DISTRICT COURT, LARIMER COUNTY, COLORADO Larimer County Justice Center 201 La Porte Avenue Suite 100 Fort Collins, CO 80521 970-494-3500	DATE FILED: March 30, 2017 11:07 AM CASE NUMBER: 2016CV31096
Plaintiff: CITY OF FORT COLLINS, a Colorado municipal corporation; and POUDRE FIRE AUTHORITY, a Colorado public entity, v. **Defendant:** KEITH GILMARTIN, an individual.	**▲ COURT USE ONLY ▲**
Kelley B. Duke, #35168 Benjamin J. Larson, #42540 IRELAND STAPLETON PRYOR & PASCOE, PC 717 17th St. Suite 2800 Denver, Colorado 80202 Telephone: (303) 623-2700 Fax No.: (303) 623-2062 E-mail: kduke@irelandstapleton.com blarson@irelandstapleton.com SPECIAL COUNSEL FOR THE CITY OF FORT COLLINS; ATTORNEYS FOR POUDRE FIRE AUTHORITY	Case No.: 16CV31096 Div.: Ctrm: 3C
PROPOSED CASE MANAGEMENT ORDER	

Pursuant to C.R.C.P. 16(b), the parties hereby submit their Proposed Case Management Order.

A telephonic case management conference is set for March 30, 2017, at 8:30 a.m.

1. The "at issue date" was February 13, 2017.

2. Responsible attorneys' names, addresses, phone numbers and email addresses:

Kelley B. Duke and Benjamin J. Larson, Ireland Stapleton Pryor & Pascoe, PC, 717 17th Street, Suite 2800, Denver, CO 80202, Tel: (303) 623-2700, Fax:

(303) 623-2062;
Email: kduke@irelandstapleton.com; blarson@irelandstapleton.com.

3. Ms. Duke and Mr. Larson met and conferred by telephone with Defendant Keith Gilmartin concerning this Proposed Case Management Order and each of the issues listed in Rule 16(b)(3)(A) through (E) on Tuesday, March 21, 2017 at 4:00 p.m.

4. Brief description of the case:

a. Plaintiffs' description of the case:

Plaintiff Poudre Fire Authority (the "Authority") was formed in 1981 by an Intergovernmental Agreement (as amended, the "2014 IGA") between the Plaintiff City of Fort Collins (the "City") and the Poudre Valley Fire Protection District. The Authority operates a Training Center at 3400 West Vine Drive in Fort Collins, Colorado (the "Training Center"), which is adjacent to property owned by Defendant Mr. Gilmartin.

In 1991, Mr. Gilmartin, along with his parents, granted the City a perpetual easement and right-of-way across Mr. Gilmartin's property (the "Easement"), as described in the Deed of Easement attached as Exhibit B to the Amended Complaint (the "Deed of Easement"). The property on which the Training Center sits is the property benefited by the Easement, and, without it, Plaintiffs and their respective directors, officers, employees, volunteers, agents, guests, and invitees cannot access the Training Center. Pursuant to the 2014 IGA and an October 12, 2016 Delegation of Duties between the City and the Authority, the Authority has the power and duty to assert all rights under the Easement.

Since approximately 2010, Defendant has substantially and intentionally interfered with Plaintiffs' peaceful use and enjoyment of the Easement as described in detail in the Amended Complaint. Defendant's actions are not only contrary to Plaintiffs' rights under the Deed of Easement, but also pose a safety threat to those persons using the Easement. Plaintiffs assert claims for trespass and private nuisance against Defendant, and seek an Order from this Court declaring the scope of the Easement and enjoining Defendant from interfering with Plaintiffs' rights under the Easement.

b. Defendant's description of the case:

Defendant AGREES with Plaintiffs' description of the case as follows:

- Plaintiff Poudre Fire Authority (the "Authority") was formed in 1981 by an Intergovernmental Agreement (as amended, the "2014 IGA") between the Plaintiff City of Fort Collins (the "City") and the Poudre Valley Fire Protection District.
- The Authority operates a Training Center at 3400 West Vine Drive in Fort Collins, Colorado (the "Training Center"), which is adjacent to property owned by Defendant Mr. Gilmartin.
- In 1991, Mr. Gilmartin, along with his parents, granted the City a perpetual easement and right-of-way across Mr. Gilmartin's property (the "Easement"), as described in the Deed of Easement attached as Exhibit B to the Amended Complaint (the "Deed of Easement").

