (CR 922)
Sitzmark Circle (CR 903)
Discovery Road (CR 901)
Twin Pines Court (CR 902)
Shadows Drive (CR 914)
Adams Way (CR 915)
Protector Place (CR 916)
Timber Way (CR 918)

The proposed district includes 335 lots. Over a period of 15 years, approximate annual payments would be \$1,600 at an interest rate of 5%:

Do not sign this petition unless you are an owner of real property benefiting from the project and requesting to be assessed costs for the improvements. An owner is a person holding fee title to real property. You are an "owner" if you hold a contract to purchase real property, which obligates you to pay general taxes on that property. In that instance, the seller may not sign the petition.

Only one owner of any property needs to sign, and only one petition from any property will be counted. Do not sign this petition unless you have read all of the text.

LEGAL DESCRIPTION OF PROPERTY

LOT 3 BLUE RIDGE AMENDED SUB

YOUR NAME(S)

Mark A. Pappas

YOUR SIGNATURE(S)

DocuSigned by:

Mark A. Pappas

AA8F20EF343E48E...

DATE OF SIGNING

1/24/2019

EXHIBIT

tabbles

DISTRICT COURT, SUMMIT COUNTY, COLORADO

501 N. Park Avenue
P.O. Box 269
Breckenridge, CO 80424

Plaintiff: PAPPAS FAMILY TRUST; et. al.

Defendants: BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY

Attorneys for Plaintiff:
Meredith A. Quinlivan (No. 38016)
West Huntley Gregory PC
P.O. Box 588
Breckenridge, CO 80424
Phone Number: (970) 453-2901
E-mail: Meredith@brecklaw.com

▲ COURT USE ONLY ▲

Case No.: 19 CV

Div.:

AFFIDAVIT OF MELISSA SNELL AND ELI SNELL

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

We, Melissa and Eli Snell, being first duly sworn, state as follows:

1. I, Melissa Snell, am over the age of eighteen (18).
2. I, Eli Snell, am over the age of eighteen (18).
3. We are residents of the Peak 7 Neighborhood in Breckenridge, Colorado, residing at 163 Lone Hand Way.
4. As a result of the Peak 7 Paving LID, we will suffer immediate and irreparable financial harm.



FURTHER AFFIANT SAYETH NAUGHT.

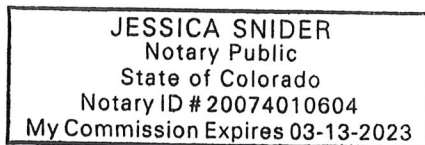
Dated this 2nd day of October, 2019.



Melissa Snell

Subscribed and sworn to before me by Melissa Snell on the 2nd day of October, 2019.

WITNESS MY HAND AND OFFICIAL SEAL.





Notary Public

FURTHER AFFIANT SAYETH NAUGHT.

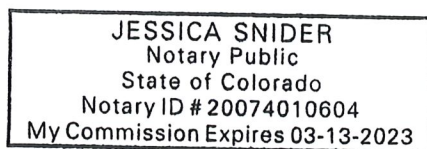
Dated this 2nd day of October, 2019.



Eli Snell

Subscribed and sworn to before me by Eli Snell on the 2nd day of October, 2019.

WITNESS MY HAND AND OFFICIAL SEAL.





Notary Public

DISTRICT COURT, SUMMIT COUNTY, COLORADO

501 N. Park Avenue
P.O. Box 269
Breckenridge, CO 80424

Plaintiff: PAPPAS FAMILY TRUST; et. al.

Defendants: BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY

Attorneys for Plaintiff:
Meredith A. Quinlivan (No. 38016)
West Huntley Gregory PC
P.O. Box 588
Breckenridge, CO 80424
Phone Number: (970) 453-2901
E-mail: Meredith@brecklaw.com

▲ COURT USE ONLY ▲

Case No.: 19 CV

Div.:

AFFIDAVIT OF SHARON HENKELS

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

I, Sharon Henkels, being first duly sworn, state as follows:

1. I, Sharon Henkels, am over the age of eighteen (18).
2. I am a resident of the Peak 7 Neighborhood in Breckenridge, Colorado, residing at 37 Protector Circle.
3. As a result of the Peak 7 Paving LID, I will suffer immediate and irreparable financial harm.



FURTHER AFFIANT SAYETH NAUGHT.

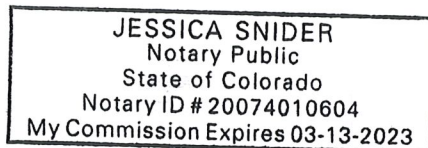
Dated this 2 day of October, 2019.

Sharon A. Henkels
Sharon Henkels

Subscribed and sworn to before me by Sharon Henkels, on the 2nd day of October, 2019.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: 3/13/23



JSS
Notary Public

DISTRICT COURT, SUMMIT COUNTY, COLORADO 501 N. Park Avenue P.O. Box 269 Breckenridge, CO 80424		DATE FILED: October 3, 2019 4:35 PM FILING ID: 1B6DA06748761 CASE NUMBER: 2019CV30126
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<hr/> Attorneys for Plaintiffs: Meredith A. Quinlivan (No. 38016) West Huntley Gregory PC P.O. Box 588 Breckenridge, CO 80424 Phone Number: (970) 453-2901 E-mail: meredith@brecklaw.com		
DISTRICT CIVIL CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT		

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, crossclaim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Simplified Procedure under C.R.C.P. 16.1 applies to this case unless (check one box below if this party asserts that C.R.C.P. 16.1 does not apply):

- ☒ This is a class action, forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding; or
- ☐ This party is seeking a monetary judgment against another party for more than \$100,000.00, including any penalties or punitive damages, but excluding attorney fees, interest and costs, as supported by the following certification:

By my signature below and in compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000; or

☐ Another party has previously filed a cover sheet stating that C.R.C.P. 16.1 does not apply to this case.

3. ☒ This party makes a Jury Demand at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Dated October 3, 2019.

WEST HUNTLEY GREGORY PC

s/ Meredith A. Quinlivan

By: _____
Meredith A. Quinlivan (No. 38016)

In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signature(s) is maintained by West Huntley Gregory PC, and will be made available for inspection by other parties or the Court upon request.