

Frequently Asked Questions (FAQs) Concerning the City of Cherry Hills Village's Exclusion from South Suburban Park and Recreation District

August 25, 2008 (revised 12/1/08 and 7/29/09)

What has been the process for Cherry Hills Village's withdrawal from South Suburban Park and Recreation District?

This is a timeline of the significant events in the withdrawal of the Village from the South Suburban Park and Recreation District:

- August 8, 2001 – The Village hosted a public forum to discuss the pros and cons of withdrawing from South Suburban. A study prepared by BBC Research & Consulting was presented at the public forum that evaluated the likely consequences of withdrawal from South Suburban.
- July 2002 – Council approved a resolution setting a special election to ask Cherry Hills Village voters whether the Village should withdraw from South Suburban.
- November 2002 – Village residents voted 1668 in favor of withdrawal from South Suburban and 1437 voted in opposition. As a result of the election the Village began the process of withdrawing from South Suburban.
- February 2003 to December 2003 – The Village filed a Petition for Exclusion as required by state statutes, and began negotiating with South Suburban to develop an agreed upon plan with South Suburban for terms of withdrawal from the District. South Suburban took the position that, despite the vote, the Village should not be permitted to withdraw from the District at any time and on any terms because the Village does not and cannot provide “the same” recreational services to its residents.
- December 2003 – The Village filed a court proceeding required by Colorado state statutes (CRS 32-1-501 to 503) to determine the terms and conditions of the Plan by which the Village will withdraw from South Suburban.
- November 2004 – The District Court ordered that the Village may withdraw from the District and that the exclusion would be effective on January 1, 2005 and, in addition, ordered the Village to pay South Suburban the fair market value of the parks and improvements to be transferred to the Village (totaling \$9,660,838). The parks that were transferred to Village ownership were Blackmer Common, Dahlia Hollow, John Meade, and Three Pond.
- February 2005 – The Village appealed the District Court's order that it must pay the fair market value of parks and improvements transferred to the Village to the Colorado Court of Appeals.
- March 2007 – The Colorado Court of Appeals concluded that the trial court erred in its ruling that the state statute requires that the Village pay South Suburban “fair market value” for parks in the Village. The Court of Appeals reversed the portion of the trial court order concerning the payment of fair market value and sent the case back to the trial court for further proceedings. The trial court was directed to consider whether any other statutory factors require payment to South Suburban and to enter findings and explanations in support of any award.

- May 2008 – The trial court issued a second opinion, again ordering the Village to pay South Suburban the sum of \$9,660,838, precisely the amount that the Court of Appeals had reversed one year earlier. The second opinion contains virtually no explanation of how the trial court arrived at the precise figure it had previously determined was the fair market value of the parks in the Village, and makes no specific findings on the other factors that the Court of Appeals directed the trial court to consider.
- June 2008 – The Village filed an appeal with the Colorado Court of Appeals.
- May 2009 – The Court of Appeals decided the appeal in favor of South Suburban. The Court of Appeals reasoned that the \$9,660,838 judgment was *not* imposed to compensate for the fair market value of the parks transferred to the Village but, instead represented the amount of tax revenue that South Suburban would have received if the Village had remained in the district from 2004 to 2014. The Court of Appeals held that the District Court’s order was not prohibited by § 32-1-503(1), C.R.S., which provides that “territory excluded from a special district pursuant to the provisions of this part 5 shall not be subject to any property tax levied by the board [of the district] for the operating costs of the special district.” The Court of Appeals reasoned that the District Court’s order that Cherry Hills Village residents pay South Suburban for “lost” future property taxes (1) was not “levied by the board” of South Suburban and (2) was not a “property tax” because it was ordered by the court *in lieu* of a tax on Cherry Hills Village residents.
- July 2009 – The Village files a Petition for Certiorari with the Colorado Supreme Court.

Why Did Residents Vote to Withdraw from South Suburban?

