

DISTRICT COURT, WELD COUNTY, COLORADO

901 9th Ave.
Greeley, CO 80631

Plaintiff: COLORADO OIL & GAS
ASSOCIATION

Defendant: CITY OF LONGMONT, COLORADO

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Case No.: 2012CV960

Division: 4

CITY OF LONGMONT'S MOTION TO CHANGE VENUE

The City of Longmont (“City” or “Longmont”) by and through its undersigned counsel, moves this Court for an order changing venue to Boulder County District Court under C.R.C.P. 98(e).

C.R.C.P. 121 § 1-15(8) CERTIFICATION

Counsel for the City conferred with counsel for the Colorado Oil & Gas Association (“COGA”) regarding this motion. Opposing counsel advised the City that COGA opposes this motion.

ARGUMENT

Because COGA’s claims arise against public officers, i.e. the Longmont City Council, for their official acts, venue is proper only in Boulder County, where the official acts occurred. *See* C.R.C.P. 98(b)(2). The Longmont City Council passed the contested resolution in Boulder County, at the Longmont Civic Center, at 350 Kimbark Street, Longmont, CO 80501. Longmont’s City Charter also declares that Longmont is a city “in Boulder County.” Further, service of the Waiver and Acceptance of Complaint was completed in Boulder County. *See* Exhibit 1 hereto. Accordingly, venue is only proper in Boulder County District Court, and this Court should transfer this case and deny COGA’s forum-shopping maneuver.

The Complaint cites two provisions, C.R.C.P. 98(b)(2) and (c), to support venue in Weld County. Complaint ¶ 8. Unfortunately for COGA, neither provision remotely allows venue in Weld County. While C.R.C.P. 98(b)(2) controls, both provisions would establish venue only in Boulder County.¹

C.R.C.P. 98(b) provides:

¹ Notably, COGA does *not* allege that venue exists in Weld County under C.R.C.P. 98(a), which governs *in rem* actions. This is understandable, as this suit clearly falls under C.R.C.P. 98(b)(2).

Actions upon the following claims shall be tried in the county where the claim, or some part thereof, arose: . . . (2) Against a public officer or person specially appointed to execute his duties, for an act done by him in virtue of his office

This provision requires that actions of this nature shall be tried “in the county where the officers performed the action.” *City of Colo. Springs v. Bd. of Comm’rs of Cnty. of Pueblo*, 147 P.3d 1, 4 (Colo. 2006).

The Longmont City Council passed Resolution R-2012-67, the resolution complained of, at a regular session of the Council, on August 28, 2012. Like any regular session, this session and this action took place in the City Council Chambers, located in the Longmont Civic Center, at 350 Kimbark Street, Longmont, Colorado, which is in Boulder County, not Weld County. Therefore, venue for any claim challenging the adoption of the Resolution lies only in Boulder County.

COGA’s Complaint also asserts that venue is proper under C.R.C.P. 98(c). This provision begins, “*Except as provided in sections (a) [and] (b) . . . of this Rule, an action shall be tried . . .*” (emphasis added). Therefore, “C.R.C.P. 98(c) applies only if C.R.C.P. 98(a) and C.R.C.P. 98(b) are not controlling.” *Denver Bd. of Water Comm’rs v. Bd. of Cnty. Comm’rs of Arapahoe Cnty.*, 187 Colo. 113, 117, 528 P.2d 1305, 1307 (1974). Where C.R.C.P. 98(b) applies, it “is controlling.” *Id.* Because C.R.C.P. 98(b)(2) does apply here, C.R.C.P. 98(c) is inapplicable to this case, and venue is proper only in Boulder County.

However, even if C.R.C.P. 98(c) did apply, it also would direct venue only to Boulder County. Rule 98(c) permits venue “in the county in which the defendants, or any of them, may reside at the commencement of the action, or in the county where the plaintiff resides when service is made on the defendant in such county.” C.R.C.P. 98(c)(1). The City of Longmont “resides” in Boulder County. Its City Council Chambers and its Civic Center (the “nerve center”

of the organization) are both located in Boulder County. The Municipal Charter of the City of Longmont specifies – twice – that the “City of Longmont” is “in Boulder County.” *See* Exhibit 2 hereto, § 1.1. “In interpreting a [city] charter provision, a court must construe it according to its plain meaning.” *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761, 762 (Colo. Ct. App. 1986). “However, if the meaning or scope of a word used in a charter provision is susceptible to different interpretations, the interpretation given to it by the city is persuasive.” *Id.*

An exception to Rule 98(c) – where the plaintiff resides in the county where the defendant is served – cannot support venue since there is no allegation that COGA “resides” in Weld County and service of process was accomplished in Boulder County, at the Longmont Civic Center.

COGA has previously admitted that Boulder County is the proper venue in a case involving a challenge to the City’s oil and gas regulations. In that related oil and gas case in Boulder County, No. 12CV702, COGA has intervened as a plaintiff to challenge aspects of Longmont’s land use regulations (“the Boulder County case”). Revealingly, in its Complaint in Intervention, COGA admitted that “[v]enue in this district [Boulder County] is proper pursuant to Rules 98(b)(2) and 98(c) of the Colorado Rules of Civil Procedure,” the identical venue provisions which it cites in its Complaint in this action. Complaint in Intervention at ¶ 5 (Attached as Exhibit 3). There is no venue-relevant distinction between the actions of the Longmont City Council giving rise to the present case and to the Boulder County case. Both were official acts taken by the full Council, by majority vote, as governing body of the City, at the Longmont Civic Center, at a regular session.² COGA is therefore bound by its admission in the Boulder County case that the actions taken by the Longmont City Council at the Longmont

² While the plaintiffs in the Boulder County case complain of an *ordinance* of the Longmont City Council, as opposed to a *resolution* in the instant case, that distinction is not material to venue.

Civic Center occur in Boulder County. Because Rule 98(b) controls, venue is proper only in Boulder County.

“Upon a proper showing that an action has been brought in a county other than that in which it should be tried, the trial court has no alternative but to grant a change of venue.” *Millet v. Dist. Court*, 951 P.2d 476, 477 (Colo. 1998). Accordingly, under C.R.C.P. 98(f)(1), this Court should change the place of trial to Boulder County because Weld County is not the proper county for venue in this case.

CONCLUSION

Venue must be changed to Boulder County District Court.

Dated this 14th day of January, 2013.

Respectfully submitted,

CITY OF LONGMONT, COLORADO

Eugene Mei, City Attorney

By: /s/ Dan Kramer
Assistant City Attorney

PHILLIP D. BARBER, P.C.

By: /s/ Phillip D. Barber

ATTORNEYS FOR THE DEFENDANT

This document was filed electronically pursuant to C.R.C.P. §1-26. The original signed document is on file at the offices of Phillip D. Barber, P.C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing, was served this 14th day of January, 2013 by LEXIS/NEXIS File and Serve on the following:

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/s/ Marci McQueen
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