

<p>8th DISTRICT COURT LARIMER COUNTY JUSTICE CENTER Court Address: 201 Laporte Avenue Fort Collins, CO 80521 Phone (970) 494-3500</p> <hr/> <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 to this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office;</p> <p>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>Party without attorney: Eric Sutherland, <i>pro se</i> 3520 Golden Currant Boulevard Fort Collins, CO 80521 Phone Number: (970) 224 4509 E-mail: sutherix@yahoo.com</p>	<p>Case #: 2018CV149 Division: 3C</p>
<p>PLAINTIFF'S RESPONSE TO CITY OF FORT COLLINS' MOTION FOR RECONSIDERATION OF THE COURT'S STATUS ORDER</p>	

Plaintiff, Eric Sutherland (also referred to hear with 1st person pronouns) files this Response to the City of Fort Collins' Motion for Reconsideration of the Court's Status Order which was filed with this Court on November 14th, 2018.

I. BACKGROUND

The City of Fort Collins has now filed with this Court a request for the Reconsideration of this Court's October 29th, 2018 *Status Order*. The City has cited various authority in support of its argument that this Court should vacate or amend its Oct. 29th *Status Order* and move forward with determination of Motions for costs and fees.

The City's description of the procedural history of the case is substantially correct except for two omissions of importance. First, the City's enumeration of outstanding matters that are still unresolved in this matter did not include three motions that have not been decided. Those motions are, in chronological order of filing with the court, 1) Timnath Development Authority and Compass Banks *Motion to Dismiss Counterclaims and Withdraw Motion for Injunctive Relief Pursuant to C.R.C.P. 65(g)*, filed with the court on July 24, 2018; 2) Eric Sutherland's *Motion for Determination of Questions of Law Under Rule 56(h)*, filed with the court on October 3, 2018; and 3) Eric Sutherland's *Motion for Correction of the Record in Advance of Appeal*, filed with the court on October 5, 2018. Secondly, the City makes no mention of the significant discovery of the fact that Judge Gregory Lammons had been disqualified from this case and a judicial official, Judge Robert Lowenbach had been assigned to this case by superior authority of the Chief Justice of the Supreme Court acting through his designated representative in the State Court Administration Office.

II. ARGUMENT IN OPPOSITION TO *MOTION TO RECONSIDER*

The City's argument in support of its *Motion to Reconsider* is well made with the exception of the absence of any consideration of the back-and-forth effect of the impact of decisions on issues that are currently on appeal/expected to soon be on appeal with decisions that are to be made by the trial court. Because the effect of decisions made in either court are substantive in nature, the City's motion

must be denied in accordance with the authority and reasoning that it has, itself, cited.

In regard to the City's desire to see its *Combined Motion for Attorneys' Fees and Bill of Costs* decided by the trial court, several issues must be considered.

First, the City's *Combined Motion for Attorneys' Fees and Bill of Costs* may not be decided in the absence of some sort of determination as to whether or not the City had duly applied any part of the Supplemental Public Security Act, C.R.S. §11-57-201 *et seq.*, the "SPSA", to the issuance of debt purported to have been authorized on April 3, 2018. Whether or not this question is approached by determining my *Motion for Determination of Question of Law Under Rule 56(h)* or by other argument at hearing, this question must be answered in order to properly decide the issue of attorneys' fees and costs. This is because the basic question posed would undercut the position of **both** the defendant and the plaintiff. Both relied upon the presumption that the SPSA had been properly applied when stating their case, but both would be wrong if, as the facts suggest, the City of Fort Collins never duly applied the SPSA because it failed to follow the requirements of its own City Charter when purporting to issue over \$146 million in debt.¹ The problem that the City encounters when facing this reality is that the question of whether or not the SPSA was duly applied is of great importance not only to the issue of attorneys fees and costs, but also to issues under appeal ... such as whether or not I should have been granted standing by this court to have the merits of my request for declaratory judgment heard and ruled upon by this court.² The unquestionable

¹ No amount of incredulity is misplaced here. Rather than simply following the plain and simple language of the City Charter, which clearly requires the passage of all ordinances at a regular city council meeting, the City of Fort Collins ignored my protests and cautions and acted in a manner that violates the City Charter.