Village residents voted to withdraw from South Suburban for many reasons, but the most important was that the Village received poor service for parks and trail maintenance. The Village’s parks and trail system is different than that of the rest of the South Suburban and, despite repeated efforts by the Village, South Suburban would not modify its practices in order to deliver the quality of services that the Village required. For whatever reason, South Suburban was unwilling or unable to allocate more resources and make park and trail maintenance a priority. This substandard service was especially problematic given that Village residents paid a disproportionate amount of taxes to South Suburban. In the last year that the Village was a part of the South Suburban, Village residents paid approximately \$1,500,000 in taxes to South Suburban -- substantially more money than South Suburban ever spent for park maintenance in the Village.

In the first year following the exclusion, the Village spent approximately \$500,000 on park maintenance. There is no question that the condition of the parks and trails has improved vastly since the Village assumed maintenance responsibilities. The quality, responsiveness, and range of park and recreational services provided to Village residents has improved markedly, and will continue to improve.

The net financial benefit to the Village from the vote to withdraw is roughly \$1,000,000 per year, from which the Village pays approximately \$170,000 annually to its residents for recreational reimbursement. The issue in the litigation with South Suburban is whether the taxes paid by Village residents will, in the next decade, be paid to South Suburban’s general fund or be used by the Village to improve services and address local priorities.

What amount did the trial court conclude that the Village should to pay in order to withdraw from the District?

The trial court first ordered the Village to pay \$9,660,838 to South Suburban, which the trial court concluded was the “fair market value” of the parks in the Village. The Court of Appeals ruled that the trial court erred in concluding that the Colorado statute required the Village to pay fair market value for the parks, ordered the judgment against the Village be vacated, and sent the case back to the trial court with instructions that the any judgment against the Village must be supported by adequate findings. After several months, the trial court

issued essentially the same findings as it had previously, and ordered the Village, again, to pay \$9,660,838 to South Suburban.

How is the Village paying the \$9,660,838 judgment that the trial court ordered paid to South Suburban?

The judgment will be paid in installments through 2019 from existing property taxes. The taxes that Village residents previously paid to South Suburban are now paid to the Village. That tax revenue has been used both for parks and recreation services and as payments on the judgment.

The Village has made three payments to South Suburban toward the \$9,660,838 judgment: in 2005, the Village paid \$256,862, in 2006 the Village paid \$943,185, and in 2008 the Village paid \$994,135; for a total of \$2,194,182. Each of these payments was made from Fund 30, which is the Village's parks, trails and recreation fund in the Village's annual budget. The 2007 payment was made in 2008 pursuant to a stipulation between the Village and the District which provides that there will be no additional payments during the time the appeal is pending at the Court of Appeals. If the Village succeeds in the appeal, the Village may recover some or all of these payments.

Will the Village be required to pay interest on the \$9,660,838, and if so, from what date?

The judgment entered by the trial court directs the Village to make principal and interest payments of approximately equal amounts, modified periodically to reflect changes in the interest rate, beginning December 1, 2005 and ending no later than December 1, 2019. The amount of interest is calculated for each payment based on the interest rate of the two-year U.S. Treasury Note.

What revenues does the Village receive as a result of the exclusion?

As a result of the Village's decision to withdraw from the South Suburban, in 2006 the Village received \$1,591,210 in property taxes, \$140,825 in specific ownership tax, and \$5,629 in interest – for a total revenue of \$1,737,664. In 2007, the Village received \$1,621,713 in property taxes, \$141,232 in specific ownership taxes, and \$150,476 in interest – for a total revenue of \$1,913,421. Had the residents of the Village voted to remain in South Suburban, these and similar future payments would have been made by Village residents to South Suburban.

The Village has used these revenues to pay the judgment entered by the trial court, fund the Village's Parks and Trails department, and fund the recreational reimbursement program.

Are there any additional amounts that Village residents must pay South Suburban?

Yes. Under the statute, Village residents must continue to pay their proportionate share of debt incurred by South Suburban before the exclusion. That amount, about \$6.6 million, was incurred by South Suburban as bonded indebtedness before 2002, and is being retired in the ordinary course from taxes on property in the Village as well as the current South Suburban district. Under Colorado law, Village residents are responsible for their pro rata share of the indebtedness incurred by South Suburban while the Village was part of the district, regardless of the outcome of the 2002 vote.

Has the judgment increased my taxes?

No. The Village has been paying the judgment with tax revenues that had been previously paid to South Suburban. The Village can continue to do so while still meeting its obligation to maintain parks and trails and provide recreational alternatives.

