

District Court, Adams County, Colorado Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601	DATE FILED: December 21, 2023 5:54 PM CASE NUMBER: 2022CV31644
<p>Plaintiff: Reunion Metropolitan District</p> <p>v.</p> <p>Defendants: North Range Metropolitan District No. 1, <i>et al.</i></p>	<p style="text-align: center;">▲ Court Use Only ▲</p> <hr/> <p>Case No.: 2022CV31644 Courtroom: W</p>
<p>Mandamus Order</p>	

Background

The Court held a hearing on December 21, 2023, after the parties filed a Joint Advisement of Issues. Plaintiff takes the position that Reunion Metropolitan District 1’s action at its November 29, 2023, board meeting in not adopting a budget contemplating the then-current Equalization Mill Levy is a violation of the MLEPA and asks this Court to Order compliance.

NR1 acknowledges that its desire and intent is to adopt a budget that certifies a mill levy of 50 mills, drastically less than the increase in mill levies proposed by RMD. However, NR1 takes the position that its actions taken on November 29, 2023 are consistent with the “spirit” of the MLEPA, and NR1’s actions align with RMD’s fiduciary

duties owed to the NR1 property owners to act in the best interest of the property owners who fund the entire operation. When pressed on this issue, NR1 acknowledged that its actions taken on November 29, 2023 are not consistent with the “letter” of the MLEPA.

Prior to the December 21, 2023, hearing, the parties conferred and agreed to the following:

(1) At the prior Status Conference, North Range Metropolitan District 1 (NR1), NR2, and RMD acknowledged that they are currently operating under the Court’s May 9, 2023 Order Concerning the Amended Motion for Appointment of Receiver, for Preliminary Injunction and for Mandamus, and the Order requires NR1 and NR2 to perform all of their obligations under the Mill Levy Equalization and Pledge Agreement (MLEPA).

(2) Prior to the Status Conference, on November 1, 2023, RMD adopted a First Amended Budget and provided Equalization Mill Levy Documents to each of the North Range Districts. At the time, it was anticipated that the Equalization Mill Levy would be set at the total rate of 92.606 mills.

(3) Prior to the Status Conference, on November 8, 2023, NR2 adopted a budget consistent with the Equalization Mill Levy as it had been contemplated at the time, based on the then-current Equalization Mill Levy Documents that RMD had provided to the North Range Districts.

(4) At the Status Conference, the Court directed the parties how to proceed if any of NR1, NR2 and/or NR3 if the parties encountered any instances of disagreement regarding the certification of the mill levies.

(5) On November 29, 2023, NR1 held its budget hearing. At that public meeting, the board of NR1 expressed its intent not to adopt a budget reflecting the then-contemplated Equalization Mill Levy, and instead, on a 3-2 vote, instructed Wolfersberger, LLC, as District Manager and Accountant, to prepare a 2024 budget to be adopted at a meeting scheduled for January 9, 2024, based on an aggregate mill levy rate of 50 mills.

(6) On November 30, 2023, the board of NR3 adopted a budget reflecting the then-existing Equalization Mill Levy.

(7) On December 13, 2023, RMD provided the North Range Districts with updated Equalization Mill Levy Documents which contemplate that, for the 2024 budget year, the final Equalization Mill Levy is 98.250 mills.

(8) Pursuant to SB23B-001, the deadline for delivering mill levy certifications to Adams County is January 10, 2024. NR1 has not yet certified its mill levies to Adams County for the 2024 budget year.

(9) On December 15, 2023, counsel for NR1 indicated that the board of directors of NR1 intends to adhere to the positions taken by it during its November 29, 2023 meeting. As such, NR1 does not intend to certify the Equalization Mill Levy presented by RMD.

(10) On December 14, 2023, counsel for NR2 indicated that the board of directors of NR2 intends, under protest and without relinquishing any arguments in this case, to adjust the mill levy to 98.250 mills for collection in 2024 pursuant to the current Equalization Mill Levy.

(11) On December 15, 2023, counsel for NR3 indicated that the board of directors of NR3 intends, under protest and without relinquishing any arguments in this case, to adjust the mill levy to 98.250 mills for collection in 2024 pursuant to the current Equalization Mill Levy.

(12) On December 15, 2023, NR4 provided its Mill Levy Notification under the MLEPA of its intent to set the mill levy at 98.250 mills for collection in 2024 pursuant to the MLEPA.

While Plaintiff discusses NR1, NR2, NR3, and NR4, the only relevant District is NR1. As such, this Order only applies to NR1.

Order

The Court finds that NR1's actions are inconsistent and non-compliant with the letter of the MLEPA, and it concedes this finding. The Court does not address the "spirit" of the MLEPA, as it might be more relevant for a separate motion that the Court anticipates will be filed by NR1 specifically or by the Defendants, as a whole.

The required Equalization Mill Levy for NR1 is 98.250 mills, comprised of a Debt Service Mill Levy of 72.666 mills and an Operations and Maintenance Mill Levy of 25.584 mills.

Pursuant to C.R.C.P. 106(a)(2), this Court has authority to issue an order of mandamus to NR1. Additionally, Section 2.15 of the MLEPA specifically provides for mandamus as a remedy in the event of default under the MLEPA.

The Court finds that it is necessary to enter an order for mandamus, given NR1's failure to comply with the Order, and to ensure that NR2 and NR3 timely and properly certify to the BOCC on Division of Local Government Form DLG 70 the aggregate amount of the Equalization Mill Levy of 98.250 mills, with the Debt Service Mill Levy and Operations and Maintenance Mill Levy of each Defendant as further specified below.

Because of the January 10, 2024, statutory deadline for certification of the Equalization Mill Levy, and in order to allow sufficient time to ensure compliance by NR1 with their obligations under the MLEPA, it is necessary that the certifications be completed in advance of the statutory deadline.

The Court Orders that the board of directors of NR1 shall provide valid public notice and shall duly hold a public meeting by or before January 4, 2024. At such public meeting, the board of directors of NR1 shall adopt a budget in compliance with the MLEPA and the Court's Order, which is a budget in compliance with the Equalization Mill Levy Documents provided by RMD on December 13, 2023, and contemplating an Equalization

Mill Levy of 98.250 mills, comprised of a Debt Service Mill Levy of 72.666 mills and an Operations and Maintenance Mill Levy of 25.584 mills. The board of directors of NR1 shall certify the Equalization Mill Levy no later than the business day immediately following the meeting, and shall immediately provide proof to RMD and the Receiver showing delivery of the Form DLG 70 properly certifying to the BOCC the Equalization Mill Levy of 98.250 mills, comprised of a Debt Service Mill Levy of 72.666 mills and an Operations and Maintenance Mill Levy of 25.584 mills.

Ordered on December 21, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Roberto Ramirez". The signature is written in a cursive, flowing style.

Roberto Ramirez
District Court Judge