8th DISTRICT COURT **LARIMER COUNTY JUSTICE CENTER** Court Address: 201 Laporte Avenue Fort Collins, CO 80521 Phone (970) 494-3500	FILED LARIMER COUNTY 18 SEP 24 PM 1:24 DATE FILED: September 24, 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 3520 Golden Currant Boulevard Fort Collins, CO 80521 Phone Number: (970) 224 4509 E-mail: sutherix@yahoo.com	Case #: 2018CV149 Division: 3C

AFFIDAVIT OF ERIC SUTHERLAND IN SUPPORT OF PLAINTIFF'S MOTION FOR RECONSIDERATION OF GRANT OF ATTORNEYS' FEES AND BILL OF COSTS

I, Eric Sutherland, being duly sworn, state as follows.

1) I believe that the property owners of the Poudre School District ***backfill*** all revenue attributable to the school district's ***voter approved FIXED AMOUNT*** component mill levies such as the 2010 Mill Levy Override that is diverted to the Timnath Development Authority, the TDA, in accordance with the tax allocation scheme of C.R.S. 31-25-107 (9) (a) (II).

2) It is my reasonable belief that any diversions of property tax revenue as described in 1) above that are made to the TDA but that the TDA is not legally entitled to because of violation of law represent injury-in-fact to my legally protected rights.

3) It is my reasonable belief that the further creation of debt by the TDA will have the effect of requiring the continuance of the ***backfill*** described above into future tax years and that the tax rates that I and other property owners will pay in future tax years will be higher.

4) It is my understanding and belief that my beliefs as expressed in the preceeding paragraphs is widely shared and held amongst officials of the Poudre School District who have publicly stated that the owners of real property with the school district, (the property taxpayers), ***backfill*** the component tax levies such as the 2010 Override Levy by payment of taxes at a higher tax rate than that that would be necessary if the diversions of tax revenue to the Timnath Develoment Authority were smaller or nonexistent.

5) It is my reasonable belief that information contained in the two ***signed*** Resolutions Adopted by the Poudre School District Board of Education, which are found on pages 3 and 4 of this affidavit, supports my reasonable beliefs. For example, the tax levy that is attributable to the 2010 Override levy is calculated in both resolutions. The voters approved $16 million/year. The district has to tax $16.7 million/year in 2016 in order to get the $16 million that PSD is entitled to. The next year, 2017, the percentage of TIF goes up and the District needs to tax $16.8 million. The property taxpayers have to make up that $800,000. Our tax rates are higher than they would have been had the property in Timnath not have been exempted. (Approximately 45% of the total diversion to TIF goes to Timnath. The rest goes to the FC URA and FC DDA.)

6) It is my reasonable belief that the calculation of the tax rate for the 2010 Override levy is lawful. However if any part of that extra $800,000 (2017) should not have been taxed because property in Timnath should not have been exempted, we pay higher taxes. In other words, if Timnath is breaking the law, then we should not have to pay.

MILL LEVY RESOLUTION

WHEREAS, the Board of Education is required to formally certify to the Board of Larimer County Commissioners the mill levy in accordance with CRS 39-5-128 (1) no later than December 15, 2017: and

WHEREAS, analysis of existing statutes and amendments to the Colorado constitution has been done to determine what mill levy is allowed under those statutes and amendments,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF POUDRE SCHOOL DISTRICT R-1 that the secretary of the board of education formally certify to the Board of Larimer County Commissioners the mill levy in accordance with CRS 39-5-128 (1) in the following manner:

For the tax year 2017 (collectable in 2018), the Governing Board of the Poudre School District R-1 hereby certifies a total levy of 52.630 mills to be extended by you upon the total net assessed valuation of $3,261,486,136 to produce $171,652,017 in revenue.

This is based on:

Total Assessed Valuation		$3,426,218,174
Less: Tax Increment Financing		(164,732,038)
	Net Valuation	$3,261,486,136

For Tax Year 2017 Collectable in 2018:

Description	Mills	Gross Tax Generated	Less TIF	Net Tax Generated
General Fund State Levy	27.000	$ 92,507,891	$ (4,447,765)	$ 88,060,126
1988 Override Election Levy	0.936	3,206,940	(154,189)	3,052,751
1996 Override Election Levy	1.827	6,259,701	(300,965)	5,958,736
2000 Override Election Levy	3.066	10,504,785	(505,068)	9,999,717
2010 Override Election Levy	4.906	16,809,026	(808,175)	16,000,851
2016 Override Election Levy	0.797	2,730,696	(131,291)	2,599,405
Senate Bill 184 Allowance	0.151	517,359	(24,875)	492,484
Bond Redemption	13.947	47,785,465	(2,297,518)	45,487,947
Totals	52.630	$ 180,321,863	$ (8,669,846)	$ 171,652,017

You are hereby authorized and directed to extend said levies upon your tax list.