² The issues common to both the decision on attorneys fees and this court's decision to decline to hear the case on its merits are 1) whether or not the recital styled in the manner of C.R.S. §11-57-210 that is found in the City's bonds has any weight whatsoever considering the City's failure

presence of back-and-forth effect between matters in the trial court and the appeals court requires this court to continue with its *Status Order* as issued in order to avoid the determination of matters substantive to those on appeal.

Second, there is good cause to question whether or not the majority of this court's past finding and any of its future findings are of effect ... even under the *de facto* judge doctrine. The *de facto* judge doctrine does not apply to any situation where, as here, factors of constitutional dimension were at work to deprive a judicial official of authority. *People v. Torkelson*, 22 P.3d 560, Colo. App. 2000. In this case, the assignment of Judge Robert Lowenbach to hear this case made by an official of the Office of the State Court Administration on June 23, 2018 pursuant to constitutional authority suffices constitutional protection. The retroactive rescission of assignment later made is of no consequence except for reinforcing the fact that from the time of assignment onward, Judge Gregory Lammons wielded no authority in this case. See *Notice of Request to Vacate Assignment of Judge Robery Lowenbach and Intent to Amend Notice of Appeal* and supporting exhibits, filed with this court on November 16, 2018.

III. CONCLUSION

There can be no question that the current situation can be seen to be regrettable in many ways. For example, I had hoped to obtain a decision from the Court of Appeals that a person such as myself does have standing to challenge abuses of the URA law on the basis of the elevated tax rates that are levied as a direct result of such abuses. It now appears that hopes for published precedent are misplaced as the case is most likely to be determined on the basis of the failure of the authority of the Chief Justice of the Supreme Court to be respected.

(cont'd)..

to duly apply any part of the SPSA as a result of its improper adoption of an ordinance and 2) whether or not the non-claim statute of C.R.S. § 11-57-210 is applicable because of the same failure as in 1).

As to the City's desires to move forward with its *Combined Motion for Attorneys' Fees and Bill of Costs*, comments made in the opening of my *Response* thereto could not be truer. The City's Motion for Fees has opened the proverbial can of worms.

Although the City of Fort Collins' points as to the typical and acceptable practice of a trial court continuing to address open issues such as attorneys' fees after a case has gone to appeal are well made and well taken, the reality of this situation is that the interplay on substantive issues is to great in the present instance for this court to reconsider its *Status Order* and decide the City's request for attorneys fees. See *Plaintiff's Response to City's Combined Motion for Attorneys' Fees and Bill of Costs* at p. 3 (*The effect of a determination on these questions of law consistent with the argument that I have presented would be extremely impactful on this proceeding (meaning determination of fees) and also on matters extrinsic to this proceeding.*) All citations of authority provided by the City recognize that trial courts are deprived of jurisdiction over matters substantive to issues on appeal and there are to many such substantive issues common to appeal and motion for fees in this case.

To the extent that the City's *Combined Motion for Attorneys' Fees and Bill of Costs* does not address the possibility that any other undecided motions enumerated by the City or in this *Response* may be decided, I offer no position on those subjects.

WHEREFORE, Plaintiff requests that that this Court deny the *City of Fort Collins' Motion for Reconsideration of the Court's Status Order* in this matter.

Eric Sutherland

Dated December 5, 2018

I hereby certify that on this 5th Day of December, 2018, a true and correct copy of the foregoing *Plaintiff's Response to City of Fort Collins' Motion for Reconsideration of the Court's Status Order* was filed with the Court. Also, a true and correct copy of the foregoing will be served via email to the following no later than December 5th, 2018.

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By _____