What's the reason for the appeal?

Details of the Village's legal position are contained in the several briefs posted on the Village website. As new briefs are filed, they will also be made available on the website.

The appeal raises complicated and novel issues regarding the proper interpretation of the Colorado statute. Among other things, and without attempting to be an exhaustive list of issues, the latest trial court ruling is unusual because it entered a judgment for precisely the dollar amount that was reversed a year earlier by the Court of Appeals. The Court of Appeals ruled that the statute does not require the Village to pay South Suburban fair market value for the parks, but the trial court's 2008 order directs the Village to do exactly that. The trial court's 2008 order also suggests that the judgment is compensation for loss of 10 years of revenue to South Suburban from 2004 to 2014. The order essentially imposes a tax on Village residents to pay for the future operation of a district in which we are not members, have no voice, and enjoy no benefits.

What is the best case scenario from the appeal?

The best case would be that the entire judgment for \$9,660,838 is reversed, and for South Suburban to repay the Village the \$2,194,182 that has already paid, with interest. The Village would then have additional funds to pay for maintenance of our parks and trails, with substantial funds remaining to be used for other priorities identified by residents in the Master Plan.

What is the worst case scenario for the Village?

The worst case scenario would place the Village in essentially the same financial position as if Village residents had voted to remain in South Suburban. If the Court of Appeals affirms the \$9,660,838 judgment of the trial court, the Village will continue to make payments on the judgment from existing tax revenues and will continue to maintain the Village's parks and trails from existing tax revenues.

Paying the full amount of the judgment, with interest over approximately ten years will limit the ability of the Village to pay for those priorities identified in the Master Plan. When the judgment is satisfied (estimated by 2019), the Village will have substantial additional property tax revenues.

How much was paid in attorney's fees and other consulting fees up through the recent court decision?

The Village paid \$64,000 in consulting and legal fees before the 2002 vote. South Suburban opposed the result of the vote, which necessitated a court action. \$243,000 was paid to former city attorneys to commence the legal exclusion proceeding as required by Colorado law and represent the Village in the ensuing litigation.

Approximately \$23,000 was paid to Davis Graham & Stubbs to argue the first appeal.

Why hasn't the Village spoken to SSPRD about resolving these issues without the need for litigation?

Discussions between the Village and South Suburban about park maintenance and policy priorities began many years before the vote in 2002 and have continued to the present, including after the latest trial court ruling. The City Council is open to continuing discussions with South Suburban.

How could the Village rejoin SSPRD?

The trial court's order in 2006 rejected the arguments of South Suburban that the exclusion should not be allowed on any terms. South Suburban appealed that part of the trial court's ruling to the Court of Appeals, and lost. That part of the litigation is now final. In order for the Village to rejoin South Suburban, the Village would probably need to schedule an election, the terms and conditions of rejoining would need to be

negotiated with the District, and a majority of the citizens of the Village would have to vote to rejoin. The Cost to Village taxpayers to hold such an election would be approximately \$25,000 to \$30,000.

Why doesn't the Village stop the litigation?

If the Village ended the litigation by not pursuing the appeal, the Village would forfeit any possibility of using the disputed \$9.6 million amount to improve services for Village residents.

What is a Petition for Certiorari, and When Will the Colorado Supreme Court Act?

A petition for certiorari is a request to the Colorado Supreme Court to review the decision of the Court of Appeals. The petition filed by the Village is posted on the City's website. The Colorado Supreme Court may grant the petition if it considers the issues worthy of review, usually within 6-10 months of the date the petition is filed. If the petition is granted, the parties will file additional briefs, oral argument will be scheduled, and a final decision published. The merits briefing and argument typically takes an additional 12 months.

How much was paid in attorney's fees and other consulting fees up through the recent court decision?

During the recent appeal to the Colorado Court of Appeals, the Village paid \$96,220 to Davis Graham & Stubbs and \$8,934 to Kissinger and Fellman for attorney fees and costs. These include all costs for the appeal from June 2008 through the present.

Is the Village continuing discussions with South Suburban?

The City Council has had periodic discussions with South Suburban representatives regarding the litigation, and it is expected that these discussions will continue.