

DISTRICT COURT, EL PASO COUNTY, COLORADO
270 South Tejon Street
Colorado Springs, Colorado 80903
(719) 448-7700

M. B. ANDERSON; SASHA DAVIS-ELMORE; JONTREA DAVIS-ELMORE; DIANE A. DAVIS-ELMORE; CLYDE DEPEW; RUTH HACKER; DAVID HACKER; LEWIS JACKSON; BERTHA JACKSON; GAYLE Y. JONES; ROBERT W. KEENAN; RUTH D. KEENAN; LINDA KELEHER; ANDREANA KELEHER; JUDITH LEDEAN; CHRISTINE MCELHANEY; HERMAN R. MCELHANEY; CLAYTON L. NELSON; ELFRIEDE NOLAN; DORIAN O'LEARY; HEATHER O'LEARY; RONNIE REEVES; SANDRA REEVES; PAULA SCHOFIELD; DAVID SCHOFIELD; PAM SCHRODER; PATTI TEAL; KURT VANDENBOOGAARD; KURT WILLIAMS; ANNITA WILLIAMS; and MARCY WILMORE, Individual Taxpayers of the Cimarron Hills Fire Protection District,

Plaintiffs,

v.

THE CIMARRON HILLS FIRE PROTECTION DISTRICT;
THE BOARD OF DIRECTORS OF THE CIMARRON HILLS FIRE PROTECTION DISTRICT; THE EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS; and THE EL PASO COUNTY ASSESSOR,

Defendants.

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-and-

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Case Number: 2010CV7256
Div.: 2 Ctrm: S304

ANSWER

Defendants, the Cimarron Hills Fire Protection District and the Board of the Directors of the Cimarron Hills Fire Protection District, by and through their attorneys, Nathan, Bremer, Dumm & Myers, P.C. and Collins Cockrel & Cole A Professional Corporation, as and for an answer to the Plaintiffs' Complaint, state and allege as follows:

With reference to the section of Plaintiffs' Complaint entitled "Nature of the Case", these Defendants state that the allegations contained therein appear to be prefatory and, therefore, do not need a response. To the extent that this section is intended to contain factual allegations, any such factual allegations are denied.

1. With reference to paragraph 1 of Plaintiffs' Complaint, these Defendants are uninformed concerning whether all the Plaintiffs are taxpayers of the Cimarron Hills Fire Protection District ("District") or if they all are residents of El Paso County, Colorado and, therefore, deny those allegations. These Defendants admit, upon information and belief, that most of the Plaintiffs appear to be taxpayers of the District and residents of El Paso County. The remaining allegations contained in this paragraph are denied.

2. With reference to paragraph 2 of Plaintiffs' Complaint, these Defendants admit the allegations contained therein concerning the District and the general statement of the function of the District.

3. With reference to paragraph 3 of Plaintiffs' Complaint, these Defendants admit that the Board of Directors is the governing body of the District. These Defendants admit that the powers and duties of the District Board are generally set forth in the Special District Act. These Defendants admit that the District Board is subject to and must exercise reasonable care to attempt to comply with applicable laws of the State of Colorado.

4. With reference to paragraph 4 of Plaintiffs' Complaint, these Defendants are uninformed concerning the allegations contained in this paragraph, however, upon information and belief, the Board of County Commissioners is the governing body of the county and the County Assessor is responsible for assessing taxable property in the County. Any remaining allegations are denied.

5. With reference to paragraph 5 of Plaintiffs' Complaint, these Defendants admit that the Court has personal jurisdiction over the District and that venue is proper. The Board of Directors of the District is not an entity cognizable in law. These Defendants admit that the Court has subject matter jurisdiction except insofar as stated in the affirmative defenses contained in this answer.

6. With reference to paragraph 6 of Plaintiffs' Complaint, these Defendants admit that in an election held in 1996, the eligible voters of the District approved a ballot question very

similar to, but not exactly the same, as contained in this allegation. In any event, the ballot question speaks for itself.

7. With reference to paragraph 7 of Plaintiffs' Complaint, these Defendants submit that the Colorado Constitution speaks for itself and deny any allegations inconsistent with the language of the Constitution.

