8th District Court __Larimer County, Colorado Court Address: 201 Laporte Fort Collins, CO 80521	FILED IN COMBINED COURTS LARIMER COUNTY COLORADO 2018 APR 26 PM 4:27 DATE FILED: April 26, 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**
Attorney or Party Without Attorney (Name and Address): Eric Sutherland, pro se 3520 Golden Currant Boulevard Fort Collins, CO 80521 (970) 224 4509 home sutherix@yahoo.com	Case Number: 18CV149 Division 3C

DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT,

1. **This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading.** It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. **Check one of the following:**

   ☐ This case is governed by Chief Justice Directive ("CJD") 11-02 and the "Colorado Civil Access Pilot Project Rules Applicable to Business Actions in District Court" because:

   - The case is filed within the period of January 1, 2012 through June 30, 2015; *AND*
   - The case is filed in a Pilot Project participating jurisdiction (Adams County, Arapahoe County, Denver County, Gilpin County, or Jefferson County); *AND*

- The case is a "Business Action" as defined in CJD 11-02, Amended Appendix A for inclusion in the Pilot Project.

☒ This case is not governed by the Colorado Civil Access Pilot Project Rules.

*NOTE: **Cases subject to the Colorado Civil Access Pilot Project must be governed by the Rules in CJD 11-02** (available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm). The presiding judge will review Item 2 for accuracy. The designation on this initial Cover Sheet will control unless the Court orders otherwise.*

3. If this case is not governed by the Colorado Civil Access Pilot Project Rules as indicated in Item 2, check the following:

☐ This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; *AND*

- A monetary judgment over $100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

☒ This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

☐ The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

☐ A monetary judgment over $100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).

☐ A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

☐ C.R.C.P. 16.1 applies to this case.

☐ C.R.C.P. 16.1 does not apply to this case.

4. ☐ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: 4/26/2018

Signature of Party or Attorney for Party

8th DISTRICT COURT **LARIMER COUNTY JUSTICE CENTER** Court Address: 201 Laporte Avenue Fort Collins, CO 80521 Phone (970) 494-3500	FILED IN COMBINED COURTS LARIMER COUNTY COLORADO 2018 APR 26 PM 4:21 DATE FILED: April 26, 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 #: 18CV149 Division: 3C

UNAMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND EQUITABLE RELIEF

Plaintiff, Eric Sutherland (also referred to hear with 1st person pronouns), for his Complaint against Defendants, City of Fort Collins, Steve Miller and Irene Josey, states and alleges as follows:

PAID
Amt. $224
Date 4/26/18

INTRODUCTION

The public affairs of governmental entities in Northern Colorado are characterized by inconvenient disregard for law. Whenever it is inconvenient to follow the law, the law is disregarded. The surest way to induce a local government in the area to disregard the law is to question the legality of an improper action. The question is often asked as to whether the 8th District Court is discouraging of such lawlessness or otherwise.

Defendant City of Fort Collins and Indispensable Party Timnath Development Authority have both authorized the creation of debt. In both cases, the issuance and authorization of debt are characterized by a failure to comply with applicable state and local laws.

The Timnath Development Authority has improperly authorized an increase in debt to be owed to Indispensable Party Compass Mortgage Corporation in the sum of $25 million dollars. The purposes for which the proceeds of this increase in debt are to be used are not known to the Plaintiff at the time of commencing this action. The Timnath Development Authority took the action of increasing debt without properly reforming its Board of Commissioners as required by the Urban Renewal Authority statutes as they currently exist in the aftermath of several amendments duly adopted by the General Assembly and signed by the Governor of Colorado including HB15-1348 and HB17-279. Generally, Urban Renewal Authorities have been required to reform the membership of their governing bodies by including representatives from county, school and special district government. There has been some confusion and disagreement about the general applicability of this requirement, however, the current states of the law with the adoption of HB17-279 leaves no ambiguity as to the requirement that a URA reform its board before borrowing more money repayable with the expanded collections of property tax increment.

