

March 23, 2021

The Town of Granby
C/O Town Counsel, Nathan Krob, *Esq.*
P.O. Box 440
Zero Jasper Avenue
Granby, CO 80446

Via U.S. First Class Mail and Electronic Mail (nathan@kroblaw.com)

Re: Headwaters Metropolitan District—Dispute Regarding Conditional Appointments

Not Subject to C.R.E. 408—Intended as a Public Record

Dear Mr. Krob:

I am Special Litigation Counsel to Headwaters Metropolitan District (“Headwaters”). Please carbon copy Mr. Clint Waldron, *Esq.*, on your response. Due to the importance of the matters in dispute, I request you respond by close of business on Thursday, March 25, 2021.

Conditional Appointment Dispute

On February 23, 2021, the Trustees of the Town of Granby purportedly acted to “conditionally appoint” Mr. Lee Sprigg, Mr. John Gillogley, and Ms. Colleen Hannon (collectively the “Purported Conditional Appointees”) to the Board of Directors of Headwaters (the “Conditional Appointment”). You are in receipt of my March 3, 2021, CORA request related to this matter.

The Town did not have the statutory or common law authority, however, to make the Conditional Appointment. Headwaters is a duly enacted Special District, a quasi-municipal corporation, and a political subdivision of the State of Colorado, and so principals of comity are applicable. The Town and Headwaters have pledged to cooperate with each other in various IGAs, and Headwaters has reserved all express or implied powers and its autonomy.

The statutory powers of Headwaters are considerable. Section 905 of the Special District Act (the “Act”) is controlling and renders the Conditional Appointment *ultra vires* and a legal nullity, potentially exposing the Town and its Trustees to legal liability. *See, e.g.*, C.R.S. § 32-1-905.

Under Section 905, Headwaters’ Board of Directors (the “Board”)—and not the Town—had the statutory authority to make appointments to the Board to fill the existing vacancies. Three (3) vacancies existed on or about December 10, 2020, when the Board announced by publication in the Middle Park Times, the vacancy(ies) and requested that qualified interested eligible electors submit a Letter of Interest to counsel for the Board by 5:00 p.m. on December 21, 2020.

The Town’s authority to fill a vacancy on a special district board—if it exists at all, which issue is reserved—is exceedingly limited and can only be exercised in one circumstance. To wit, under

Section 905(2)(a)-(b), the Town is vested with the discretionary authority (not mandatory) to appoint one or more directors to fill a vacancy(ies) only if:

- (1) a vacancy exists for sixty (60) days or more;
- (2) the Town gives a thirty (30) day written notice of its intent to fill a vacancy; and
- (3) the special district board still fails to appoint the new director(s).

C.R.S. § 32-1-905(2)(a)-(b). Only if each of these three elements are met, does the Town *arguendo* have the discretionary authority to then make an appointment in an open meeting. *Id.* The Act does not permit “Conditional Appointments” under any circumstances.

However, the Headwaters Board ***acted first*** to appoint in its discretion “a director [or directors] from the pool of any duly qualified, willing candidates,” divesting the Town of any potential authority to appoint a director to fill a vacancy. See C.R.S. § 32-1-905(2)(a).

It is unknown (and subject to the CORA request) whether the Town’s Conditional Appointment was made in an Open Meeting and recorded in the Minutes thereof. See *id.* at § 905(2)(a); *id.* at 905(3).

If and when the dispute is presented to the District Court, the Town will be deemed to have acted in a manner patently *ultra vires* to its authority. In any such action, the Board will seek an award of its attorney’s fees and costs, besides declaratory relief and all damages against the Town and its Trustees.

Conflict of Interest—Recusal of Ms. Natascha O’Flaherty

Ms. O’Flaherty’s husband sits on the Board of Directors of Granby Ranch Metropolitan District (“GRMD”), which entity was contemplating litigation against Headwaters, when Ms. O’Flaherty was named as the Town Representative to Headwaters, and, more problematic for the Town, when the vote was taken to make the Conditional Appointment. That litigation is active.

Ms. O’Flaherty’s conflict of interest is plain, as recognize by you at the Town Meeting held on January 26, 2021, when she was recused at your suggestion from participating in the GRMD discussion. Headwaters demands that the Town replace Ms. O’Flaherty with a Town Representative without a conflict of interest. Further, Ms. O’Flaherty must not participate with matters involving Headwaters.

Dispute with Conditional Appointees

An additional dispute exists among the Board’s appointed directors and the Purported Conditional Appointees, individually and collectively, regarding whether they were in fact “eligible electors,” and if they were *arguendo* (which issue is expressly reserved), whether the Board had an *obligation* to select one or more of them to fill any vacancy. That matter is now the subject of separate litigation brought by the Conditional Appointees.

Demand

Headwaters hereby demands that the Town rescind the Conditional Appointment at its next-scheduled Open Meeting of the Town Trustees. If the Town asserts that the law and facts laid

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out above are somehow materially inaccurate or are not controlling, please do not hesitate to provide the Town's supporting facts, documentation, and legal argument in your response.

Thank you for your prompt attention to this important matter.

Very truly yours,

/s/ Kieran A. Lasater
Kieran A. Lasater

Cc. Client (via email)
Mr. Clint Waldron, *Esq.*, The General Counsel to Headwaters (via email)

