

DISTRICT COURT, DOUGLAS COUNTY,
COLORADO
4000 Justice Way, Suite 2009
Castle Rock, CO 80109

**IN RE CASTLE PINES NORTH
METROPOLITAN DISTRICT**

Attorneys for the Petitioners:

GRIMSHAW & HARRING, P.C.
Matthew R. Dalton, #11192
Thomas N. George, #41395
1700 Lincoln Street, Suite 3800
Denver, CO 80203
Phone: (303) 839-3800
Fax: (303) 839-3838
E-mail: m@grimshawharring.com
tgeorge@grimshawharring.com

EFILED Document
CO Douglas County District Court 18th JD
Filing Date: Apr 28 2010 2:01PM MDT
Filing ID: 30827399
Review Clerk: tina m surber

▲COURT USE ONLY▲

Case No. 1984CV126

Div.: Ctrm.:

**RESPONSE TO CITY OF CASTLE PINES NORTH'S MOTION FOR
CLARIFICATION OF APRIL 17, 2010 MINUTE ORDER**

COMES NOW Castle Pines North Metropolitan District ("District"), by and through counsel, Grimshaw & Harring, P.C., and submits this Response to City of Castle Pines North's Motion for Clarification of April 17, 2010 Minute Order. The District recognizes that this Response may not comport with the Court's recent minute order, and that the recent filings in this case present a lot back-and-forth between the City and the District. The District has sought information from the City in connection with this matter for over a year now to no avail. Each of the District's efforts to reach out to the City has been met much like the District's recent filings in this case—with misstatements and misleading assertions. It is the District's hope that this response may be treated as a final reply in this matter so that this Court may rule on the District's outstanding Request for Continuance, and that the District need not spend more time or taxpayer money on this matter. In Response, the District states the following:

1. The City of Castle Pines North (the "City") filed an Application for Dissolution ("Application") with the District on February 5, 2010.
2. The District filed a Petition for Dissolution and Request for Continuance ("Petition") on April 5, 2010. The Petition requests an initial interim continuance of six (6) months in order for the District to progress with its plan for dissolution and completion of the requirements of § 32-1-702, C.R.S.

3. The City filed a Response to Petition for Dissolution and Request for Continuance ("Response") on April 15, 2010.

4. The Court entered a minute order, providing time frames for the parties' responses and replies ("Minute Order") on April 17, 2010,

5. The District filed a Reply to the City's Response ("Reply") on April 19, 2010.

6. The City filed a Motion for Clarification of April 17, 2010 Minute Order ("Motion") on April 26, 2010. In its Motion, the City "specifically requests guidance from this Court as to whether the Court desires the City to file an additional pleading with this Court prior to the Court issuing an order on the matter of the continuance of these dissolution proceedings." The City's Motion is five pages in length and states, "Notwithstanding the City's Request for Clarification, the City herein responds to statements in the District Reply that are incorrect and misleading." Motion at ¶7. The City's Motion is clearly no different than a response/reply, and procedurally, the City could have simply filed its reply as permitted by this Court and delineated in the Minute Order. The City instead chose to file the Motion and to use the opportunity to present new arguments to the Court. The District herein responds to those new arguments posited by the City in the Motion.

7. In its Motion, the City states, "The Application is clear in establishing that the City's intent in initiating the dissolution proceedings is to have the City ultimately assume those services currently provided by the District, upon voter approval." Motion at ¶7. This statement is, apparently, support for the City's argument that the District must enter into an intergovernmental agreement ("IGA") with the City for the continuation of District services. However, the City offers zero legal support for this argument and does not respond to the District's previous assertion that state law does not require the District to enter into an IGA with the City. What the Application itself says, as the District has argued previously, is irrelevant. The City's "intent in initiating the dissolution proceedings" is equally irrelevant.

8. The City's apparent logic in drawing its conclusion that the District must enter into an IGA with the City is patently flawed, and the flaw is exhibited in the City's Motion. In ¶8 of the Motion, the City states: "State law also requires an intergovernmental agreement between the District and the City." As support for this contention, the City states:

Section 32-1-702(4)(b)(I), C.R.S. requires, as an integral part of any dissolution proceeding wherein the services of the district to be dissolved are to be continued, that an intergovernmental agreement be reached by and between the district to be dissolved and the governmental entity (or entities) that will be assuming responsibility for the provision of such services post-dissolution of the district.