- The property on which the Training Center sits is the property benefited by the Easement.

Defendant DISAGREES with Plaintiffs' description of the case as follows:

The facility at 3400 W. Vine Dr. has at least since at least 2010 housed, in addition to training, several other administrative components. The consequence of such is a burdening, increasing in level, of the easement with parking, fire training ancillary operations, 24 hr/day traffic flow including a variety of commercial vehicles up to tractor trailer size, thwarting efforts to limit none PFA related/public traffic and night sky pollution. Recent health studies have brought to light the potential for associated health issue and then the catch all of 'safe and peaceful use', all beyond the specification originally released to the neighborhood or Defendant for facility impact.

Defendant questions the validity of the 2016 IGA, but as the City has been joined makes mute contentions but opens others; Perhaps 'substantive due process and considering there is a City of Ft Collins Mayor and Council member election emanate potentially raises some points for consideration as to the forward flow of the case.

Defendant continues to patently deny issues as expressed in AMENDED ANSWER. Additionally, Defendant objects to an apparent 'presence tense' pleading for modification not present in the COMPLAINT that is tantamount to a Quite Title Action. All plaintiff complaints are predicated on an claims of right in the easement not substantiated by "together with a right-of-way for access, on, along, through and under all of the herein after described real property.
All action taken by Defendant where in defense of his rights in private property contended as 'not conveyed' to Plaintiff in the Deed of Easement. Thus, resulting in acts of a trespass, nuisance, and burdening of the easement by Plaintiff.

As a result of recent construction by Colorado State University it has become apparent there are potentially two new issues here-to-for hidden/buried transgression of Defendants rights in the easement by Plaintiffs.

Defendant attempts to extrude, from the Plaintiffs, any legal basis that was perceived to exist beyond plain language, in support for their position and actions garnered only a reiteration of an unsupported contention of having the rights in the easement.

Additionally, there is an ancillary issue of conveyance of discussed misinformation by the City or PFA governmental entities to police entities and by their subsequent action violated Defendants rights.

5. There are no pending motions filed or unresolved at this time but Defendant anticipates filing motions.

6. Brief assessment of each party' position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1):

a. Plaintiffs' Assessment of Proportionality Needs:

The proportionality needs of this case call for limited discovery. First, this case primarily concerns the legal issue of the parties' respective rights under the Deed of Easement, and consequently this case is not fact intensive and discovery has limited importance in resolving the parties' dispute. Second, with respect to the parties' relative access to the relevant information, Mr. Gilmartin has already received various relevant public records from Plaintiffs. Additionally, Mr. Gilmartin should already have in his possession relevant documents and correspondence concerning the Easement. Plaintiffs are also endeavoring to provide robust disclosures of potential witnesses and relevant documents through their exhibits attached to the Amended Complaint and pursuant to Rule 26(a)(1). Third, while property rights and public safety are important issues, Plaintiffs are not seeking any damages against Mr. Gilmartin. Rather, Plaintiffs simply request that Mr. Gilmartin not interfere with their rights under the Deed of Easement, which sits on a small strip of land across the corner of his property. Fourth, while Plaintiffs are not aware of Mr. Gilmartin's resources as a *pro se* Defendant, in the event his resources are limited, a narrow scope of discovery benefits Mr. Gilmartin's interests because Plaintiffs will be limited in the same manner. Additionally, the expense of unnecessarily broad discovery on Plaintiffs would be borne by the taxpayers. Considering the foregoing, the burden of the potential costs attributable to broad discovery would significantly outweigh any potential benefits gained from such discovery.

b. Defendant's Assessment of Proportionality Needs:

Defendant agrees with Plaintiffs' assessment that this case primarily concerns the legal issue of the parties' respective rights under the Deed of Easement.

Plaintiff’s expressed belief “this in case primarily concerns the legal issue..etc” But in sharp contrast , a different stage is set via the INITIAL COMPLAINT which outlines fifteen alleged bad boy scenarios, all fact intensive and involving multiple characters. INITIAL DISCLOSURES compile eighteen individual witness and the array of open ended possibilities and thirty eight items under INITIAL DISCLOSURES B Documents, Data, Compilations. All aspects fact intensive and requiring discovery; If justice is to be a goal. The approach by Plaintiff with the line of character complaints and long list of headliners from officialdom to tell their tale does not bode well for defense with only a miniscule of discovery or per Plaintiff “this case is not fact intensive and discovery has limited importance ” (Plaintiff Point – “First”)

Run

As a nation and for this case Colorado, ownership of Real Estate requires vigilance. The laws of Colorado' perpetuate paths for dissieasing owners not vigilant. As contrast, there is the police powers of governmental entities that are expected to provide an equalizing offset for complaints of dissieasing efforts against owners. But that system has flaws (i.e. the dessiesing party is given the credibility). Next is the case of 'civil case' situations. There, there is no such governmental equalization as is provided in governmental complaints against its citizens of criminal matters.

