

DEVELOPMENT AND LIABILITY IN THE OPHIR VALLEY, COLORADO

Joseph Shults*

ABSTRACT: Ophir, Colorado, a small mining town located 8 miles from Telluride, Colorado, was heavily damaged by avalanches in the early 1900s. By the 1960s it was nearly a ghost town, but currently it is experiencing a revival. Much of the town and the 3 mile road up the valley lie directly in avalanche paths, making it one of the most threatened, habited valleys in North America. The dense concentration of large avalanche paths in combination with high land values make the Ophir valley an ideal case to study some of the social and legal questions associated with land development in and near areas threatened by avalanches. Some of the issues to be discussed include: What are the responsibilities of developers to disclose the hazards and possible costs of mitigation? Who pays for mitigation if there is any? What are the rights and responsibilities of land owners who own portions of a path? And, of course, who pays if things go wrong? Information has been gathered from local legal advisors, residents, and local avalanche professionals.

Keywords: Liability, avalanche, zoning, mitigation

1. INTRODUCTION

Throughout the 70, 80's and 90's people have been flocking to the mountains throughout the West. Some just visit but many others have remained and made it their home, with areas surrounding or near ski resorts seeing exponential growth. In South West Colorado's historic mining areas there has been a rebirth of several small mining towns and an interest in land development on existing mining claims. Associated with this has been skyrocketing land values for one but also the associated avalanche hazards and legal questions.

2. HISTORY

The town of Ophir is located approximately five miles south of Telluride, Colorado in the San Juan Mountains. It sits at an elevation of 9,600-9,800 feet and is hemmed in by 13,000 plus feet peaks on the North and South sides. This in combination with the infamously unpredictable, Continental snow pack of the San Juans, makes it a somewhat hazardous location to reside in occasionally during the winter months.

First, a brief history of the valley. The area was discovered to be rich in minerals in 1875 and by 1881 it was an incorporated town. The population fluctuated through boom and bust cycles

but in 1885 Ophir had a population of 200 people and by 1891 the population had grown to 400 people and 70 houses.

Winter storms isolated the town for weeks at a time and produced large avalanches which destroyed many, many, mine buildings, a portion of the town itself, and killed numerous miners and residents.

By 1910 people were leaving Ophir as mines closed down. Silver and other metal prices dropped in the early twenties and Ophir's population continued to shrink. By the early 50's Ophir's population was down to two residents, and by 1970 there was only one full time resident. But in 1972 the Telluride Ski resort opened and the population has rose steadily since to a present level of about 130 residents.

In 1973 Art Mears was contracted by the State of Colorado to complete a study and produce a hazard evaluation map for the valley from the town of Ophir down to the Ophir loop. What this map shows is that roughly 70% of the three mile road into Ophir can be reached by avalanches with return periods of 10 to 50 years and several other paths reaching the road quite regularly. Also above the town itself two very large paths could potentially affect a large portion of the platted town. Although these paths run less frequently (four large cycles have been noted in the last 80 years) they present a greater hazard due to the exposure time of the residents.

Since this map is based on very little historical data and Voellmys equations, Art clearly states that it has its' limitations and possible

* Telluride Ski Patrol, P.O. Box 720, Ophir, CO 81426; tel. 970-728-2939; email. ppt@rmi.com

inaccuracies, but the lines which he drew have become very clear-cut and definitive. With the value of 50 x 100' lots now approaching \$100,000 people want to know if they are in the avalanche path or not. More recently people have been purchasing mining claims throughout the valley and once again the lines which Art drew 25 years ago can have a significant affect upon the land value of a particular parcel.

3. SO WHAT DEVELOPEMENT DO WE CURRENTLY HAVE WITHIN THE DELINEATED HAZARD ZONES?

Up to this point there has been no construction of new homes, but extensive renovation of existing homes has occurred along with the construction of new homes right up to the hazard zone lines.

4. DO PEOPLE HAVE THE RIGHT TO BUILD IN A KNOWN PATH?

At this time regulation 1041 does allow new construction within an avalanche path if no safe area can be located on the parcel, but the building must be engineered to withstand the expected impact pressures, along with no commercial use in the winter, and several other restrictions.

