8th DISTRICT COURT **LARIMER COUNTY JUSTICE CENTER** Court Address: 201 Laporte Avenue Fort Collins, CO 80521 Phone (970) 494-3500 **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 3520 Golden Currant Boulevard Fort Collins, CO 80521 Phone Number: (970) 224 4509 E-mail: sutherix@yahoo.com	Case #: 2018CV149 Division:
***REPLY IN SUPPORT OF* MOTION FOR RECONSIDERATION OF ORDER GRANTING INDISPENSABLE PARTIES MOTION TO DISMISS.**	

Plaintiff, Eric Sutherland (also referred to here with 1st person pronouns) submits this Reply Brief in support of his Motion for Reconsideration.

I. Indispensable Parties Continue to Cling to Inapposite Argument to the Exclusion of the Facts.

Why am I not surprised? Bad actors that have been cheating the community for years are refusing to acknowledge inconvenient facts.

The Indispensable Parties have now filed a Response to my Motion for Reconsideration of an Order of this Court dismissing claims in regard to them and only them. Predictably, the Indispensable Parties have once again completely ignored the methodology by which the Poudre School District calculates mill levies that are imposed upon property within the district. Predictably, the Indispensable Parties have failed to acknowledge that the mechanics of this methodology guaranty higher taxes for all taxpayers in the district whenever any property, such as the large Walmart and Costco stores in Timnath, are excluded from paying their fair share of ***voter approved FIXED AMOUNT*** revenue requirements of the school district.

It is axiomatic, unquestionable and beyond refutation that anytime any property within the school district does not contribute to ***voter approved FIXED AMOUNT*** revenue requirements of the school district, owners of all other property must pay more. The only way to reach a different conclusion is if some entity like the Indispensable Parties or, perhaps, some person like the judicial officer of this Court decides to ignore simple math. That may very well happen. It is why we have appellate courts.

In this tax year, every single property owner in PSD is paying an extra 1.2 mills of property tax that would not otherwise be collected because 4.8%[1] of all the assessed value in PSD is deemed to be "increment" and the equivalent of the amount of taxes paid by the owners of that property are diverted to two Urban

[1] The ratio of increment/total assessed value will probably increase to 5% in the 2018 tax year.

Renewal Authorities and one Downtown Development Authority. The amount diverted shows up in Exhibit 1, the draft Mill Levy Resolution of the Poudre School District, in the column under "Less TIF".

Such inconvenient facts!!!! Better that the Indispensable Parties continue their rote recitation of the *Olson* case and blissfully ignore the actual mechanics of taxation that, believe it or not, is responsible for the revenues that they have been receiving for over a decade.

That extra 1.2 mills of extra tax shows up on property tax notices because of the simple math that PSD uses to calculate its mill levies every year. This was described in detail in my *Response* to the Indispensable Parties *Motion to Dismiss.* PSD has 5 separate ***voter approved FIXED AMOUNT*** mill levy overrides, or "MLO's". PSD also has ***voter approved FIXED AMOUNT*** bond levies that actually consist of several different authorizations that are generally aggregated into a single component for purposes of calculating the mill levy that must be imposed in order collect sufficient revenues to pay the debt service. In each of these six different components of PSD's total mill levy, the actual tax rate (the mill levy) is calculated by simple division. The total revenue that the district is authorized to collect is divided by the total assessed value in the district minus the all the assessed value that happens to be deemed "increment". (Think Walmart and Costco.) A third or fourth grader in the Poudre School District is expected to understand mathematical concepts sufficient to conclude that if more of the property in the district is deemed increment, the tax rate is higher.

Over one third of that extra 1.2 mills of extra tax that shows up on everyone's property tax notice every year is attributable to all the property located in that horribly, terribly blighted community of Timnath that is deemed "increment". Must it always be this way? No. Because property may only be deemed increment

if there are qualified, legitimate debts for the Timnath Development Authority to pay. Once all qualified, legitimate debts are repaid, all "increment" goes away. Consequently, if an additional $20 million is borrowed by the TDA, and that $20 million is deemed to be a legitimate debt, then every property owner in the Poudre School District will have to continue paying that extra 2/5's of a mill of property tax to the TDA to pay off its debts. Alternatively, if the authorization of the loan is deemed unlawful, one of several other remedies may be applied to ensure that higher taxes are not required to be paid in order pay off TDA debt.

Much insult is added to the injury when one considers the extra demands that are placed on the school district by growth that occurs in Timnath … which is, in turn, fueled by the property tax increment diverted from school district levies.

I have standing to bring the two claims that remain relevant in this matter. I am a property owner and I will be paying higher taxes in the future if the issuance and authorization of the loan to the TDA is held to be valid. This is not speculation. This is as factual and as predictable as the sun coming every morning. I would not have filed the complaint if this were not the case.

For this Court to conclude otherwise, it must hold that if ever a person or entity should manage to foist his, her or its fair and lawful share of supporting our collective enterprises on everyone else by taking actions that are clearly in violation of law, it's OK. I don't agree. An injury is an injury whether it be taking someone's money directly out of their pocket or taking actions that force someone to pay more for something they are obliged to pay for under our systems of public finance and rule of law.

In the present instance, the injury is frustrated by years and years of corruption, bad faith and callous disregard for the greater community perpetrated by the Timnath Development Authority. It is also called cheating or worse.

Thousands of acres of agricultural land was declared to be urban blight. The entire notion that there are statutory and constitutional limitations on the use of property tax increment was thrown out the window. The situation finally reached a climax of sorts when the TDA refused to reform its governing body to include school district and county representatives in accordance with new legislation that sought to curb the free-wheeling abuses of URAs by introducing some voices from the greater community.

