

DISTRICT COURT LARIMER COUNTY COLORADO

Court address: 201 La Porte Avenue, Suite 100

Fort Collins, CO 80521

**MARTHA C. PERKINS,**

Plaintiff,

-v-

**BETH D. BRISTOL, &**

**CITY OF LOVELAND, CO,**

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT, WRIT OF MANDAMUS AND ACTION  
TO QUIET TITLE**

The Plaintiff says:

1. The Plaintiff is Martha C. Perkins (Perkins), a single woman, who purchased a home, built circa 1901, located at 503 5<sup>th</sup> Street, Loveland, CO in October 2015. Exhibit 1
2. Beth D. Bristol (Bristol) is a single woman who resides at 491 23rd St Sw Loveland, CO 80537 and owns a home, built circa 1907, located at 524 Washington Street, Loveland, CO. Exhibit 2
3. The City of Loveland, Colorado (Loveland) is a municipal corporation organized under the laws of the State of Colorado.
4. The Perkins' property is legally described, per Larimer County records, as Lots 13, 14, 15, Block 43, Finley's Addition, Loveland, CO. Exhibit 3
5. The Perkins property is legally described by Loveland, for reasons known only to Loveland, as the S 86 ft of Lots, 13,14 and 15 Block 43 Finley's Addition, Loveland. Exhibit 4

6. The Bristol property is legally described, per Larimer County records, as Lots 13, 14 and 15 Block 43 Finley's Addition, Loveland, CO. Exhibit 3
7. The Bristol property is legally described by Loveland, for reasons known only to Loveland, as N 54 Ft Of Lots 13 Thru 15, Blk 43, Finleys Addn, Lov. Exhibit 2
8. At closing Perkins made inquiries as to the status of the legal description and as to the status of the sanitary sewer and other utility easements and was advised neither was a "problem".
9. As a function of the closing Perkins asked the Realtor for, paid for and was subsequently provided an Improvements Location Certificate (ILC) which caused Perkins to make further inquiry as to the facts stated on the ILC and as to the facts not stated by the ILC. Exhibit 5
10. Upon further inquiry after the closing Perkins noted issues with the legal description of her parcel matching the recorded legal description of the Bristol parcel.
11. Perkins further noted that the utilities for her parcel were inextricably linked with the utilities for the Bristol parcel.
12. Perkins has looked unsuccessfully for 8 months for a document, recorded or unrecorded that purports to split the Lots 13, 14 and 15 Finley's Addition into two separate and distinct parcels.
13. Perkins has contacted the Realtor for Bristol on three occasions as to his knowledge as to the status of the legal descriptions for the Bristol parcel, especially *vis a vis* the Perkins parcel.
14. The Realtor has not made a response, the Realtor's title company, Globe Title, has been unable to identify any document recorded, or unrecorded, that purports to divide the Lots 13, 14 and 15 Block 43 Finley's Addition, Loveland, or if it has identified such a document, it has not shared it with Perkins attorney.
15. Perkins has, at considerable expense to herself, instituted a survey of her parcel and the Bristol parcel to determine the exact dimensions of each parcel and instituted a utilities locator service to

try to determine the whereabouts of the various utility services to her parcel for inclusion on the survey document.

16. Perkins intends that the survey will provide the basis for an approval by Loveland of a recordable document for recording by Larimer County to commemorate the correct legal descriptions of the Perkins and Bristol parcels as well as noting the locations of the utility easements on both parcels.
17. Notwithstanding Bristol and her Realtor having actual knowledge of Perkin's concerns as to the status of the legal description(s) of the Bristol and Perkins parcels, no valid party wall agreement being in place nor a reciprocal easement being in place for the common shared sanitary sewer, the Bristol parcel is currently listed for sale as of September 2016.
18. Any sale of the Bristol parcel, prior to a resolution of the existing title and easement issues, seems likely to create even more unresolved issues than currently exist between the parties hereto.
19. Perkins has caused a Notice of Lis Pendens to be recorded as to both the Perkins and the Bristol property and as regards this instant litigation. Exhibit 6
20. The Perkins property and the Bristol property are also subject to an improperly recorded "party wall agreement" related to the garage shared by the two parcels. Exhibit 7
21. The existing party wall agreement is not signed by one of the parties thereto and cannot be relied upon to define the rights and responsibilities of those parties' successors in interest, now Bristol and Perkins.
22. The Perkins property and the Bristol property contain utility connections and share a common sanitary sewer in which both parcels have an interest in using, maintaining and accessing for repair or replacement.
23. Neither the Bristol parcel nor the Perkins parcel can function as a residence without the continued use of the utility connections and the common sanitary sewer.

