

DISTRICT COURT, LARIMER COUNTY, COLORADO

Court Address: 201 La Porte Avenue
Fort Collins, CO 80521

Phone Number: (970) 494-3500

DATE FILED: January 25, 2019 9:07 AM
FILING ID: 92FC74F21C823
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 in 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 ▲

Attorneys for Defendant City of Fort Collins:

John W. Mill (#22348)

Amanda Levin Milgrom (#47871)

Sherman & Howard L.L.C.

633 17th Street, Suite 3000

Denver, CO 80202

Phone Number: (303) 297-2900

Email: jmill@shermanhoward.com

amilgrom@shermanhoward.com

Carrie M. Daggett, #23316

John R. Duval, #10185

Fort Collins City Attorney's Office

300 LaPorte Avenue

Fort Collins, CO 80522-0580

970-221-6520

cddaggett@fcgov.com, jduval@fcgov.com

Case No.: 2018CV149

Courtroom/Division: 5B

SUPPLEMENTAL AFFIDAVIT OF JOHN W. MILL

I, John W. Mill, hereby state under oath as follows:

1. I have personal knowledge of the facts stated herein.

2. I am over the age of eighteen years and competent to give testimony.

3. I submit this Supplemental Affidavit in further support of The City of Fort Collins' Combined Motion for Attorneys' Fees and Bill of Costs ("the City's Motion for Fees") filed on September 26, 2018. That Motion is set for a hearing at 1:30 p.m. on March 15, 2019.

Additional Attorneys' Fees and Costs

4. Since the filing of the City's Motion for Fees, The City of Fort Collins ("the City") has incurred additional attorneys' fees and costs in this matter. All of these additional attorneys' fees and costs were incurred because of the actions of the Plaintiff, Mr. Eric Sutherland.

5. I previously submitted the Affidavit of John W. Mill (Ex. A to the City's Motion for Fees) which established that through September 12, 2018, the Plaintiff's claims had caused the City to incur a total of \$34,754.65 in attorneys' fees and costs.

6. From September 13 to January 12, 2019, in this matter the City has incurred additional attorneys' fees of \$21,378.36 and additional costs of \$825.35.

7. Attached as Exhibit A to this Supplemental Affidavit are true and correct copies of Sherman & Howard L.L.C.'s invoices dated October 26, November 21 and December 14, 2018 and January 22, 2019 in this matter. My firm's regular practice is to create such invoices, at or near the time of the work reflected on them, by a person with knowledge of, or from information transmitted by a person with knowledge of, the work performed and the invoices attached as Exhibit A hereto and the invoices attached to my original affidavit are kept in the course of the firm's regularly conducted business activities.

8. The City has paid, or is obligated to pay, the attorneys' fees and costs reflected on the invoices attached as Exhibit A.

Additional Attorneys' Fees and Costs

9. I reiterate, and incorporate herein by reference, the statements in my original affidavit in this matter regarding the experience and qualifications of the attorneys representing the City in this matter and the reasonableness of the hourly rates charged.

10. Based on my experience, in my opinion the number of hours expended by Sherman & Howard in this matter since September 12, 2018 are reasonable, the amount of costs incurred since September 12, 2018 are reasonable and those attorneys' fees and costs were necessary for the City to respond to Plaintiffs' claims and actions.

11. The invoices attached hereto as Exhibit A summarize the work that Plaintiff's actions have forced the City's counsel to perform since September 12, 2018. That includes:

- a. Preparing the City's Motion for Fees (filed Sept. 26, 2018).
- b. Reviewing Plaintiff's opposition to the City's Motion for Fees.
- c. Addressing Plaintiff's Motion for Determination of Questions of Law under Rule 56(h) (filed Oct. 3, 2018, after the Court had dismissed all of Plaintiff's claims and the City had moved for attorneys' fees). The City filed a response to Plaintiff's motion and a motion to strike Plaintiff's motion (both filed Oct. 24, 2018).
- d. Responding to Plaintiff's Motion for Correction of the Record in Advance of Appeal (filed Oct. 5, 2018).
- e. Preparing the City's Reply in support of the City's Motion for Fees (filed Oct. 25, 2018).
- f. As a result of Plaintiff filing a notice of appeal on October 23, 2018, the Court issued its Status Order Regarding Notice of Appeal on October 29, 2018. The City moved for reconsideration of that Order on November 14, 2018, which the Court granted on December 6, 2018.
- g. Plaintiff requested a hearing on the City's Motion for Attorneys' Fees, which the Court granted, which required the City to file a Notice to Set Hearing by Telephone on December 18, 2018 and participate in a setting call with the Court clerk, and which will require the City to incur additional attorneys' fees to prepare for and participate in the hearing.
- h. In addition, since September 12, 2018, Plaintiff has sent the City and/or the City's counsel in this matter a number of emails. All of Plaintiff's emails required the City's counsel to read them, and in some cases respond to them. This required time, which increased the amount of attorneys' fees incurred by the City, all due to Plaintiff's actions.

12. Sherman & Howard has discounted by 10% all attorneys' fees charged in this matter including on the October, November and December 2018 and January 2019 invoices.

13. In addition, as the billing partner on this matter, throughout the matter on all invoices, I have exercised reasonable and appropriate billing judgment. As a result, in some instances, I have written off and not charged, or reduced and charged a lower amount, than the actual number of hours spent on certain tasks. This was done to be fair and ensure that the fees charged are reasonable.

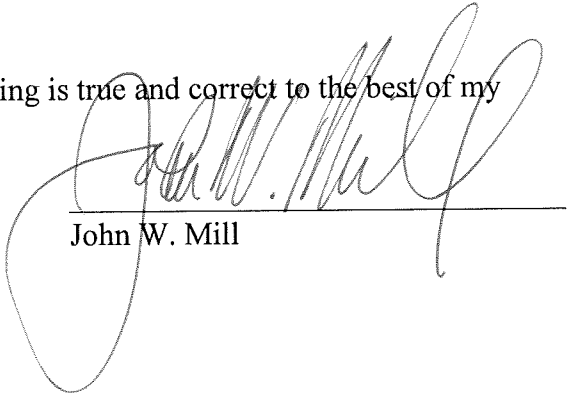
Summary

14. The total attorneys' fees and costs incurred by the City in this matter from when Mr. Sutherland filed his Complaint in this matter on April 26, 2018 through January 12, 2019 are \$56,958.36. This consists of:

	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
First Affidavit (thru Sept. 2018 invoice)	\$33,284.23	\$1,470.42	\$34,754.65
Oct. 26, 2018 invoice	8,359.87	153.72	8,513.59
Nov. 21, 2018 invoice	8,214.75	542.54	8,757.29
Dec. 14, 2018 invoice	2,318.62	88.59	2,407.21
Jan. 22, 2019 invoice	<u>2,485.12</u>	<u>40.50</u>	<u>2,525.62</u>
Total	\$54,662.59	\$2,295.77	\$56,958.36

Further affiant sayeth not.

I hereby swear or affirm that the foregoing is true and correct to the best of my knowledge, information and belief.



 John W. Mill

STATE OF COLORADO)
)
 COUNTY OF DENVER)

I hereby certify that the foregoing **SUPPLEMENTAL AFFIDAVIT OF JOHN W. MILL** was subscribed and sworn to before me on this 24th day of January, 2019, by John W. Mill.

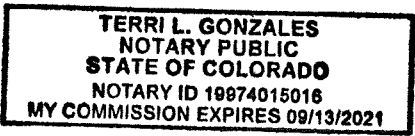
WITNESS my hand and official seal.

My commission expires: 9/13/21



 Notary Public

[SEAL]



CERTIFICATE OF SERVICE

I hereby certify on the 25th day of January, 2019, that a true and correct copy of the foregoing **SUPPLEMENTAL AFFIDAVIT OF JOHN W. MILL** was filed via ICCES e-filing system and served upon the following:

Eric Sutherland, *pro se*
3520 Golden Currant Boulevard
Fort Collins, CO 80521
(*By email and US Mail*)

Eric R. Burris, *pro hac vice*
Cole J. Woodward
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

/s/ Lynn Tumey
Lynn Tumey, Legal Assistant