The District agrees, and the law is clear, that the District must enter an IGA with the entity (or entities) that will continue that District's services. The City jumps to the conclusion that the

entity with whom the District enters an IGA must be the City, and no other entity. To the contrary, the City's own statement demonstrates clearly that the District need only enter an IGA "between the district to be dissolved and the governmental entity (or entities) that will be assuming responsibility." The statute contemplates, as the City's language recognizes, that a dissolving District may enter an agreement or agreements with any one or several entities for the continuation of services. Further, the City quotes the following from Section 32-1-704(4)(c), C.R.S.:

If, however, the special district is entirely within the municipality and the parties are unable to reach an agreement, the court may impose a plan for dissolution under section 32-1-702 at the request of either the municipality or the special district and shall order an election to be held in the special district on the question of dissolution.

Motion at ¶8 (emphasis supplied). Here, the City's argument apparently relies on an interpretation that "parties," as used in this section, refers only to the City and the District. To the contrary, Section 32-1-704(1), C.R.S., which precedes the above-quoted passage, provides clear explanation that "parties" should be interpreted as it is under all other legal proceedings as parties to the case—in this case, the dissolution:

Prior to the court hearing on the petition for dissolution, the governing body of any municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., other special district, or regional service authority which is a party to an agreement to render services and which is assuming the responsibility to provide those services in the special district to be dissolved shall submit to the jurisdiction of the court by a written entry of appearance.

(emphasis supplied). Hypothetically, if the District is, in the end, unable to reach an agreement with whatever entities it negotiates with, then the City does have the prerogative to request this Court impose a plan for dissolution. It does not follow, however, that the "parties" to the agreement are limited only to the City and the District.

9. In ¶9 of the Motion, the City blatantly misrepresents the law to the Court. The City addresses the District's argument that "while a [c]ity may initiate dissolution proceedings, it must then cede all control of the process from that point forward," and states that "such a conclusion directly conflicts with the clear legislative intent in allowing a municipality to initiate proceedings in the limited circumstance of where 85% of a district's territory is contained within the municipality." (emphasis supplied). As support for this direct conflict and clear legislative intent, the City offers the following summation of the legislative intent along with the following citation:

- a. to allow a City to initiate dissolution proceedings to eliminate an overlapping governmental entity; and

- b. to increase governmental efficiencies to the benefit of residents and taxpayers of the City; and
- c. to fully absorb the functions of the district.

See Section 32-1-102(3) and (5), C.R.S.

Section 32-1-102(3), C.R.S., reads, in its entirety, as follows:

The general assembly further declares that the purpose of part 5 of this article is to facilitate the elimination of the overlapping of services provided by local governments and the double taxation which may occur because of annexation or otherwise when all or part of the taxable property of an area lies within the boundaries of both a municipality and a special district.

(emphasis supplied). Dissolution is controlled by part 7. Part 5 controls the exclusion of territory from an existing district. It has nothing to do with the dissolution of a district.

Section 32-1-102(5), C.R.S., reads, in its entirety, as follows:

The general assembly further declares that the purpose of part 7 of this article is to facilitate dissolution of special districts in order to reduce the proliferation, fragmentation, and overlapping of local governments and to encourage assumption of services by other governmental entities.

(emphasis supplied). While part 7 is the correct dissolution part, nowhere does this declaration of purpose state or even imply that the purpose of the dissolution is to cause the City to "fully absorb the functions of the district." This is a blatant misrepresentation of the law.

10. The City contends that "Section 32-1-702(4)(b)(I) clearly anticipates that where a special district is entirely located within a municipality, the parties are required to enter into an intergovernmental agreement regarding the plan for dissolution." Motion at ¶10 (emphasis supplied). Section 32-1-702(4)(b)(I), C.R.S., states, in its entirety, that a petition for dissolution must include the following:

(b) (I) A plan for dissolution specifically providing that services are to be continued within the special district by one or more regional service authorities, municipalities, counties, intergovernmental authorities formed and operated under part 2 of article 1 of title 29, C.R.S., or other special districts, or any combination thereof, and incorporating an agreement with such regional service authority, municipality, county, intergovernmental authority, or other special district, or any combination thereof, under which responsibility for all services presently provided by the special district will be assumed by such entity. Such agreement shall provide for the operation and maintenance of the system or facilities of the special district by the regional service authority, municipality, county,

intergovernmental authority, or other special district, provisions for service, rates, and charges, and, if applicable, provisions concerning acquisition of the special district's system or facilities, consolidation or inclusion of territory, and procedures for contract modification, employee rights, and retirement benefits. Such agreement may include provisions for certification of levies by the special district continuing in existence under paragraph (c) of subsection (3) of this section, the contracting regional service authority, municipality, county, intergovernmental authority, or other special district providing the services. Any agreement concerning fire protection districts entered into pursuant to this subsection (4) shall include provisions for the continuation of paid employees' rights pursuant to section 32-1-1002 (2) and the retirement benefits of paid firefighters as provided in parts 2 and 4 of article 30.5 and article 31 of title 31, C.R.S., and the retirement benefits of volunteer firefighters under part 11 of article 30 of title 31, C.R.S.

(emphasis supplied). If the statute makes anything clear, it is clear that a dissolving district may explore all options available to it for the continuation of services with all other entities.

11. In ¶11 of the Motion, the City contends that the District has not conducted itself "promptly" and in "good faith," as required by law. As support for this contention, the City states that the District has requested information from the City in order to progress in the District's plan for dissolution in a "ploy to stall for more time." The District is puzzled by how the District's request for information to assist in the dissolution process could possibly be interpreted by the City as anything but good faith. To date, the District continues to wait, in good faith, for the requested information from the City in order to proceed formulating its dissolution plan. The dissolution process has been stalled, if at all, by the City's refusal to provide information to the District to assist in the dissolution process.

12. In ¶12 of the Motion, the City contends that the District's "lack of good faith is further evidenced by an email from the Board of Directors of the District to the citizens of Castle Pines North." (email attached to Motion). The City contends that the email makes factual misrepresentations by (1) misstating that the City filed a petition in District Court to dissolve the District on January 26, 2010, and (2) misstating that the March 25, 2010 letter from Wells Fargo Bank declares the petition for dissolution as a "material adverse change" and "an event of default."

In response to (1), Counsel admits that the email incorrectly referred to the Application as a "petition" and mixed up the date of filing (the City entered its appearance with the Court on January 26, 2010). These were honest mistakes. In any event, the date and language are immaterial.

As to (2), the District's email included the March 25, 2010, letter from Wells Fargo Bank as an attachment. It is difficult to misrepresent a document when you hand it out. The bank's letter speaks for itself, and is attached hereto as Exhibit A.

In addition, the City fails to mention in its Motion that, after the initial meeting held between the District and Wells Fargo Bank, there was a follow up meeting, attended by the Mayor, a City Council member and City Attorneys, where Wells Fargo Bank confirmed the statements in the letter and stated that Wells Fargo Bank would only reconsider declaring a default if the City withdrew its Application or otherwise made the Bank whole.

13. In ¶12 of the Motion, the City further contends that the District's email "establishes the strong likelihood that the District is attempting to influence voters in advance of an election on the question of dissolution or in advance of the District's May 4, 2010 general election." The City goes so far as to suggest that the District's email may violate the Fair Campaign Practices Act. In doing so the City again blatantly misrepresents the law. The FCPA only applies to the District if a ballot issue is before the public. Any assertion of a violation is therefore premature and prejudicial. That said, the District will continue to move forward with the dissolution process promptly and in good faith, but the District will not apologize for providing transparency and information to its taxpayers in connection with this dissolution proceeding, which has already cost the District tens of thousands of dollars in professional fees, and has halted the District's ability to secure much needed renewable water resources for the taxpayers.

WHEREFORE, the District requests this Court treat the City's Motion for Clarification as the City's final response/reply under the Court's Minute Order, DENY the City's Motion for Clarification, and GRANT the District's Request for Continuance. A proposed order is attached.

Respectfully submitted this 28th day of April 2010.

GRIMSHAW & HARRING, P.C.

*Pursuant to CRCP 121 §26-9, this document has
been e-filed. An original signature is on file.*

s/ Thomas N. George
Matthew R. Dalton
Thomas N. George

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2010, a true and correct copy of the foregoing was served electronically via LexisNexis File & Serve on the following:

John E. Hayes, Esq.
Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 Sixteenth Street, Suite 200
Denver, CO 80202-1468

Linda C. Michow, Esq.
Widner Michow & Cox LLP
13133 East Arapahoe Road, Suite 100
Centennial, CO 80112

A duly signed copy of this pleading is on file and available for inspection at the offices of Grimshaw & Harring, P.C.

s/ Lori A. Garofalo
Lori A. Garofalo