

## ROCK CREEK MASTER HOA v. JEFFERSON COUNTY - LITIGATION UPDATE

### Background

As a condition to development adopted by the Town of Superior, the original developers of Rock Creek granted aviation easements to the then Jefferson County Airport for each Rock Creek filing. An aviation easement allows aircraft using the airport the right to enter the airspace owned by the property owners and create noise, vibration, and other effects caused by aircraft operations. Homeowners may have noticed these easements on their title commitments when they purchased their property. However, the Rock Creek developers were concerned that potential changes to the nature of the airport might negatively impact Rock Creek property owners. Therefore, they insisted that limitation events be included in the easements related to changes of runways, types of aircraft, airport uses and increases of noise. The easements provided that upon the occurrence of any one limitation, the easements would terminate.

Due to the sharp increase in noise complaints in 2019, an investigation was undertaken by the HOA Board. The investigation revealed evidence that one or more of the limitation events had occurred. For instance, one limitation event was that the noise levels would not exceed the maximum levels predicted by the airport in a 1988 Master Plan. **The investigation revealed that the noise limits from the airport were ten times the maximum noise levels represented by the airport.**

A request was made to Jefferson County, who is the owner of the renamed Rocky Mountain Metropolitan Airport, to voluntarily terminate the easements. After this request was refused, the HOA commenced a lawsuit on behalf of Rock Creek property owners in Boulder County District Court requesting that the aviation easements be vacated.

### Court Trial and Ruling

Following an October 2021 trial, **the Court ruled that a limitation event related to increased noise levels had occurred which would terminate the easements.** However, the Court limited the termination of easements only to those areas sustaining noise over a certain level. Specifically, all property located in Rock Creek Ranch filing number 3, 10, 13, 15, 17A, 18, 19, 20, and 21. The Court entered an order vacating the aviation easements for all properties in these filings. We have included a map. Current homeowner title commitments should have the corresponding aviation easement filing number.

### Appeal Filed

Despite being pleased with the victory provided by the Court's decision, the HOA believes the finding of the occurrence of the limitation event relating to increased noise should have resulted in the termination of all Rock Creek aviation easements. Specifically, that the Court improperly added a term not included in the easements or agreed to by the Rock Creek developers. Therefore, the HOA has filed an appeal to the Colorado Court of Appeals for the purpose of having the Court's findings applied to all Rock Creek filings and all the aviation easements vacated.

As this is an ongoing legal matter, we will communicate updates to our members as we can.

Best regards,

Rock Creek HOA Board of Directors