Although the actual transaction of funding the increase in debt with a payment of funds from one indispensable party to the other is NOT a subject of concern in this lawsuit, the repayment of the loan amount with property tax increment threatens injury to the Plaintiff. Consequently, the County Assessor and County Treasrurer are named as defendant's here as it is the potential for action taken in violation of law by these two parties that threatens injury.

The City of Fort Collins has improperly authorized the creation of $150 million dollars by purporting to have authorized the issuance of bonds in the same

amount. The legislative action taken by the City is inconsistent with the City charter of the City of Fort Collins, the City Code of the City of Fort Collins and also the State Constitution. Generally, a legislative enactment of the City Council must be made by Ordinance and Ordinances must be adopted in accordance with procedures defined by the City Charter including, for example, a requirement that the Ordinance be adopted by majority vote at a regular or special meeting of the City Council and signed by the Mayor. The creation of debt in any form is a legislative enactment and is particularly required to be enacted by Ordinance. However, almost comically, the City Council did not approve the creation of debt at a regular or special City Council meeting. The Mayor did not sign the Ordinance. Rather, members of the City Council acted after the conclusion of a regular City Council meeting in the artifice of an Enterprise Board in a manner that was inconsistent with the Charter and Code provisions pertaining to the undertakings and authority of the Enterprise Board. The "Ordinance" so enacted was signed by the "president" of the Enterprise Board. This last defect is a matter of constitutional dimension as no person was ever elected of appointed 'presdent' of the Enterprise Board in accordance with duly adopted law. See Article XXI section 4. This last point is crucial in determining what court of law has jurisdiction to review this complaint.

It is without question that in both the situations mentioned above, the defects in procedure that render the actions of the TDA and the City null and void can be perfected by further actions in pursuit of the desired issuance and authorization of debt. Both governmental entities have been notified of the deficiencies and asked to correct them. Both have, thus far refused.

Both legislative actions taken above have invoked C.R.S. § 11-57-212, a non-claim statute that bars actions challenging the issuance or authorization of a legislative action creating debt if not commenced within 30 days. The earlier of the two deadlines for challenging the creation of debt is April 26, 2018. Although both authorizations for creation of debt invoked the §11-57-212, the deficiencies described here are properly considered to be failures of due process which is an abridgement of constitutional rights. Thus, there is no effect of –212 in barring challenges not brought before the time bar of the statue in regard to the deficiencies complained of in this complaint. No statute may operate so as to abridge the constitutional rights of citizens, *See White v. Davis* (citation needed). Nevertheless, in can not be argued that a potential dispute over a complicated and admittedly disputed matter of law is avoided by the filing of this complaint prior to the deadline imposed by the non-claim statute.

Although it is regrettable that an action must be taken in order to compel the two governmental entities to properly take the legislative actions necessary for the creation of debt or, in the alternative, to eliminate the future injury that may be reasonably expected to follow from the unlawful creation of debt, the alternative embodied by this complaint is the best alternative. This complaint is filed here with the fore knowledge that the deficiencies complained of here may become moot by further action of one or both of the two governing bodies. Incomplete treatment of any of the facts or allegations in this complaint may be attributed to the strategic value of voluntary compliance with the requirements of the Supplemental Public Securities Act including the non-claim statute, CRS 11-57-212, and the potential for judicial efficiency that results therefrom. Such incomplete treatment shall be understood to be subject to improvement by a subsequent amendment to this complaint filed in accordance with the C.R.C.P.

In recognition of the previously mentioned strategic requirements, this complaint also aspires to a more permanent action that may not be rendered moot by actions of the City or the TDA. Additional claims coincident with the same incidence or occurrence as the two authorizations of debt complained of here are also included as is proper under the rules of civil procedure and also to guard against claim preclusion if filed in a separate action at a later date. Specifically, the legitimacy of certain provisions of the City Charter that are purported to have been created by voter approval of a Charter amendment in November of 2016 are challenged. Also, the legitimacy of ANY further disbursement of property tax increment to the TDA in light of past and ongoing violations of state law is challenged in this action.

