

DISTRICT COURT, EL PASO COUNTY,
STATE OF COLORADO
270 South Tejon St.
Colorado Springs, Colorado 80903

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CO El Paso County District Court 4th JD

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Plaintiffs:

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
v.

Defendants:

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

Attorneys for Plaintiffs:

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▲ COURT USE ONLY ▲

Case Number:

Div.:

COMPLAINT

Plaintiffs, 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 (collectively “Plaintiffs”), through counsel, Shearer & Call, P.C., for their Complaint against Defendants, state and allege as follows:

NATURE OF THE CASE

Plaintiffs seek relief against the Defendants for violations of Article X, Section 20 of the Colorado Constitution, commonly known as the Taxpayer Bill of Rights (“TABOR”). Specifically, the Cimarron Hills Fire Protection District (the “Cimarron Hills”), through its Board of Directors, has violated TABOR by increasing its mill levy without obtaining voter approval in advance, and by collecting, keeping and/or spending the associated revenue (*see* COLO. CONST. art. X § 20(1) and (4)(a)). Plaintiffs, as individual taxpayers of Cimarron Hills, seek: (1) a declaratory judgment that Cimarron Hills’ mill levy increases since 2004, in excess of the 7.598 mills approved by the voters in 1996, are in violation of TABOR; (2) an Order requiring Cimarron Hills to refund tax revenues collected in violation of TABOR, plus 10% annual simple interest, as provided by TABOR; (3) a temporary restraining order, and preliminary and permanent injunctions, prohibiting El Paso County from distributing or paying to Cimarron Hills, and prohibiting Cimarron Hills from receiving, keeping or spending, tax revenues in 2011 and for all years thereafter, which are in excess of the amount of revenue that would have been generated based upon the voter approved mill levy of 7.598; and (4) an award of costs and reasonable attorney fees incurred in this enforcement action (*see* COLO. CONST. art. X § 20(1)).

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are taxpayers of the Cimarron Hills Fire Protection District, and as such have standing to bring this action. Plaintiffs also are residents of El Paso County, Colorado.

2. Defendant Cimarron Hills Fire Protection District (“Cimarron Hills”) is a quasi-municipal corporation and political subdivision of the State of Colorado, formed pursuant to C.R.S. §32-1-101, *et seq.* (“Special District Act”) to provide fire suppression, fire prevention, emergency medical, ambulance, emergency rescue and hazardous materials services to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction. Cimarron Hills is located in El Paso County, Colorado.

3. Defendant Board of Directors of Cimarron Hills Fire Protection District (the “District Board”) is the governing body of Cimarron Hills. The powers and duties of the District Board are set forth in the Special District Act. The District Board also is subject to, and must comply with, all of the laws of the State of Colorado.

4. Defendant Board of County Commissioners of El Paso County, Colorado, is the governing body of El Paso County, Colorado, through Defendant El Paso County Assessor (collectively “El Paso County”), is responsible for collecting real property taxes and distributing tax revenues to special districts within El Paso County jurisdiction, including Cimarron Hills.

5. This Court has subject matter jurisdiction and personal jurisdiction over the Defendants. Venue in this Court is proper pursuant to C.R.C.P. 98(c).

GENERAL ALLEGATIONS

6. In an election held in 1996, the eligible voters of Cimarron Hills approved the following ballot question:

SHALL THE CIMARRON HILLS FIRE PROTECTION DISTRICT MILL LEVY FOR GENERAL OPERATING EXPENSES BE INCREASED BY 2.931 MILLS COMMENCING JANUARY 1, 1997 FOR A TOTAL MILL LEVY FOR GENERAL OPERATING EXPENSES NOT TO EXCEED 7.5980 MILLS AND THEREAFTER, AND THEREAFTER [sic] AS ADJUSTED FOR INFLATION PLUS ANNUAL GROWTH TO THE EXTENT PERMITTED BY ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION FOR THE PURPOSE OF FIRE PROTECTION AND EMEERGENCY MEDICAL ASSITANE; SUCH VOTER APPROVED REVENUE CHANGE TO BE AN EXCEPTION TO THE LIMITES WHICH WOULD OTHERWISE APPLY; AND SHALL THE CIMARRON HILLS FIRE PROTECTION DISTRICT BE ENTITLED TO COLLECT AND SPEND THE FULL REVENUES FROM SUCH TAX INCREASE IN ANY YEAR AFTER THE FIRST FULL YEAR IN WHICH IT IS IN EFFECT WITOUT ANY OTHER LIMITATION OR CONDITION, AND WITHOUT LIMITING THE COLLECTIN OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE CIMARRON HILLS FIRE PROTECTION DISTRICT, UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW. (Emphasis and capitalization in original.)

