

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue Fort Collins, CO 80521</p>	<p>DATE FILED: August 3, 2018 9:03 AM FILING ID: 87D8A9FE688F5 CASE NUMBER: 2018CV149</p>
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>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 in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and</p> <p>Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Counsel for The Timnath Development Authority and Compass Mortgage Corporation:</i></p> <p>Eric R. Burris, admitted <i>pro hac vice</i> BROWNSTEIN HYATT FARBER SCHRECK, LLP 201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Phone: 505.244.0770 Email: eburris@bhfs.com</p> <p>Cole J. Woodward, #50199 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone: 303.223.1100 Email: cwoodward@bhfs.com</p> <p><i>Co-Counsel for The Timnath Development Authority:</i> Robert G. Rogers, #43578 Casey K. Lekahal, #46531 WHITE BEAR ANKELE TANAKA & WALDRON 2154 E. Commons Ave., Suite 2000 Centennial, CO 80122 Phone: 303.858.1800 Emails: rrogers@wbapc.com; clekahal@wbapc.com</p>	<p>Case Number: 2018CV149</p> <p>Division: 3C</p>
<p style="text-align: center;">RESPONSE IN OPPOSITION TO PLAINTIFF’S FIRST AMENDED MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO DISMISS</p>	

The Timnath Development Authority (“TDA”) and Compass Mortgage Corporation (“Compass”), by and through their counsel of record, White Bear Ankele Tanaka & Waldron Attorneys at Law and Brownstein Hyatt Farber Schreck, LLP, hereby submit the following Response in Opposition to Plaintiff’s First Amended Motion for Reconsideration of Order Granting Motion to Dismiss.

INTRODUCTION

Plaintiff’s First Amended Motion for Reconsideration of Order Granting Motion to Dismiss (the “Motion”) alleges that this Court committed a “manifest error of law” when it ordered that the claims against Compass and TDA in Plaintiff’s Unamended Complaint for Declaratory Judgement and Equitable Relief (the “Complaint”) be dismissed. Plaintiff’s Motion reiterates the same arguments that the Court weighed and rejected with respect to Plaintiff’s standing in this matter. The Court determined in its Order Granting Defendants Timnath Development Authority and Compass Mortgage Corporation’s Joint Motion to Dismiss (the “Order”) that Plaintiff failed to allege facts that grant him standing to enforce Colorado’s Urban Renewal Act (the “URA”) at C.R.S. 31-25-101, *et seq.* Plaintiff’s Motion offers no new legal or factual arguments; it merely restates the position Plaintiff took in his Amended Response to TDA and Compass’ Joint Motion to Dismiss and Request for Expedited Briefing (the “Response”) and at the June 27, 2018 hearing, where both sides presented testimony and argument on TDA and Compass’ Joint Motion to Dismiss and Request for Expedited Briefing and Hearing (the “Joint Motion to Dismiss”). Plaintiff’s position contravenes existing case law, and the plain language of the URA. In light of these facts, TDA and Compass request that this Court deny Plaintiff’s Motion.

ARGUMENT

A. Plaintiff’s Motion for Reconsideration Contains No New Factual Allegations or Legal Argument.

Plaintiff correctly notes that motions to reconsider are disfavored under Colorado law. Mot. at 3; *see* Colo.R.Civ.P. 121 § 1-15(11) (“A party moving to reconsider must show more than a disagreement with the court’s decision.”). Plaintiff’s Motion fails to meet this threshold requirement. It provides the Court with no new factual allegations or legal argument. Indeed, Plaintiff’s Motion declares that “[a]ll facts and legal argument necessary to establish the jurisdiction of the Court for these two averments were presented in my [Response].” Mot. at 4. At no point does Plaintiff’s Motion even purport to advance novel allegations or legal theories material to the Court’s ruling. Plaintiff’s Motion fails to identify any “manifest error of fact or law that clearly mandates a different result” Colo.R.Civ.P. 121 § 1-15(11). The Court may deny Plaintiff’s Motion on that basis alone.

B. Plaintiff Lacks Standing Because He Cannot Allege a Cognizable Injury-In-Fact to a Legally Protected Interest Under Colorado Law.

