

Sarah Kane

From: Darin Atteberry
Sent: Tuesday, September 16, 2014 1:26 PM
To: 'Eric Sutherland'
Cc: Sarah Kane; CCSL
Subject: RE: Please include all evidence of ownership of Larimer No. 2 in Read Before Packet - Sept 16, 2014 City Council Agenda Item #11

Mr. Sutherland,

This is in response to your email from yesterday expressing your opinion regarding the ownership of the City Ditch alignment between the Poudre River and Bingham Hill Road. You requested that all the documentation and evidence to support the City has to support the City's claim of ownership of the City Ditch alignment be provided to the City Council in advance of the Council's meeting this evening. You also made this request by voice mail message to me and Helen Matson of the City's Real Estate Office. In that message indicated that you are not referring to the 1892 Rule and Order conveying an interest in the property to the City, or the 1977 deed conveying the surrounding property to Jim Brinks (which references the conveyance to the City); therefore, we will not be providing further documentation to you or Council.

We acknowledge that the Brinks family has informally disputed the legal effects of the two documents that you've noted (the Rule and Order conveying to the City and the 1977 Deed to Brinks), which have been the subject of extensive discussion in recent years. It is clear from your message and from other statements that you strongly and without doubt disagree with the City's position regarding the ownership of the City Ditch property.

Efforts by City staff and Councilmembers to reach a mutually acceptable outcome to this dispute with the Brinks family have as of yet been unsuccessful, but are ongoing. In addition, the City of Greeley is aware of the disagreement between the City (of Fort Collins) and the Brinks family. The City Council action this evening does not hinge on the outcome of any disagreement between the City of Fort Collins and the Brinks family regarding ownership of the City Ditch property. Nonetheless, the City does have a claim to the property based on the recorded 1892 Rule and Order, and your accusations that City staff has acted in a fraudulent manner are unfounded.



Darin Atteberry, ICMA-CM / AICP
City Manager
Fort Collins, Colorado

From: Eric Sutherland [mailto:sutherix@yahoo.com]
Sent: Monday, September 15, 2014 11:32 AM
To: Darin Atteberry
Cc: Ross Cunniff; Lisa Poppaw; Wade Troxell; Bob Overbeck; Karen Weitkunat; Gino Campana; Gerry Horak; Helen Matson; jhaukass@fcgov.com; Carrie Daggett; Paul Eckman; John Duval; Mike Beckstead; Sarah Kane; Wanda Nelson; Rita Knoll; john.kefalus.senate@state.co.us; randyfischer@frii.com; Joann Ginal; riedelce@co.larimer.co.us; johnsosw@larimer.org; lprassus@fcgov.com; Aimee Jensen; myersag@larimer.org; erinudell@coloradoan.com; kevinduggan@coloradoan.com; lgustus@coloradoan.com; tdonnelly@larimer.org; haagjs@larimer.org; ericlarsen@coloradoan.com; jstahla@reporter-herald.com; Kevin Gertig; Ken Mannon
Subject: Please include all evidence of ownership of Larimer No. 2 in Read Before Packet

Mr. Atteberry,

This request is very simple. Please put a copy of all the documentation and evidence that you have to support your claim that the City of Fort Collins has fee ownership of the Larimer Canal No 2 between the Poudre River and Bingham Hill Road into the Read Before packet presented to City Council on Tuesday evening.

Please include a copy of the petition filed by the City with the court that includes a claim to the fee interest in the land underlying the canal.

If the City has such documentation, it is being incredibly irresponsible not filing a claim to title for this property.

You have 2 days to accomplish this very simple task for the benefit of the Fort Collins City Council. Please do not hesitate to set their mind at ease by producing enough information to evidence the City's claim of ownership. I think this is the very least you can do.

There are about 30 people bcc'd in to this message that are all familiar with this situation. I could have included more. The City of Fort Collins' ethical standards will be on display Tuesday night for all to see. The very first step in this process should be making those documents that evidence your claims available for inspection by members of City Council and the public.

We know Greeley has a commanding power over the affairs of the Fort Collins Utilities department. The evaporation of 34,000 acre feet of conditional water rights into thin air probably did not help matters any. These facts, however, do not excuse you from abiding by the law.

18-5-114. Offering a false instrument for recording

(1) A person commits offering a false instrument for recording in the first degree if, knowing that a written instrument relating to or affecting **real** or personal property or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge or belief that it will be registered, filed, or recorded or become a part of the records of that public office or public employee.

Eric Sutherland

PS The Colorado Constitution does not allow you or anyone else to make growing small amounts of marijuana in an enclosed, secured space an offense. The taxpayers of Fort Collins are wasting large amounts of money on a City Attorney's office that apparently slept through the national media coverage when Amendment 64 was passed. Regardless of how you, the PFA brass (nothing else to do?) or the Ghost of Cowboy Steve Roy feel about the subject of marijuana, we are a democratic nation of laws not men. (see Item 12 of Tuesday night's agenda).

----- Forwarded Message -----

From: Eric Sutherland <sutherix@yahoo.com>

To: Eric Sutherland <sutherix@yahoo.com>

Sent: Sunday, September 14, 2014 11:12 PM

Subject: City of Fort Collins to claim ownership of property it does not own.

Hi,

The Fort Collins City Council is set to claim to own land it does not own and grant an easement to City of Greeley. Second reading of an Ordinance will be made on Tuesday, September 16th.

http://citydocs.fcgov.com/?cmd=convert&vid=72&docid=2320048&dt=AGENDA+ITEM&doc_download_date=SEP-16-2014&ITEM_NUMBER=11

The city's claims to ownership of the canal are erroneous. If the City owned the land, it could have claimed and recorded a title at any time in the last 120 years.

The city's claims are based upon the mistaken inclusion of the words "in fee" in a decree that also carefully noted the petition by the City for a condemnation of a right of way for a canal from the Poudre River to the water treatment plant. It was extremely unusual for any canals established at this time (1892) to be located upon fee ownership of land, unless that land was also owned by the canal owner. Such was the case for the land the City owned south of Bingham Hill rd. I seriously doubt that the City of Fort Collins or any other entity had the legal ability to condemn anything other than an easement for any canal across private property. It is my understanding that this is still how the law operates today, thus disallowing the City from re-condemning the fee interest it claims to possess. In any case, the City can't validate an intent to condemn a fee interest with a petition to the court requesting a fee interest.

Back in 2010, the city first asserted fee ownership of the canal in an Ordinance executing an easement agreement. This action was done without the property owner's knowledge.

http://citydocs.fcgov.com/?cmd=convert&vid=72&docid=1539459&dt=&doc_download_date=MAR-16-2010&ITEM_NUMBER=

If anyone can make it to the meeting of the Fort Collins City Council on Sept. 16th, please go. The item will be discussed sometime between 6:30 and 7:30 pm. It will not be a late night affair. There will be an opportunity for public comment specifically about this agenda item during the agenda item.

The Agenda Item Summary makes it clear that "Fort Collins is allowing this easement, it will somehow get a better environmental result from the City of Greeley." (since the alternative would simply be to let Greeley condemn the easement it desires.) This one statement shows how disingenuous things can get at times:

- 1) Such a statement infers the idea that Greeley will not be practicing uniform environmental reclamation/mitigation along the entire route of the pipeline. Fort Collins is "special" and will get "special" treatment and adherence to its standards if it grants the easement.
- 2) Such a statement casts a doubt on whether FC owns the property in fee. Greeley can't condemn an easement across public property owned by another public agency.

Eric