24. Loveland refuses to recognize that there is an issue regarding the common legal description for both the Perkins and Bristol parcels.
25. After first contacting Loveland in writing as to the lot split issue, presumed by Perkins as the appropriate method for resolving the common legal descriptions for her parcel and the Bristol parcel, beginning in February 2016, in August 2016 Loveland demanded an Application to its Planning Department from Perkins and Bristol for some sort of municipal process to “create” two lots as to the Perkins and Bristol portions of Lots 13, 14 and 15 of Block 42, Finley’s Addition, Loveland.
26. Bristol has refused to participate in the Loveland Application process or in any discussion, let alone an agreement, as to the utility easement(s), common sanitary sewer issues or party wall concerns of Perkins.
27. The Loveland Application process will cost the Applicant several thousand dollars in terms of professional expenses for surveys, title insurance and an attorney.
28. Loveland has a clear legal duty to assist Bristol and Perkins in resolving the title/lot split problem, which will result in nothing more than preserving the status quo from Loveland’s perspective as well as from the perspective of the immediate neighborhood in which the Perkins and Bristol property are located.
29. Loveland is estopped from maintaining that the Perkins parcel and the Bristol parcels are not two separate parcels because Loveland taxes the Perkins and the Bristol parcels separately, i.e. on two distinct parcels, and because the Loveland has created a Special District in which the Perkins parcel is separately assessed and legally described as the South 86 feet of Lots 13, 14 and 15 of Finley’s Addition despite the lack of any recorded document creating that particular Lot. Exhibit 8

30. Perkins and her attorney have met with Loveland officials and have been advised that Loveland demands the Application process, albeit modestly modified and marginally simplified, to assist with the creation of a recordable lot split document to create separate Lots for Bristol and for Perkins.

31. Loveland's demand for an Application process is an unconscionable burden on Perkins and Bristol for no positive purpose.

32. The Perkins parcel and the Bristol parcel both contain residences that have openly shared a common sanitary sewer for decades, perhaps as early as 1910 in an era of wooden sewer pipes, and both parcels have utilized the sanitary sewer continuously for decades.

33. The existing utility easements the party wall and the sanitary sewer constitute both a benefit and a burden to the Perkins parcel and to the Bristol parcel and have been continuously utilized as they are today for decades.

34. The Bristol parcel and the Perkins parcel shared a common driveway to provide access to a common shared garage which garage contains a shared wall as an integral and essential part of the garage structure and which garage contains a space for parking one car for the Bristol parcel and one space for the Perkins parcel.

35. Perkins is entitled to a determination by entry of an appropriate Order of this honorable Court as to the title/lot split issue, and defining the easements at issue and the party wall at issue.

36. Loveland has a clear legal duty to approve and to accommodate, without hindrance, additional expense or further delay, the recording of an appropriate Court Order accomplishing the lot split which can be recorded by Perkins to appropriately and legally define the boundaries of her parcel once the survey is complete and the accurate representation of the existing parcels can be confirmed.

37. The closest analogous provision to instant circumstances are addressed in the 2014 Colorado Real Estate Title Standards - Colorado Bar Association:

**3.5.6 Correction Deeds — Joinder by Grantee — Deletion of Property**

Problem: An acknowledged deed is recorded. Subsequently, another deed (which may or may not be designated a correction deed, and which may or may not refer to the recording information of the deed originally recorded), properly executed and acknowledged by both the grantor and grantee named in the original deed, is recorded. The correction deed differs from the deed originally recorded in that the description has been modified by the deletion of some portion of the described property. There are no words of grant purporting to transfer the property so deleted from the grantee to the grantor. Is title to the property so deleted marketable in the grantor?

Answer: No.

Plaintiff requests:

A. A Writ of Mandamus directed to Loveland to approve the Order of this Court dividing Lots 13, 14 and 15 Finley's Addition, Block 43, Loveland, CO into two separate and distinct Lots, subject to verification by the survey commissioned by Perkins, the Perkins Lot being legally described as:

**South 86 ft of Lots 13, 14 and 15 Finley's Addition, Block 43, Loveland, CO**

And the Bristol Lot being described, subject to verification by the survey commissioned by Perkins, as:

**North 54 ft of Lots 13, 14 and 15 Finley's Addition, Block 43, Loveland, CO**  
resulting in both parcels being described as they currently actually exist and both parcels having a marketable title.

- B. An Order of this Court, in recordable form, granting to Perkins an easement over the Bristol parcel for the purposes of maintaining and repairing the utilities and the sanitary sewer as it traverses the Bristol parcel and as confirmed by the utility locates incorporated within the survey.
- C. An Order of this Court in recordable form, granting Perkins an interest in preserving and maintaining the party wall which currently exists in the garage located partially on the Perkins parcel and partially on the Bristol parcel subject to verification by the survey.
- D. Such other and further relief as the Court deems fair and equitable under the instant facts and circumstances.

September 25, 2016  
*Electronically signed*

C. Brian James  
C. Brian James CO 49695  
Attorney for Plaintiff  
PO Box 32673  
Santa Fe, NM 87505  
505.629.3326  
cbjames1969@gmail.com