Plaintiff alleges that as a taxpayer residing within the jurisdiction of the Poudre School District, he will sustain an injury-in-fact in the form of increased property taxes as a result of TDA’s collection of Tax Increment Financing (TIF) revenues, allocated to it in accordance with the URA. Mot. at 4. The Colorado Court of Appeals rejected this same argument in *Olson v. City of Golden*, 53 P.3d 747 (Colo. App. 2002).

The *Olson* court dismissed a taxpayer’s attempt to enforce the provisions of the URA for lack of standing on three independent grounds. First, it found that the increase in taxes alleged by the taxpayer was too speculative to support the taxpayer’s claim of standing, as it was premised on a number of intermediary actions by governmental entities that might or might not

actually take place. *Id.* at 752. Second, it rejected the taxpayer’s argument in light of prudential limits on standing, rooted in separation of powers, which prohibit the judicial branch from usurping the constitutional powers of the other co-equal branches of government. *Id.* at 750. Third, it found that the plain language of the URA statute indicated that the Legislature did not intend to grant taxpayers standing to enforce its terms. *Id.* at 752.

All three of the grounds for dismissing the taxpayer’s claims identified by the *Olson* court are present here as well. *See* Joint Mot. to Dismiss at 8. The tax increase alleged by Plaintiff is speculative in the sense that an increase will only occur if the Poudre School District takes the necessary steps to increase its mill levy rate. That act has not taken place, and may never take place. Even if Poudre School District did take the necessary steps to increase its mill levy rate, that increase might be attributable to factors other than the TDA’s collection of TIF revenues. Thus, Plaintiff’s alleged injury is speculative in nature, and does not constitute an injury-in-fact.

The injury alleged by Plaintiff here is a taxpayer injury that, by Plaintiff’s own admission, could equally be alleged by any taxpayer within the Poudre School District’s jurisdiction. The prudential limitations on standing identified by the *Olson* court deny Plaintiff standing under the facts presented here.

Finally, Plaintiff’s Motion makes no attempt to refute the core holding of *Olson*, which states that the plain language of the URA does not grant a legally protected interest to taxpayers, and thus they lack standing to enforce its provisions. *Olson*, 53 P.3d at 752-53. The *Olson* court found “no legislative intent to grant taxpayers the right to enforce [the URA].” *Id.* at 752. In the absence of a legally protected interest, Plaintiff cannot establish standing with respect to the claims made in his Complaint.

C. **Plaintiff's Motion Does Not Explain How the Absence of Briefing from Defendants Miller and Josey Constitutes a Manifest Error of Fact or Law.**

Plaintiff accuses TDA and Compass of hijacking these proceedings by waiving service of Plaintiff's Complaint and filing the Joint Motion to Dismiss before the Complaint was served on Defendant Steve Miller and Irene Josey. Mot. at 5-6. Plaintiff's Motion does not indicate whether or how briefing from these two parties could have altered the Court's analysis with respect to the standing issue.

Plaintiff's insistence that TDA and Compass are not the Defendants in this action is merely an effort to avoid the central holding of *Olson* through semantic game-playing. As the Court noted in its Order, "it is evident that the suit is, in fact, a thinly veiled attack on Defendant TDA's compliance with the URA for which Plaintiff lacks standing to proceed." Order at 3. Plaintiff's attempts to obscure the identity of the true parties in interest in this suit do not enable him to circumvent the black letter law established in *Olson*.

CONCLUSION

Based on the foregoing, Defendants Timnath Development Authority and Compass Mortgage Corporation request that this Court deny Plaintiff's Motion for Reconsideration of Order Granting Motion to Dismiss.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of August, 2018, a true and correct copy of the foregoing **RESPONSE IN OPPOSITION TO PLAINTIFF'S FIRST AMENDED MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO DISMISS** was filed with the Court and served via Colorado Courts E-filing System on *pro se Plaintiff* as follows:

By E-Mail and Regular Mail

Eric Sutherland
3520 Golden Currant Boulevard
Fort Collins, CO 80521
Phone: 970.224.4509
Email: sutherix@yahoo.com

s/Penny G. Lalonde
Penny G. Lalonde, Paralegal

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