5. WHAT IS THE CURRENT CONTROL PROGRAM?

San Miquel County took control of the road in 1942, but since the population was almost zero no real control program was initiated. Sometime in the 1970's they started to bring in some guns from the state, generally in the spring, and did some sporadic control work over the road, but not over the town itself due to liability. Sometime during this period a round caused a release of the entire North side of the valley at once, thus showing that control of the road and town were occasionally the same.

In 1984, Helitrax helisking was started by Mike Friedman and several other locals. This gave the county a new option. Currently Mike Horner, the County Superintendent, along with Helitrax decided when to implement control work.

Since at this time there is no actual forecaster for the area, the closure of the road itself only occurs when control work is actually in progress. Although no one has actually been buried

yet there are stories of close calls and hair raising adventures.

6. SO WHAT IS THE LIABILITY ISSUE?

Up until 1998 the county and Helitrax were doing this control work without liability insurance. In 1998 Helitrax decided not to continue to do work for the county unless they were indemnified. Both the county and town of Ophir attorneys felt that since Helitrax was a subcontractor they were not covered under the government immunity laws. Getting this coverage took some time but since no houses were actually in the mapped runouts of the paths getting controlled there were able to secure a policy.

Acquisition of this policy was down to the wire with the largest storm cycle of the winter, and at one point due to the delay, the school bus ceased to travel the road. Along with this policy, signed waivers were acquired from the owners of the two existing homes most threatened by control of the road were acquired.

During this time there was talk of trying to acquire waivers from all of the land owners in Ophir, so that control over the town could be done, but initial attempts at this proved difficult.

7. LEGAL QUESTIONS:

7.1 What are the rights of private land owners as far as control work on private lands?

This appears to be an untried area. Can a land owner prevent explosives from being used on his/her property? The general response I received was yes, unless a case was made that a public emergency existed, then a court order could be retained. But most of the starting zones, in Ophir at least, are large enough that no one land owner has control over the entire starting zone.

7.2 Can a private land owner prevent slides from being run over their property?

Another gray area, but generally it was felt if you were in no way depriving that landowner of the economic benefit of that property it was probably acceptable for the public welfare. You could possibly be liable for damage to timber if it was shown to have economic value and certainly to any structure on the property.

7.3 What responsibilities do developers or real estate agents have to reveal hazards?

As you might imagine they are responsible to disclose any geologic hazard to the property that they know of and is on public record. As far as the road hazards go, things were not so clear. Although every realtor I spoke with said that they did disclose the road hazards, not all of them believed, since it did not directly effect the property that it was required.

7.4 How about a private seller?

No one knew of a case were a private seller was actually found liable for not disclosing hazards on a property.

7.5 What is the Ophir community feeling on all this?

Like most small communities, the people of Ophir want to have control of their own destiny, generally they are willing to accept the risks that come along with living in a high mountain valley. But what risk is acceptable? Will peoples perception of acceptable risk change after an accident?

8. WHAT IS IN THE FUTURE?

Well, the control work over the road seems to be mostly solved for the moment, although some type of local forecasting should probably be initiated so the road closures are more effective and timely.

As for the control work with explosives this would probably not be acceptable due to the unpredictability of avalanches. Most feel that defense structures in the runouts are probably the most effective option. But due to the very limited financial resources of the town I do not foresee anything along these lines in the near future. Also, even when these proposals have been mentioned some residents object on the grounds that it would make the town have a safer feeling and thus increase the rate of development.

9. WHAT DOES ALL THIS MEAN TO YOU AS AN AVALANCHE PROFESSIONAL?

I believe that these remote high mountain properties are going to continue to see ever increasing development in the future and thus a need for more study, delineation, and mapping of avalanche hazard areas. Those of you who do take on this consultation work are going to have to be sure to have a complete understanding of the procedures currently in use for the detailed evaluation of avalanche hazard areas and methods for quantifying risks, design parameters, mitigation procedures, and legal implications.

Keep in mind that that cold North facing hillside property might not look like much today but it could be the home of the rich and famous tomorrow

10. REFERENCES

Collman, R., McCoy, D. A., and Graves, A., 1993: The R.G.S. Story, Volume III, 13-493.

Mears, A.I., 1975: Snow Avalanche Hazards Of The Ophir Area, San Miquel County, Colorado. Open File Report, 1-13.