PARTIES

1. Eric Sutherland is a citizen of Fort Collins, a ratepayer of Fort Collins Utilities and particularly the electric utility of the city that supplies electric power to his residence in Fort Collins and a taxpayer of the Poudre School District by virtue of property taxes paid on his residence at 3520 Golden Currant.

2. Steve Miller is the elected Assessor of Larimer County. Among other responsibilities, the Assessor is required to calculate the amount of property tax increment that is paid to the Timnath Development Authority.

3. Irene Josey is the elected Treasurer of Larimer County. Among other responsibilities, the Treasurer is responsible for disbursing property tax increment in an amount certified by the Assessor to the Timnath Development Authority.

4. The City of Fort Collins is a Home Rule City in the State of Colorado organized under Article XX section 6 of the Colorado Constitution and a Home Rule City Charter adopted in accordance with Art. XX § 6.

5. The Timnath Development Authority (the TDA) is an Urban Renewal Authority organized under C.R.S. § 31-25-101 *et seq.* At present the governing board of the TDA, also called the Board of Commissioners of the TDA, is composed of the 4 individuals elected to the Town Council and the Mayor of Timnath. The TDA is named here as an indispensable party in recognition of the possibility that its rights may be impaired as a result of the disposition of this court in this action.

6. Compass Mortgage Company (BBVA/Compass) is an Alabama corporation doing business in Colorado with an address of 999 18th Street, Suite 2800 Denver, CO 80202. BBVA/Compass is named here as an indispensable party in recognition of the possibility that its rights may be impaired as a result of the disposition of this court in this action.

JURISDICTION

7. This Court has jurisdiction over all claims for declaratory relief in this matter under C.R.S. 13-51-106 and C.R.C.P. 57(b).

8. This Court also has jurisdiction over all claims for equitable relief in this matter on the basis of two facts pertaining to the Plaintiff's circumstances; 1) Plaintiff may be reasonably be expected to pay electric bills to the City of Fort Collins electric bills and the amount paid on those bills as to rates or total charges will undoubtedly be increased by the repayment of unlawfully authorized debt as complained of here, and 2) Plaintiff may be reasonably expected to pay future property taxes attributable to Poudre School District mill levies that will undoubtedly be higher as to rates and total tax demanded as a result of the unlawfully authorized debt of the TDA as complained of here. Both 1) and 2) represent imminent tangible economic injury. Thus, Plaintiff has standing to bring this action on the basis of economic injury.

9. This Court also has jurisdiction over all claims pertaining to the calculation and payment of future property tax increment to the TDA on the basis of the broad standing afforded taxpayers in Colorado where issues of constitutional dimension are implicated.

10. Venue is proper in this Court because all parties with the exception of BBVA/Compass reside, officiate or are organized exclusively in Larimer County. BBVA/Comapass' participation in financing the TDA through loan agreements also makes this Court the proper venue to hear this matter.

FIRST CLAIM FOR RELIEF

11. In 2015, the Colorado General Assembly duly adopted and the Governor signed HB15-1348, which generally required, amongst other requirements, that existing Urban Renewal Authorities such as the TDA reform the composition of their governing boards to include a representative appointed by the Board of County Commissioners, a school board member and another member to be appointed by the special districts levying property taxes within the URA plan area.

12. Owing to a late amendment that significantly altered the effectivity clause of the HB15-1348, the applicability of the requirement described in the previous numbered paragraph was widely misapprehended as described here: 1) as introduced, HB15-1348 contained language could be construed to require that the applicability of all its provisions were conditioned upon a "trigger" mechanism pertaining to certain actions that may be taken by a URA in the future, 2) the Senate amendment to HB15-1348 stripped the "trigger" mechanism from the applicability of those provisions of the Bill that pertained to the reformation of the Board of Commissioners and, 3) because the advantages to be gleaned from ignoring the requirement of reformation of the board were significant, a myth was universally promulgated to disavow any such requirement.

