

<p>FORT COLLINS MUNICIPAL COURT 215 N. Mason Fort Collins, CO 80521 Phone (970) 221 6800</p>	
<p>Plaintiffs: Eric Sutherland, J & M Distributing, DBA Fort Collins Muffler and Automotive</p> <p>v.</p> <p>Defendant : THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry.</p> <p>Intervenor: NEXT CHAPTER PROPERTIES, LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<hr/> <p>Parties without attorney Eric Sutherland 3520 Golden Currant Fort Collins, CO 80521 (970) 224 4509 sutherix@yahoo.om</p> <p>Brian Dwyer 2001 S. College Ave. Fort Collins, CO 80525 (970) 484 0866 bdwyer1199@gmail.com</p>	<p>Case Number: 2018civil01</p>
<p style="text-align: center;">MOTION FOR CLARIFICATION OF AMENDED SCHEDULING ORDER</p>	

Plaintiff, Eric Sutherland files this *Motion for Clarification of Amended Scheduling Order*..

Conference: I attempted to confer with opposing Counsel. Counsel for the city is on vacation. Counsel for Next Chapter did not respond.

BACKGROUND

On November 11, 2018, I was in receipt of service through the court administrator of this Court's *Amended Scheduling Order*. This *Order* states:

The Court has been working assiduously on the Ruling and Order in this case. The record is lengthy, comprising more than 500 pages. Unfortunately, Plaintiffs failure to make any citations to the record in their briefs has made the task more time consuming than anticipated. The Court will file the Ruling and Order November 26, 2018, and it will grant itself no further extensions.

CLARIFICATION REQUESTED

By the statement of the Court included above, it is obvious that something is terribly wrong.

The court should not be working assiduously. It should not even be working at all.

No citations to the record by the Plaintiffs were necessary because there was nothing in the record to support Plaintiffs' position. Rather Plaintiffs complained of the *complete absence* of necessary and required elements of the design proposal and abuse of discretion by decision makers when approving the design proposal without the necessary elements. (Claims 1 and 2) Plaintiffs also requested declaratory judgment on the constitutionality of two provisions of the LUC and noted that no action had been taken in the court below to eliminate vagueness. (Claims 3 and 4). Finally, Plaintiffs complained that the inability to enforce forward looking conditions of approval rendered those conditions insufficient for purposes of approval of a design.

As previously explained to the court, the only use Plaintiffs would have of the record would be for purposes of examining every inch of it to prove all elements we alleged were absent were indeed absent. See *Opening Brief* at p. 5 "It is impossible to prove a *complete absence* of compliance with a specific provision of the Land Use Code has occurred without an analysis of every single component of the record..." Examining every single piece of the record, of course, would be assiduous ... and also unnecessary.

Whether it be considered a new theory of law or simply a preference for judicial efficiency, Plaintiffs held that an allegation of absence of elements shifts the

burden of proof onto the Defendants and that burden should have been easy if Plaintiffs were wrong.

Defendants made no showing that the elements alleged to be missing were missing. Instead, Defendants contrived ridiculous arguments to deflect attention from the very simple truth upon which a decision in this case would turn.

The City of Fort Collins intentionally and unnecessarily conflated this procedure by bringing the entire record of the entire proceeding under review. This was subterfuge perpetrated on the court instead of simply proving that elements alleged missing were actually present ... or, heaven forbid, being honest and confessing to the absence of elements that were never there. Had there been any single piece of the record that refuted Plaintiffs' allegation of missing elements, then only that piece of the record needed to be reviewed by the Court ... not 500 pages.

Plaintiffs had proposed a hearing on this matter to review the posture of the case, the standards for review, and especially the legal matters requiring determination by this Court. Both Defendants adamantly refused this possibility in conference and no request for a hearing was made.

WHEREFOR, Plaintiff Eric Sutherland respectfully requests that this Court Clarify why the review of 500 pages of record from the court below is necessary when this entire case is decided exclusively on the absence of elements alleged to be absent ... with no refutation of such absence by Defendants.

Respectfully submitted this 21st day of November, 2018

Eric Sutherland

Eric Sutherland

Address of Lead Plaintiff
3520 Golden Currant
Fort Collins, CO 80521

I hereby certify that the above Motion was served to the Defendants City and Next Chapter via email on 11/21/2018

Eric Sutherland