This is not an equal dispute, nor many others ,at any level of government for such civil matters. In this case, **any** aspect of a Plaintiff's "REQUEST OF RELIEF" garnered will result, short term and/or long term, directly or indirectly in a de facto, partially or complete, dessiesing of Defendant's property. With a Plaintiff success, a perspective is 'the people's money funded and begot fee-simple ownership rights. Essentially, a fashioned governmentally facilitated 'taking' with ouster of the owner from his property; which in this case constituting approximately 10% of Defendant's property.

Whatever in this matter that could lead to any percent of Defendant's property, be it home and/or garden and/or cartilage plus , towards being dessiesed d, on paper or practicality, every detail, thus its "discovery",' is' important' to the Defendant and his defense.

The only way Plaintiff 's de minimis assessment for discovery needs, bears a modicum of tenability, is if it facilitates the cause of the Plaintiff parties or impinges on the Defendant's opportunity to end up on the preferred side of decision line of the civil issue based standard of proof; "the preponderance of the evidence " Defendant has already passed thru the criminal standard for the percentage of complaints originating from the police tainted allotment of issues.

Plaintiff's Complaints has been enumerate but not Defendant's in defense but in general. The issue of 'rights inclusive in "right of way for access" does not include all of the burdening, from Defendants view. Thus the extraordinary sorting, categorizing and preparation of all those years of phone pictures and video of speeding, turning a rounds, parking., night sky light pollution etc.. So unless there is consensus, there is a quest of not minimizing the importance of discovery.

As to Plaintiff's claims of availability of documents:

> "Mr. Gilmartin should already have in his possession relevant documents and correspondence concerning the Easement. " (Plaintiff point "Second /Additionally") and/or "Plaintiff's are also endeavoring to provide robust disclosure of potential witness and relevant documents through their exhibits attached." (Plaintiff point "Second /Additionally")and/or the burden of the potential costs attributable to broad discovery would significantly outweigh any potential benefits Plaintiff's point "(Plaintiff's Forth/Additionally).

Years of personal emails or correspondence on paper or maybe the 'cloud', photographic and video recording may be available but with only with a great expenditure of time. I am familiar with the quantity of records kept by the City and PFA, their filing manpower and their efforts at digitizing. That does not count the sorting time for all the pictures and video of an obstacle in path. Paramount to volume is the issues that are not paired down from the shot gun approach after unsupported claimed rights.

Plaintiff sites "while property rights and public safety are important, Plaintiffs are not seeking any damages against Mr. Gilmartin . However in PROPOSED CASE MANAGEMENT #10 "Plaintiff's are not seeking damages **at this time**". This is contrary to the Complaint.

Finish
It is Defendant's position that the full extent for aspects discovery be permitted. It is suggested, as a token to address Plaintiff's concern for "costs attributable to broad discovery.." as against "… any potential benefit gained" (Plaintiff point "Forth) and that one set of submission by Plaintiffs could alleviate much of this much ado. Plaintiff should start with case law of appropriate relevance for the foundation of all its 'claims of rights' that seems to emanate from that word 'access'; To whit: What is the limit, or extends incorporated in the phrase "right of way for access"?; Let's get and answer from Plaintiff first.

7. Settlement prospects: Plaintiffs and Mr. Gilmartin have communicated for years concerning the issues raised in the Amended Complaint and have not been able to reach an amicable resolution. Consequently, the prospects for settlement are fair, at best, and a Court-ordered mediation is unlikely to resolve the parties' disputes at this time.

8. Deadlines for:

a. Amending or supplementing pleadings: April 21, 2017

b. Joinder of additional parties: April 21, 2017

c. Identifying non-parties at fault: April 21, 2017

9. Dates of Initial Disclosures: The Authority submitted its Initial Disclosures on March 13, 2017, which the City has joined or will be joining. Mr. Gilmartin submitted initial disclosures on March 20, 2017. The parties are in the process of addressing the adequacy of disclosures. Should the parties have any issues related to the adequacy of initial disclosures this should be brought to the attention of the court not later than April 10, 2017.