13. In 2017, a "fix" was applied to the provisions of HB15-1348 by the proper adoption and signing of HB17-279, which clarified and even expanded the conditions that "triggered" those elements of the legislative changes enacted by HB15-1348 that were still subject to a "trigger" type mechanism.

14. On March 27, 2018, the TDA adopted Resolution No. TDA 04 2018, (hereafter Resolution 4). This legislative enactment was considered and voted by

a 5 member Board of Commissioners consisting of the Mayor and 4 elected council members.

15. Resolution 4 authorized the creation of an additional $25 million in debt repayable, in part with property tax, increment.

16. In accordance with the plain and simple language of C.R.S. § 31-25-107(9), the creation of additional debt by a URA necessarily requires an expansion of the amount of property tax increment that will be necessary to be disbursed to the URA to repay the debt.

17. The expansion of the use of tax increment financing described in the immediately preceding two numbered paragraphs satisfies at least one of the conditions enumerated in the statutory requirements (the "trigger" mechanisms) legislated in HB17-279.

18. Prior to the adoption of Resolution 4, the TDA had made no effort to reform the Board of Commissioners in accordance with the requirements of the existing state statute, C.R.S. § 31-25-104. No county, school district or special district representative had been named to the board or enjoyed any right of participation including voting on board matters on March 27, 2018.

19. Whether by virtue of the requirements of HB15-1348 as duly adopted into law or whether by virtue of the conditions that triggered a requirement later added by HB17-279, the TDA must have necessarily reformed the Board of Commissioners prior to authorizing Resolution 4 in order for this action to be legally valid for the purposes of disbursing property tax increment to the TDA for debt service.

20. Plaintiff respectfully asks this Court issue a declaration that repayment of any part of the additional $25 million in debt attributable to Resolution 4 with property tax increment is unlawful.

SECOND CLAIM FOR RELIEF

21. Plaintiff herein incorporates all allegations found in the First Claim For Relief.

22. Plaintiff respectfully asks this Court to enjoin defendants Steve Miller and his successors in office and Irene Josey or her successors in office from

calculating or disbursing property tax increment for the purposes of repaying any part of the additional $25 million in debt associated with Resolution 4.

THIRD CLAIM FOR RELIEF

23. There exists an Intergovernmental Agreement that has been executed between Larimer County and the TDA.

24. This agreement purports to authorize and require the payment of tax revenues received by the TDA attributable to the annual mill levy certified and imposed by Larimer County including a .75 mill levy approved by the voters in 2000 for the purposes of financing services to adults with disabilities to Larimer County.

25. This agreement was not in compliance with the URA statutes at the time it was created and is still not in compliance at this time.

26. Plaintiff respectfully requests, etc.

FOURTH CLAIM FOR RELIEF

27. Poudre Valley Fire Protection District agreement.

FIFTH CLAIM FOR RELIEF

28. Timnath Ranch agreement.

SIXTH CLAIM FOR RELIEF

29. Timnath Farms Metropolitan districts agreement.

SEVENTH CLAIM FOR RELIEF

30. Assessment of ag land does not comply with requirements of statute.

EIGHTH CLAIM FOR RELIEF

31. Original declaration of blight was fraudulent and erroneous.

NINTH CLAIM FOR RELIEF

32. Propery tax increment must evince a clear and particularized additionality.

TENTH CLAIM FOR RELIEF

33. *Ohlson v. Golden* must be reviewed in light of circumstances where debt is paid with revenues that are patently otherwise available to public entities.

ELEVENTH CLAIM FOR RELIEF

34. The TDA has failed to properly budget and account for a special fund.

TWELFTH CLAIM FOR RELIEF

35. On April 3rd, the Fort Collins Electric Utility Enterprise Board voted to approve an "Ordinance". This "Ordinance" purported to authorize the issuance and sale of revenue bonds

36. This Ordinance did not comply with the requirements of the Fort Collins City Charter in that it was not adopted in a manner as Ordinance of the Council in that it was not 1) first reading was not introduced at a regular or special City Council meeting, 2) finally passed at a regular city council meeting, 3) was not published in a newspaper of general circulation, and 4) signed by the Mayor.