7. Pursuant to Article X, Section 20, of the Colorado Constitution, effective December 31, 1992, commonly known as the Taxpayer Bill of Rights (“TABOR”), special districts must have voter approval in advance for any “mill levy above that for the prior year.” *See* COLO. CONST. art. X, § 20(4)(a). TABOR also prohibits special districts from collecting, keeping or spending revenue associated with an illegal mill levy increase.

8. Since the 1996 election, Cimarron Hills has not obtained voter approval for any increases in the mill levy.

9. Despite the lack of voter approval, beginning in 2004 the Board of Cimarron Hills has certified mill levies in excess of the 7.598 mills approved by the voters in the 1996 election, and has, in violation of TABOR, collected, kept and/or spent the revenue associated with its excessive mill levy increases.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

10. Plaintiffs incorporate the foregoing allegations by this reference.

11. Plaintiffs request a declaratory judgment that Cimarron Hills' mill levy increases since 2004, which are in excess of the 7.598 mills approved by the voters in 1996, are in violation of TABOR, and that Cimarron Hills has illegally collected, kept and/or spent the tax revenues associated with the mill levy increases.

12. Upon information and belief, some or all of the members of the District Board contend that Cimarron Hills was and is entitled to impose a mill levy in excess of the 7.598 mills approved by the voters in 1996, and to collect, keep and/or spend the tax revenues associated with the mill levy increases.

13. A declaratory judgment will end the controversy and terminate any uncertainty as to the parties' rights and obligations.

14. Plaintiffs are interested persons, for purposes of C.R.C.P. 57(b).

SECOND CLAIM FOR RELIEF
(TABOR Refund)

15. Plaintiffs incorporate the foregoing allegations by this reference.

16. Plaintiffs are entitled to a refund of the tax revenues collected, kept or spent illegally by Cimarron Hills in violation of TABOR, with 10% annual simple interest, pursuant to COLO. CONST. art. X § 20(1).

THIRD CLAIM FOR RELIEF
(Temporary Restraining Order and Temporary and Permanent Injunctive Relief)

17. Plaintiffs incorporate the foregoing allegations by this reference.

18. In December 2010, in violation of TABOR, the District Board again certified a mill levy (for 2010 taxes to be paid in 2011), which certification is in excess of the voter approved mill levy of 7.598.

19. Based upon the foregoing facts, and pursuant to C.R.C.P. 65, and *Rathke v. MacFarlane*, 648 P.2d 648 (Colo. 1982):

- a. Plaintiffs have a reasonable probability of success on the merits, based upon the plain language of TABOR;
- b. There is a danger of real, immediate, and irreparable injury (i.e., unless enjoined, Cimarron Hills will collect, keep or spend the revenue associated with the excessive mill levy in violation of TABOR) which may be prevented by injunctive relief;
- c. Plaintiffs have no plain, speedy, and adequate remedy at law;
- d. Injunctive relief will preserve the status quo pending trial on the merits;
- e. The granting of a preliminary injunction will not disserve the public interest; and
- f. The balance of equities favors issuing an injunction.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, and grant relief, as follows:

- a. that the Court enter a declaratory judgment stating that Cimarron Hills' mill levies since 2004, in excess of the 7.598 mills, are in violation of TABOR;
- b. that the Court grant an Order requiring Cimarron Hills to refund tax revenues received during the last four full fiscal years prior to the year in which this Complaint was filed, and for any period thereafter, which revenue was received in violation of TABOR, plus 10% annual simple interest, to Cimarron Hills' taxpayers, or, in the alternative, to provide future tax credits to Cimarron Hills' taxpayers in the amounts that should be refunded, as provided by TABOR;
- c. that the Court enter a Temporary Restraining Order, and grant preliminary and permanent injunctions, prohibiting El Paso County from paying or distributing to Cimarron Hills, and prohibiting Cimarron Hills from receiving, keeping or spending, tax revenues in excess of 7.598 mills; and

d. that the Court grant Plaintiffs an award of the costs and reasonable attorney fees incurred in this action, pursuant to COLO. CONST. art. X § 20(1).

Dated this 30th day of December, 2010.

SHEARER & CALL, P.C.

*Original signature on file at the offices of
Shearer & Call, P.C.*

By: /s/ J. Alan Call

Richard L. Shearer

J. Alan Call

ATTORNEYS FOR PLAINTIFFS

Plaintiffs' Representative's address:

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