There can be no surprise and there is none that the TDA clings to a hollow and useless defense while ignoring the injury that it is creating. There can be no surprise that the TDA rallies attorneys in offensive mode to assail me with lawsuits and requests for fees and costs. The TDA, along with its creditor, Compass Mortgage Corporation have built a house of cards marked with bad faith on every level. Regardless of what happens in this litigation or the lawsuit the TDA and Town of Timnath have brought against me, I am doing the right thing here by looking out for this community and the principles of fairness and rule of law that has made this community what it is.

II. A couple of questions that are sure to be asked:

Why should the loan be deemed invalid by declaratory judgment? That is because the TDA failed to reform its Board of Commissioners as required by amendments to Urban renewal law.

Why did the TDA refuse to comply with the law? That is because they perceived themselves to be bulletproof. They either did not know that their unlawful action would lead to injury or they simply ignored the ramifications of their action. Either the TDA simply did not know enough about how the millions of dollars of property tax revenues that it receives every year is derived or else it chooses to ignore the facts.

Why not wait until later to deem the issuance and authorization of the loan invalid? That is because if I did not take the action I took, I would be forever time barred from doing so in the future by CRS §11-57-212. No action may be taken in the future to assail the validity of the issuance and authorization of the debt. Whether it is lawful under the TABOR amendment or not, the state of Colorado has committed to paying the debts of Urban Renewal Authorities, "URA's", by having its agents, the county treasurers and county assessors, divert property tax dollars attributable to the levies of local governments to pay off the loans that URAs take on. One way to stop the assessors and treasurers from taking actions that raise everyone's property taxes to pay off URA debts is to make sure that unlawful debts are declared to be unlawful within 30 days of any act of issuance.

Will Eric Sutherland really pay higher taxes in the future if the loan authorization challenged in this action is not deemed invalid? Yes. This is not speculation. This is an irrefutable conclusion.

Didn't the Colorado Court of Appeals already create binding precedent that controls this matter? No, the findings of the COA in *Olson v. City of Golden* are not applicable here. Marian Olson and Victor Boog made absolutely no attempt to connect the sale of property at below market price to the prospect of higher taxes. I have talked to Mr. Boog about this. He agrees. To say that such a connection existed wasn't even speculation, it was specious. No amount of theoretical scenario building could ever put one thing as a cause of the other. Bad cases make for bad case law sometimes. It has been convenient for the Indispensable Parties to feign ignorance of the direct and indisputable connection between unlawfully authorized loans and higher taxes. Sometimes facts are inconvenient and it is best to ignore them. In such cases, it is best to do what the Indispensable Parties have

done and assert over and over again that *Olson* represents an absolute bar to inquiry even though it is not.

III. Indispensable Parties have not addressed standing to enforce the Colorado Consitution

This completely separate path to demonstrating standing simply has not been addressed. The assertion was first made in the Complaint. A detailed description of the relevant authority and argument has been presented twice. Of course, this Court need not reach a conclusion on this matter because standing is an absolute by virtue of higher taxes for lawless behavior.

IV. Indispensable parties have not addressed relaxed standards for standing in declaratory judgment actions.

The Uniform Declaratory Judgment Act states that the UJDA is to be liberally construed to provide for justice. The usual requirements for standing under Colorado law are relaxed to afford standing where it is necessary to resolve a question of rights under law before a party incurs risk of injury, etc. Although this relaxed standard need not be applied in the instant case because of the certainty of future injury associated with the contested issuance of debt, it is somewhat interesting to note that this argument has not been addressed by the Indispensable Parties.

V. A Rare Second Bite of the Apple.

Because the Indispensable Parties have now insisted upon the litigation strategy they have pursued, (waiving service and moving to dismiss before the defendants were served), I am now afforded something that rarely happens in a civil case.

Defendants Miller and Josey have now filed a Motion to Dismiss. This provides for a second opportunity to examine the mechanics of taxation in the Poudre School District with perhaps greater attention to legal rigor than before. Furthermore, those arguments for my standing based upon principles of Constitutional dimension become much more focused when applied to the ***actual*** relief requested here.[2]

The primary intent of this action as it pertained to tax increment financing was to assert the legal theory that the County Treasurer and County Assessor are subject to the jurisdiction of the court in matters where taxpayers are being injured by unlawful activities of Urban Renewal Authorities. As a practical matter, there are to many unlawful activities in Larimer County to enumerate in separate claims. However, by seizing on this one example, and maybe even perhaps applying the theory of law pertaining to the proper standard for standing in the face of a non-claim statute recently expounded in my *Response To City of Fort Collins' Motion to Dismiss* if necessary, the process restoring justice and equity to the citizens of the Poudre School District and the Colorado may begin.

V. CONCLUSION

This court should recognize that the Plaintiff and all other owners of real property within the Poudre School District are injured on any occasion where taxable property within a URA such as the TDA is excluded from contributing to the ***voter approved FIXED AMOUNT*** mill levies of the school district as a consequence of lawless behavior by URAs.

Dated Aug 10, 2018

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Eric Sutherland

[2] No relief specifically enjoining the Indispensable parties has been requested.

Certifcate of Service.

I hereby certify that on this 10th Day of Aug, 2018, a true and correct copy of the foregoing ***First Amended*** **Motion for Reconsideration of Order Granting Indispensable Parties Motion to Dismiss** was filed with the Court and served via email to the following:

Eric R. Burris eburris @ bhfs.com
Cole J. Woodward cwoodward @ bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP

Robert Rogers rrogers @ wbapc.com
Casey K. Lekahal clekahal @wbapc.com
WHITE BEAR ANKELE TANAKA & WALDRON

Attorneys for Steve Miller and Irene Josey
Jeanine Haag
George Haas

Attorneys for City of Fort Collins
John Mills
Amanda Milgrom
Carrie Daggett
John Duval

By _____