37. This Ordinance did not comply with the requirements of the Fort Collins City Code in that 1) it was not adopted in the same manner as other ordinances of the City Council, 2) it purported to bind the City to perform an obligation relating to the electrical utility system that is a multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in all future years, which is specifically prohibited by code, and 3) the meeting of the Electric Utility Enterprise Board was not held concurrent with a regular or special City Council meeting.

38. This Ordinance did not comply with the requirements of the Colorado Consitution in that no person has ever been duly elected or appointed to the position of "president" of the Electric Utility Enterprise Board.

39. Plaintiff respectfully requests that this Court issue a declaration that this Ordinance authorizing the issuance of revenue bonds is a nullity and that no obligation of the City or any other entity following from this Ordinance may be hereafter enforced and no rights may accrue to any entity no matter how or where situated or contracted.

THIRTEENTH CLAIM FOR RELIEF

40. Electric Utility Enterprise Board has no power to defease existing revenue bonds. It may only issue revenue bonds and other obligations pursuant to Article V section 19.3.

FOURTEENTH CLAIM FOR RELIEF

41. The absence of a comma in the ballot question voted by Fort Collins electors precludes the validity of certain provisions of the City Charter that now appear in the Charter

FIFTEENTH CLAIM FOR RELIEF

42. The failure of the ballot question to disclose to voters that a "yes" vote would have the effect of exempting expenditures for debt service and contractual obligations of the light and power fund from the Charter requirement for Council appropriations of all City revenues precludes the validity of a certain provision of the City Charter than may now be found published in the Charter.

SIXTEENTH CLAIM FOR RELIEF

43. Council violated a prohibition of the City Charter by appropriating money to a private industrial organization; Woodward.

SEVENTEENTH CLAIM FOR RELIEF

44. Council violated a prohibition of the City Charter by appropriating money to a private industrial organization; Avago

EIGHTEENTH CLAIM FOR RELIEF

45. The City Manager violated a prohibition of the City Charter by becoming responsible for the debts and liabilities of private entities. The City Attorney shall issue a summons and the Municipal Court shall prosecute this violation in accordance with this declaration.

NINETEENTH CLAIM FOR RELIEF

47. URA TIF , DDA TIF , tax refunds due to Fort Collins sales tax payers of overcollected KFCG taxes, tax refunds due to PSD taxpayers for overcollection of taxes attributable to improper calculation of DDA increment revenues, failure to properly appoint judge is violation of charter, denial of speedy justice and due process requires Landmark Expansion PDP to be voided, failure to duly appoint hearing officer for Type 1 hearing voids Salud Clinic PDP. Etc.

WHEREFORE, Plaintiff prays that the Court issue the aforementioned declarations; enter judgment for the Plaintiff on each operable claim; and provide such other and further relief as the Court deems just and proper.

Respectfully submitted this 26th day of April, 2018 and thus commencing actions for the purposes of C.R.S. § 11-57-212

Eric Sutherland

3520 Golden Currant Blvd.
Fort Collins, CO 80521

I, Eric Sutherland, being first duly sworn upon my oath that I am over the age of eighteen years, that I am a registered elector and citizen of the City of Fort Collins, have prepared and read the foregoing **Unamended Complaint for Declaratory Judgment and Equitable Relief** and the facts stated therein and exhibits added in appendage thereto are true and accurate to the best of my knowledge and belief.

Eric Sutherland

STATE OF COLORADO)
COUNTY OF LARIMER) SS.

Subscribed and sworn to before me this 26 day of April, 2018 by Eric Sutherland.

Clerk of the Court

COMBINED COURT SEAL LARIMER COUNTY COLORADO

Witness my and hand and official seal