10. Plaintiffs are not seeking damages at this time.

11. Proposed limitations on and modifications to the scope and types of discovery,

consistent with the proportionality factors in C.R.C.P. 26(b)(1):

> The court approves the limitations as to the scope and type of discovery as set forth below:
>
> Number of depositions (C.R.C.P. 26(b)(2)(A) limit per party of one adverse party and two other persons and experts per C.R.C.P. 26(b)(4)(A)): Each side may take the deposition of each adverse party and one other person. In the event the parties designate expert witnesses, there shall be no expert depositions.
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> Number of interrogatories (C.R.C.P. 26(b)(2)(B) of limit 30 per party): 10 interrogatories per side.
>
> Number of requests for production of documents (C.R.C.P. 26(b)(2)(D) limit of 20 per party): 10 requests for production per side.
>
> Number of requests for admission (C.R.C.P. 26(b)(2)(E) limit of 20 per party): Five requests for admission per side.
>
> Any limitations on awardable costs: Costs are awardable only as permitted by applicable law.

12. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(B)(I) or (B)(II):

a. Plaintiffs' statement:

Plaintiffs do not anticipate retaining an expert. However, in the event of a dispute about the boundaries of the Easement, Plaintiffs may retain a surveyor to survey the Easement and subsequently testify as to its boundaries.

b. Defendant's statement:

Defendant hopes not for the need of retaining an expert. However, retains the right. In the interest of efficiency, such will be in the event of a dispute about any unresolveable issue. Defendant may retain an, as appropriate witness and subsequently testify as to the matter.

One such potential issue will be of an agreement as to the physical location (on the earth) for described locations. Also, in the event of a dispute about the boundaries of the Easement, Defendant may retain a surveyor to survey the Easement and subsequently testify as to its boundaries. The Larimer County surveyor is listed in Defendant’s INITIAL DISCLOSURE. Additionally or in the alternative survey whose work is recorded with the Larimer Clerk and Recorder would be likely starting choices .

13. Proposed deadlines for expert witness disclosures if other than those in C.R.C.P.

26(a)(2):

a. Production of Expert Reports:

i. Plaintiffs' initial expert disclosure: June 2, 2017;

ii. Defendant's initial expert disclosure: June 16, 2017.

14. Oral Discovery Motions. The Court **does**/require discovery motions to be presented orally, without written motions or briefs. If there is a discovery dispute the parties should follow the court's procedures in setting the matter for a hearing.

15. Electronically Stored Information.

a. Plaintiff's Position:

The parties do not anticipate needing to discover a significant amount of electronically stored information. The parties agree to produce electronically stored data in PDF format and will discuss the need to provide such data in its native format on a case-by-case basis. At this time, the Parties to not anticipate any native format data will need to be provided.

b. Defendant's Position

As a broad statement of deference, yet disagreement, Plaintiff's E.S.I. position, anything not initiated on paper, cloth etc is electronically stored information. Defendant cannot agree to the Plaintiff's position:

> "parties do not anticipate needing to discover a significant amount of electronically stored information.

Based on Plaintiff's broad and critical impact on Defendant, discovery will be limited to what is believed or adjudicated to be sufficient and efficient for the disputes resolution.

16. The Parties' best estimate as to when discovery can be completed: 35 days prior to trial.

The Parties' best estimate of the length of trial: 2 days.

Trial before the Court will commence on August 14, 2017 and is scheduled for two days.

A final pretrial conference shall be conducted before the Court on July 20, 2017 at 1:00

p.m. The parties are ordered to exchange witness and exhibit lists prior to the scheduled pretrial conference.

17. Other appropriate matters for consideration: Jointly perceived as "None at this time."

Respectfully submitted this 29th day of March, 2017.

IRELAND STAPLETON PRYOR & PASCOE, PC

Signed original on file at the office of
Ireland Stapleton Pryor & Pascoe, PC

/s/ Kelley B. Duke
Kelley B. Duke, #35168
Benjamin J. Larson, #42540
Special Counsel for the City of Fort Collins
Attorneys for Poudre Fire Authority

/s/ Keith Gilmartin
Keith Gilmartin

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the court, is and shall be the Case Management Order in this case.

Dated this 30th day of March, 2017.

BY THE COURT:

District Court Judge