

## **SUMMARY STATEMENT**

*Fletcher v. Lone Mountain Road Association, et al.*, Docket No. 43741

In an appeal from the district court in Kootenai County, the Supreme Court reversed in part and affirmed in part the district court's declaratory judgment. Rocky and Delores Fletcher brought an action seeking a declaratory judgment defining the rights and responsibilities of owners in Twin Lakes Meadows Subdivision with respect to Lone Mountain Road, a gravel road in the subdivision. The district court found that the Covenants, Conditions, and Restrictions (CC&Rs) governing the subdivision were ambiguous and that the owners who used the road had waived any right to seek contribution from five lot owners who do not use the road.

The Supreme Court reversed, finding that the CC&Rs were not ambiguous. The Supreme Court held that the CC&Rs provided that lot owners adjoining Lone Mountain Road in the first phase of the subdivision were responsible for the maintenance of the portion of the road located in the first phase and that lot owners in the second phase of the subdivision were responsible for the maintenance of that portion of the road located in the second phase.

The Supreme Court further held that the CC&Rs required a two-thirds vote of adjoining landowners in each phase of the subdivision to approve any maintenance, repair, or improvement of the road.

The Supreme Court further held that the district court erred in finding that the lot owners using the road had waived the right to obtain contribution for the cost of maintenance from the five lot owners who do not use the road. This holding was based on the fact that no enforceable obligation based upon a two-thirds vote of lot owners had ever occurred.

The Supreme Court rejected the Fletchers' claim that dust from the gravel road constituted an additional burden on their property. The Supreme Court noted that because Lone Mountain Road was a gravel road when the Fletchers purchased their property, the use of the easement was unchanged and thus, dust from the gravel road was not a new or additional burden.

Finally, the Supreme Court agreed with the Fletchers that the district court should enter a judgment declaring that an informal road maintenance association formed by a few lot owners in the subdivision had no right to conduct maintenance on Lone Mountain Road or to enforce payment for past maintenance expenses.