In accordance with CRS 22-40-102 (6), Poudre School District is required to inform the county treasurer of the general fund mill levy that would be required in the absence of state funding received pursuant to the "Public School Finance Act of 1994" and the estimated funds to be received for the general fund. The Colorado Department of Education has estimated the amount of funding Poudre School District will receive from the state for the general fund to be $121,936,509.65 and that in the absence of this funding the District's general fund state mill levy would be 72.719 instead of 27.000.

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of Poudre School District R-1, Colorado this 12th day of December, 2017.

Signature

Christophe Febvre
President/Board of Education

MILL LEVY RESOLUTION

WHEREAS, the Board of Education is required to formally certify to the Board of Larimer County Commissioners the mill levy in accordance with CRS 39-5-128 (1) no later than December 15, 2017: and

WHEREAS, analysis of existing statutes and amendments to the Colorado constitution has been done to determine what mill levy is allowed under those statutes and amendments,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF POUDRE SCHOOL DISTRICT R-1 that the secretary of the board of education formally certify to the Board of Larimer County Commissioners the mill levy in accordance with CRS 39-5-128 (1) in the following manner:

For the tax year 2017 (collectable in 2018), the Governing Board of the Poudre School District R-1 hereby certifies a total levy of 52.630 mills to be extended by you upon the total net assessed valuation of $3,261,486,136 to produce $171,652,017 in revenue.

This is based on:

Total Assessed Valuation		$3,426,218,174
Less: Tax Increment Financing		(164,732,038)
	Net Valuation	$3,261,486,136

For Tax Year 2017 Collectable in 2018:

Description	Mills	Gross Tax Generated	Less TIF	Net Tax Generated
General Fund State Levy	27.000	$ 92,507,891	$ (4,447,765)	$ 88,060,126
1988 Override Election Levy	0.936	3,206,940	(154,189)	3,052,751
1996 Override Election Levy	1.827	6,259,701	(300,965)	5,958,736
2000 Override Election Levy	3.066	10,504,785	(505,068)	9,999,717
2010 Override Election Levy	4.906	16,809,026	(808,175)	16,000,851
2016 Override Election Levy	0.797	2,730,696	(131,291)	2,599,405
Senate Bill 184 Allowance	0.151	517,359	(24,875)	492,484
Bond Redemption	13.947	47,785,465	(2,297,518)	45,487,947
Totals	52.630	$ 180,321,863	$ (8,669,846)	$ 171,652,017

You are hereby authorized and directed to extend said levies upon your tax list.

In accordance with CRS 22-40-102 (6), Poudre School District is required to inform the county treasurer of the general fund mill levy that would be required in the absence of state funding received pursuant to the "Public School Finance Act of 1994" and the estimated funds to be received for the general fund. The Colorado Department of Education has estimated the amount of funding Poudre School District will receive from the state for the general fund to be $121,936,509.65 and that in the absence of this funding the District's general fund state mill levy would be 72.719 instead of 27.000.

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of Poudre School District R-1, Colorado this 12th day of December, 2017.

Signature

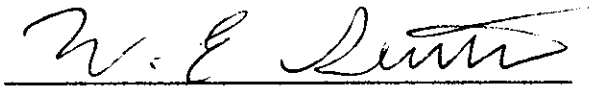
Christophe Febvre
President/Board of Education

7) I am pleased that the school district is not taking the hit. It is my reasonable belief that funding of schools in Colorado is an embarrassment that needs to be corrected.

8) It is my reasonable belief that, to the extent that Compass Bank and the TDA have ignored my assertion that the PSD property owners are being injured, it is reasonable to conclude that they understand perfectly what I am saying.

9) It is my reasonable belief that, if I was wrong about injury, Compass Bank and the TDA would have argued facts and law to dispute my position but they haven't.

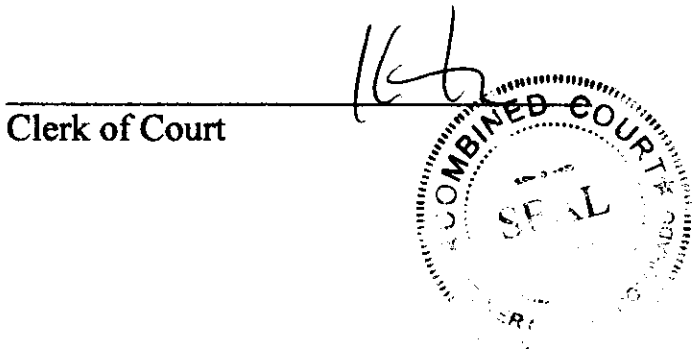
10) All beliefs that I have expressed in this affidavit were also my belief at the time I filed the *Unamended Complaint* in the instant action.



Eric Sutherland

The foregoing *Affidavit of Eric Sutherland in Support of Plaintiff's Motion for Reconsideration of Grant of Attorneys' Fees and Bill of Costs* was acknowledged before me this 24th day of September, 2018 by Eric Sutherland.

Witness my and official seal.



Clerk of Court