

JUL 27 2018

8th DISTRICT COURT
LARIMER COUNTY JUSTICE CENTER
Court Address: 201 Laporte Avenue
Fort Collins, CO 80521
Phone (970) 494-3500

DATE FILED: July 27, 2018
CASE NUMBER: 2018CV149

Plaintiff: Eric Sutherland, *pro se*

v.

Defendants : THE CITY OF FORT COLLINS, a home rule municipality in the state of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors to this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office;

And

Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.

▲ COURT USE ONLY ▲

Party without attorney:
Eric Sutherland, *pro se*
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Case #: 2018CV149
Division:

**PROPOSED ORDER : MOTION FOR RECONSIDERATION OF ORDER GRANTING
INDISPENSABLE PARTIES MOTION TO DISMISS.**

This matter has come before this court on the Motion for Reconsideration of Order Granting Indispensable Parties Motion to Dismiss by Plaintiff Eric Sutherland. The Court, being duly advised in the premises, FINDS and ORDERS as follows:

1. To determine standing, a court considers “whether the plaintiff has asserted a legal basis upon which a claim for relief may be predicated.” *Olson V. City of Golden*, 53 P.3d 747 ,750 (Colo. App. 2002). The *Olson* court held that, because the judicial branch of government is precluded from assuming powers of another branch, courts could not overlook limitations on standing to “redress otherwise nonjusticiable wrongs”. *Id.*, citing *Dodge v. Department of Social Services*, 600 P.2d 70,73 (Colo. 1979) A plaintiff must demonstrate a legal interest that entitled him or her to judicial redress. *Id.*

2. This Court now acknowledges that Plaintiff has demonstrated injury in fact to a legally protected interest in this matter.

3. Because a significant portion of the property taxes paid by all owners of real property within the Poudre School District are attributable to voter approved taxing authority for the levy and collection of **FIXED AMOUNTS** of revenue on an annual basis, any reduction in the pool of assessed value that is collectively taxed to raise the expected **FIXED AMOUNTS** of tax revenue necessarily increases the tax rates paid by all taxpayers in the school district. The exclusion of real property located within the Timnath Development Authority in a manner that is inconsistent with law would necessarily create a decrease in the pool of assessed valuation that would lead to higher tax rates. Plaintiff has averred that the repayment of a loan contemplated to be contracted between the Timnath Development Authority and Compass Mortgage Company, which Plaintiff has also averred to be improperly authorized, will result in the sort unlawful decrease in the pool of assessed valuation that results in injury. This court therefore finds that the first prong of the *Wimberly* test has been satisfied by Plaintiff demonstrating an injury-in-fact that is likely to occur.

4. The second prong of the *Wimberly* test is also satisfied. Plaintiff and all other parties that are similarly situated have a legally protected right to pay no more tax than is necessary for the Poudre School District to receive enough tax revenues to fulfill expectations attributable to **FIXED AMOUNT** levies. Plaintiff and all others need not pay additional tax simply because the Timnath Development Authority or other URA takes steps that are contrary to law to ensure the exclusion of property tax revenues paid by property within a URA from

contributing to these **FIXED AMOUNT** levies for the purposes of increasing the sum of money diverted to a URA.

5. The requirements for standing in a declaratory judgment action are relaxed. *Mt. Emmons Mining Co. v. Town of Crested Butte* 690 P. 2d 231 –Colo: Supreme Court, 1984. In this matter, however, there is no need to relax the requirements for standard. Plaintiff has demonstrated compliance with standards for both prongs of the *Wimberly* test above any reasonable allegations to the contrary. Any remaining questions that may linger regarding the likelihood of future injury must be concluded in favor of the Plaintiff because the non-claim statute found in C.R.S. 11-57-212 would bar inquiry as to any request for declaratory judgment in the future once injury became more imminent or sharply defined. Therefor, it is appropriate that Plaintiffs request for declaratory judgment be considered at this time.

6. Because the requirements for standing have been met as explained above, this court need not reach a determination on the other basis for standing asserted by Plaintiff concerning the issues of constitutional dimension.

WHEREFORE, this court vacates its previous ORDER granting Timnath Development Authority and Compass Mortgage Corporation's joint Motion to Dismiss and ORDERS that the same is hereby denied.

District Court Judge