

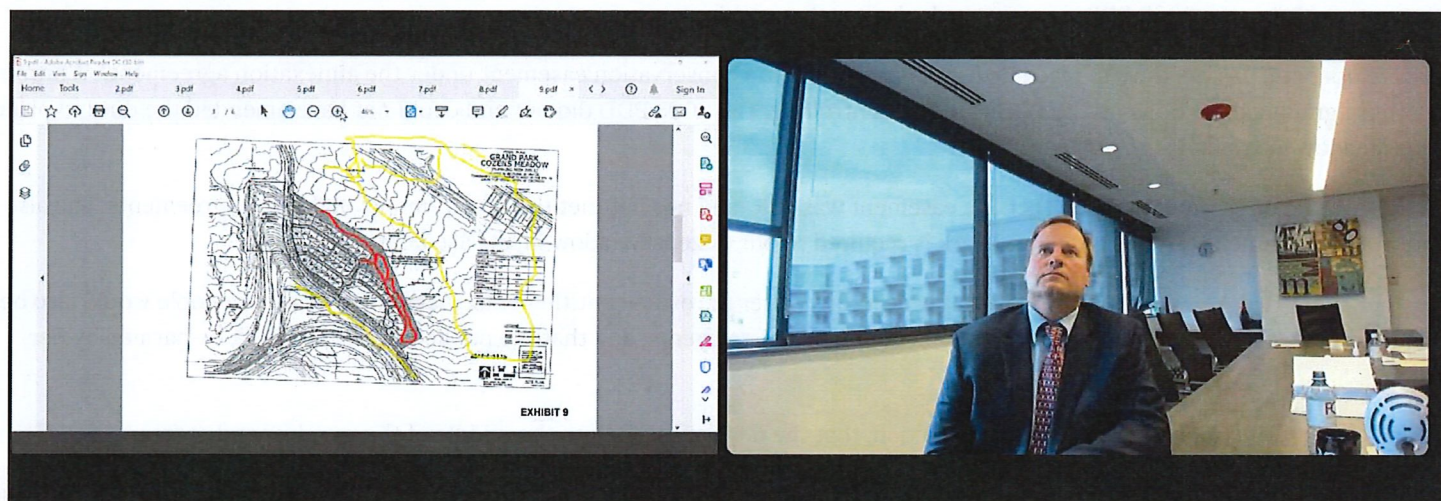
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# Judge orders Fraser to resume Grand Park paperwork

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**Grand Park developer Clark Lipscomb testifies on Thursday, Sept. 2, 2021 at a hearing for a preliminary injunction that would force Fraser to resume entitlements for the developments in the neighborhood.**

*WebEx Screenshot*

Concluding a two-day hearing between the town of Fraser and Grand Park about the town's action to withhold entitlements for the developments, a Grand County District Court Judge ruled in Grand Park's favor, saying Fraser had the developer "over a barrel."

On Friday, Judge Mary Hoak issued a preliminary injunction requiring Fraser to resume entitlements for Grand Park. Her ruling determined that Fraser's move to stop processing development plans, certificates of occupancy, building permits and more for Grand Park developments was a sanction "draconian" enough that it could cause irreparable damage to Grand Park and that Fraser may not have the authority to issue the sanctions.

"The town of Fraser has the developers by the cajones," Hoak said. "If I enter the preliminary injunction, there is no harm to the town of Fraser ... They can still litigate this case, argue their position and succeed in their position."

Fraser paused entitlements for Grand Park in July because the town claimed the developer was in default of the annexation agreement with the town that required a conservation easement on Elk Creek and Cozens Meadow.

An easement was filed in March 2020 for 17.7 acres of Elk Creek Meadow, which stated it was in full completion of Grand Park's easement requirements in the annexation agreement. The town voided that easement in October 2020 because it wasn't approved by the town attorney as was required by the town.

However, Grand Park developer Clark Lipscomb and his attorneys have maintained that easement is still valid and Grand Park has no obligations to provide an easement over Cozens Meadow.

Grand Park lawyer Larry Katz argued that the town didn't have the right to withhold the entitlements under the agreements between the two parties for numerous reasons, including the deadline in the development's annexation agreement had passed in 2007 and that an explicit requirement for an easement in Cozens Meadow is not included in the 2005 planned development district (PDD).

"It was very clear in 2005 there was no longer going to be a conservation easement in Cozens Meadow since they took out the reference to it in (the 2005 PDD)," Katz said. "They actually defined where the conservation easement was in Elk Creek but they didn't define anything in Cozens Meadow."

Additionally, Grand Park representatives claimed that Fraser's decision to withhold entitlements for new units amounted to irreparable damage, with Lipscomb testifying that his companies would be bankrupt within a few months if Fraser continued to withhold documents needed to complete construction and sales.

Defense attorney Kent Whitmer, who represented Fraser, asserted that the town was following the remedies outlined in the annexation agreement that both the town and Grand Park agreed to ahead of time for a default.

Further, he said Grand Park was required to have a conservation easement over Cozens Meadow based on the 2003 annexation agreement, asserting the 2005 PDD documents don't alter that requirement.

"The developer still has the duty to place Cozens Meadow under a conservation easement under the annexation agreement," Whitmer said. "Those graphic depictions on the PDDs are not controlling. The 2005 PDD did not and could not have amended the duty to place Cozens Meadow into a conservation easement."

Hoak did not rule or comment on whether the easement was still valid nor if it met the requirements under the agreements. She also did not rule or comment on whether Grand Park is required to put Cozens Meadow in an easement.

During her ruling, Hoak outlined her reasoning for ordering Fraser to resume entitlements, including that other people would also be damaged by Fraser's actions, such as subcontractors and real estate agents, and that the public interest wouldn't be harmed by her decision.

"It's not as though, if I grant the preliminary injunction, that the developers go into the middle of the meadow and erect a McMansion," Hoak said. "It may disserve the public, not to enter (the injunction)."

In addition, should the dispute about the easement continue to trial, Hoak said she believed Grand Park had a probability of being successful in their argument that they are not obliged to provide an easement on Cozens Meadow.

Hoak emphasized that her opinions in the matter could change based on new evidence if the parties continue to trial and that she wouldn't be bound by her current thoughts.

"I think, should we get to trial in this matter, I'm going to have a lot different evidence or certainly, more of it," she said. "I am not going to be tied to this and I do not want to hear at trial 'But Judge, you found reasonable probability of succeeding' because I will be at a much different stage."