

DISTRICT COURT, PARK COUNTY, COLORADO  
Court Address: Park County District Court  
300 - 4<sup>th</sup> Street  
Fairplay, Colorado 80440

**Petitioner:**

WILL-O-WISP METROPOLITAN DISTRICT, a quasi-municipal corporation of the State of Colorado,

v.

**Respondents (Lot 134):**

MAGNESS LAND HOLDINGS LLC, a Colorado limited liability company; FIRSTBANK OF EVERGREEN; FIRSTBANK OF CHERRY CREEK; NORTH FORK ASSOCIATES, a limited partnership; WOODSIDE LTD., a Colorado corporation; WOODSIDE PARK UNIT 5 HOMEOWNERS' ASSOCIATION, a/k/a WOODSIDE PARK UNITS 5 AND 6 HOMEOWNERS' ASSOCIATION, a Colorado non-profit corporation; and MICHELLE A. MILLER, in her official capacity as the Treasurer of Park County and as the Public Trustee of Park County,

v.

**Respondents (Lot 133):**

MARY L. WINDEMULLER; DOUGLAS L. WINDEMULLER; FIRSTBANK OF EVERGREEN; FIRSTBANK OF CHERRY CREEK; MOUNTAIN MUTUAL RESERVOIR COMPANY; NORTH FORK ASSOCIATES; WOODSIDE LTD., a Colorado corporation; WOODSIDE PARK UNIT 5 HOMEOWNERS' ASSOCIATION, a/k/a WOODSIDE PARK UNITS 5 AND 6 HOMEOWNERS' ASSOCIATION, a Colorado non-profit corporation; and MICHELLE A. MILLER, in her official capacity as the Treasurer of Park County and as the Public Trustee of Park County,

v

**Respondents (Lot 131):**

THE DAVID WILLIAM BROWN LIVING TRUST, a Colorado Trust; GAIL MARIE BROWN LIVING TRUST; CHARLES SCHWAB BANK, N.A.; WOODSIDE LTD., a Colorado corporation; WOODSIDE PARK UNIT 5 HOMEOWNERS' ASSOCIATION, a/k/a WOODSIDE PARK UNITS 5 AND 6 HOMEOWNERS' ASSOCIATION, a Colorado non-profit corporation; and MICHELLE A. MILLER, in her official capacity as the Treasurer of Park County and as the Public Trustee of Park County.

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Case Number: 06-CV-320

Division B

**MOTION FOR IMMEDIATE POSSESSION**

COMES NOW the Petitioner, Will-O-Wisp Metropolitan District, by and through its attorneys, and requests that the Court hold a hearing on Immediate Possession and thereafter enter an Order of Immediate Possession for the property to be acquired by Petitioner that is described in the First Amended Petition in Condemnation ("the Property"). As grounds for this Motion for Immediate Possession, the Petitioner states as follows:

1. Pursuant to C.R.S. § 38-1-105(6)(a), Petitioner is entitled to obtain Immediate Possession of the Property identified in its First Amended Petition in Condemnation ("At any stage of such new proceedings ... the court, by rule in that behalf made, may authorize the petitioner ... to take possession of and use, said premises during the pendency and until the final conclusion of such proceedings ... if such petitioner pays a sufficient sum into court, or to the clerk thereof, to pay the compensation in that behalf when ascertained").

2. Pursuant to C.R.S. § 38-1-105(6)(c), Petitioner may take possession of the Property 30 days after service of the First Amended Petition in Condemnation, or earlier upon consent of the Respondents. In the case before the Court, the Petitioner has alleged in its First Amended Petition in Condemnation it has a need for immediate possession of the Property, and the need is for public use. Petitioner intends to offer competent evidence at the hearing that an immediate and real need exists to acquire immediate possession of the Property. Swift v. Smith, 119 Colo. 126, 136-37, 201 P.2d 609, 614 (1948).


3. The Property is being taken for a proper public purpose and Petitioner has conducted good faith negotiations for acquisition of the Property.

4. Petitioner requires immediate possession of the Property in order to construct the public project for which the Property is being taken as set forth in the First Amended Petition in Condemnation.

**WHEREFORE**, the Petitioner prays that this Court hold a hearing for immediate possession and further requests that the Court enter an Order for Immediate Possession in the Petitioner's favor for the immediate possession of the Property setting forth the amount of deposit or deposits necessary for possession, together with such further relief as may be deemed appropriate by this Court.

SUBMITTED this 16th day of November, 2007 through the Lexis/Nexis electronic filing system pursuant to C.R.C.P. 121, § 1-26.

FAEGRE & BENSON LLP



/s/ Leslie A. Fields

John R. Sperber

Attorneys for Petitioner,  
Will-O-Wisp Metropolitan District

**CERTIFICATE OF SERVICE**

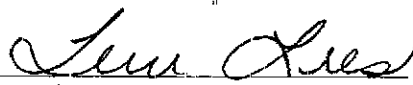
I hereby certify that on this 16th day of November, 2007, a true and correct copy of the foregoing **MOTION FOR IMMEDIATE POSSESSION** was sent via JusticeLink to the following:

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\_\_\_\_\_  
/s/ Terri Lees

## **Anne Van Teyens**

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**From:** LexisNexis File & Serve [eFile@fileandserve.lexisnexis.com]  
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**Titles:**

- First Amended Petition in Condemnation (25 pages)
- Amended Notice of Lis Pendens (19 pages)
- Motion for Immediate Possession (3 pages)
- Notice to Set Immediate Possession (3 pages)

**Case:** WILL O WISP METROPOLITAN DISTRICT vs. MAGNESS LAND HOLDINGS LLC et al Case #: 2006CV320

**Date:** Nov 16 2007 10:20AM MST

**Attorney:** Leslie A Fields

**Firm:** Faegre & Benson LLP-Colorado

**Transaction #:** 17130033

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