8. With reference to paragraph 8 of Plaintiffs' Complaint, these Defendants admit that since the 1996 election, the voters have not approved increases in the mill levy above those already authorized. Any allegations contained in this paragraph to the contrary are denied.

9. With reference to paragraph 9 of Plaintiffs' Complaint, these Defendants admit that the District has certified mill levies in excess of 7.598 mills. These Defendants deny the remaining allegations contained in this paragraph.

10. With reference to paragraph 10 of Plaintiffs' Complaint, these Defendants incorporate their responses to the allegations incorporated in this paragraph by Plaintiffs.

11. With reference to paragraph 11 of Plaintiffs' Complaint, these Defendants are uninformed concerning what Plaintiffs request and, therefore, deny the allegations contained in this paragraph.

12. With reference to paragraph 12 of Plaintiffs' Complaint, these Defendants admit that District Board members believe that the District has complied with TABOR. Any allegations to the contrary contained in this paragraph are denied.

13. With reference to paragraph 13 of Plaintiffs' Complaint, these Defendants deny the allegations contained in this paragraph.

14. With reference to paragraph 14 of Plaintiffs' Complaint, these Defendants are uninformed concerning the allegations contained in this paragraph and, therefore, at this time, deny the same.

15. With reference to paragraph 15 of Plaintiffs' Complaint, these Defendants incorporate their responses to the allegations incorporated in this paragraph by Plaintiffs.

16. With reference to paragraph 16 of Plaintiffs' Complaint, these Defendants deny the allegations contained in this paragraph.

17. With reference to paragraph 17 of Plaintiffs' Complaint, these Defendants incorporate their responses to the allegations incorporated in this paragraph by Plaintiffs.

18. With reference to paragraph 18 of Plaintiffs' Complaint, these Defendants admit that in December 2010, the District certified a mill levy for 2010 taxes to be collected in 2011 in excess of a mill levy of 7.598. The remaining allegations contained in this paragraph are denied.

19. With reference to paragraph 19 of Plaintiffs' Complaint, these Defendants deny the allegations contained in this paragraph.

20. These Defendants deny each and every other allegation contained in the Plaintiffs' Complaint not heretofore specifically admitted.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims, at least in part, are barred or limited by the doctrine of laches.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims, at least in part, are barred or limited by the doctrine of estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims, at least in part, are barred or limited by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs have made claims which could lie in tort, such claims are barred and/or governed by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.

FIFTH AFFIRMATIVE DEFENSE

The Board of Directors of the District is not an entity cognizable at law.

SIXTH AFFIRMATIVE DEFENSE

Some of Plaintiffs' claims may not state a claim upon relief much may be granted against these Defendants.

WHEREFORE, having fully answered the Plaintiffs' Complaint, these Defendants pray that the same be dismissed and denied as to them, and that these Defendants have judgment against the Plaintiffs, jointly and severally, for all costs herein expended, for reasonable attorney fees, and for such other and further relief as the Court may seem proper.

Respectfully submitted,

NATHAN, BREMER, DUMM & MYERS, P.C.

s/ J. Andrew Nathan

J. Andrew Nathan, #3295

– and –

David A. Greher, #27311

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Attorneys for Defendants Cimarron Hills Fire Protection District and the Board of Directors of the Cimarron Hills Fire Protection District

This ANSWER was filed electronically pursuant to C.R.C.P. 121 §1-26. The original signed document is on file at the offices of Nathan, Bremer, Dumm & Myers, P.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2011, a true and correct copy of the foregoing ANSWER was served via the State of Colorado's LEXIS-NEXIS File and Serve e-filing system upon each of the following:

Richard L. Shearer, Esq. J. Alan Call, Esq. SHEARER & CALL, P.C. 1625 Broadway, Suite 1450 Denver, Colorado 80202 rick.shearer@shearercall.com alan.call@shearercall.com <i>Attorneys for Plaintiffs</i>	Andrew C. Gorgey, Esq. First Assistant County Attorney 27 E. Vermijo Avenue Colorado Springs, CO 80903 <i>Attorney for El Paso County Defendants</i>
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s/ Cassandra Sudbeck

Cassandra Sudbeck

This Certificate of Service was filed electronically pursuant to C.R.C.P. 121 §1-26. The original signed certificate is on file at the offices of Nathan, Bremer, Dumm & Myers, P.C.