

Metro Districts 101
Granby Board of Trustees
September 14, 2021

1 INTRODUCTION

- Special districts have been around for the better part of 100 years –
- CRWCD - 1937
- Lots of types of special districts:
- Art, Cemetery, Business Improvement, Fire, General Improvement, Library, Local Improvement, Metropolitan, Recreation, Sanitation, Soil and Conservation, Special Improvement, Special Improvement, Transportation, Urban Drainage and Flood, Water and Sanitation, Water, Water Conservancy, Water Conservation...

2. METROPOLITAN (“METRO”) DISTRICTS

- Focus today is on metropolitan districts (“metro districts”) and its closely related cousin, General Improvement Districts (“GIDs”)
- What is a metro district?
- A quasi-municipal corporation and political subdivision of the State of Colorado formed to provide necessary public services that the county or municipality cannot otherwise provide.
- It is essentially a tax-exempt financing mechanism used for the installation, operation and maintenance of public infrastructure.

What metro districts can do – from mosquitos to mega-structures

Metro districts must be authorized in their service plan to provide at least 2 of the following:

- Mosquito control
- Parks and recreation
- Fire protection
- Safety protection
- Water
- Sewer
- Solid waste disposal
- Street improvements
- Transportation
- Television relay and translation
- Covenant enforcement

3. HOW METRO DISTRICTS ARE FORMED OR CREATED: 3-STEP PROCESS

- Initiated by those who live in the district (desire to have central water for a group of homes outside town limits, for example)
- OR
- Developer who wants to use the district as a financing mechanism to build infrastructure for the development

First step: Town approval of Service Plan

- Approval of Service Plan by BOT/BOCC where District will be located
- Service Plan is like the charter of a town or city. It sets forth the powers the district as a governmental entity will have (i.e. the power to provide water, sanitary sewer, etc...)
- Primary elements of a Service Plan:
 - Proposed services
 - Boundary map
 - General description of facilities
 - Any proposed indebtedness

Any subsequent “material modification” of Service Plan after the original Service Plan is approved requires approval of the Town.

Material modification includes:

- Addition to the types of services provided
- Decrease in the level of services
- Decrease in the financial ability of the District to discharge indebtedness
- Decrease in the need for organized service in the area
- Inclusion of property into a new county or municipality

Second Step: Election

- Approval of Petition for Organization by the District Court, requesting the Court order an election regarding (1) formation of the district and (2) ability and authority of the district to incur debt
- Those who are registered Colorado electors and reside in the district or own property within the district can vote
- Two issues:
 - Approval of the district
 - Authorization to incur debt [issue bonds] [TABOR]

Step Three: Court Decree

- Court certifies the election results and enters an Order and Decree declaring the District has been duly organized
- District can then hold its initial, organizational meeting
- Once the District is set up, other than (1) approving amendments to the Service Plan when there is a “material modification,” (2) quinquennial reviews every 5 years to make sure they can pay their authorized but unissued debt and (3) making sure the District complies with any IGA it has with the Town, Towns generally have little involvement in the ongoing operation of the District.

4. HOW METRO DISTRICTS ARE GOVERNED

- Although the Town has some high level oversight metro districts, the Town does not govern the District.
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- District is its own separate, quasi-municipal corporation and political subdivision of the State
- District is governed by a Board of Directors elected by the registered electors within the District. Anyone who is registered to vote in Colorado and resides in or owns property in the District, is eligible to run for the Board
- Once elected, Directors owe fiduciary duties to the District and must exercise the utmost good faith, business sense, and astuteness on behalf of the District. A Director is prohibited from taking personal advantage of a situation to benefit himself or herself or prejudice the District.

5. HOW METRO DISTRICTS ARE FUNDED – THREE PRIMARY SOURCES: TAXES, BONDS AND FEES

- Levying of property tax
 - # of mills to repay bonds (bond service or debt service)
 - # of mills for operation and maintenance of the District (O&M)
 - Limitations on bonds and mills
 - Voter imposed limits
 - Service plan limits
 - Typically limits total amount of bonds, maximum mill levy, maximum period
- [Note: Property taxes are deductible, while HOA assessments are not – either mechanism can be used to pay for operation and maintenance]

- Issuance of debt (after approval by electors as required by TABOR)
 - General obligation bonds
 - Secured by property taxes, through imposition of mill levy
 - Revenue bonds
 - Generally paid through fees, charges or other non-tax revenues collected from district residents and customers

- Imposing fees and charges for services and facilities provided by the District
- Note: Districts may also be eligible for infrastructure improvement grants and/or very low interest loans under a variety of programs because they are a public entity.

6. BENEFITS OF USING A METRO DISTRICT (rather than HOA or private financing):

- District can raise funds for public infrastructure through municipal bonds and other governmental grant or loan programs with favorable rates and terms not available to private entities.
 - District is exempt from sales, use and other taxes
 - District enjoys the benefits and protections of governmental immunity
 - District is more transparent than a private entity because it is subject to open record and sunshine laws, public budgeting and auditing laws, etc.
 - District is not in the business of making a profit from the facilities and services provided.
- Because of its local nature, a District is often better able to address issues of local concern, that are not a concern for the municipality as a whole

7. WHY DEVELOPERS OFTEN PREFER TO USE METRO DISTRICTS TO FINANCE INFRASTRUCTURE AND AMENITIES

- Example:
 - Purchased land for \$5 million and intend to develop into 100 lots (Land cost: \$50,000 per lot)
 - Improvements (infrastructure such as roads, water and sewer lines, etc.) plus any amenities (parks, recreation facilities, etc.) are estimated to be \$2 million (\$20,000 per lot)
 - If Developer pays all costs of improvements and amenities up front (either using its own funds or privately loaned funds) and rolls those costs into the price of the lot:
 - Price per lot: \$50,000 land plus \$20,000 improvements and amenities= \$70,000 total per lot
 - On the other hand, if Developer finances infrastructure and improvements through district bonds:
 - Price per lot: \$50,000 at time of purchase. Then the purchaser pays the \$20,000 for improvements and amenities that were funded through the bonds over a period of time in the form of property taxes to pay off the low interest rate bonds.

- Results:

- From developer's perspective, it ties up less of its funds, results in lower interest rate on borrowed funds, and allows the sale of lots for a lower initial purchase price, making them more marketable.
- From the purchaser's perspective, it results in a lower initial purchase price for the lot and allows them to pay off the cost of the improvements and amenities over an extended period of time at a low interest rate, using property taxes which are deductible.

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- BUT: Importance of full disclosure – See recent legislation discussed below

8. HOW METRO DISTRICTS CAN BE EXPANDED – THE INCLUSION PROCESS

- Initial District boundaries are set forth in the Service Plan
- Adding lands to the District (“Inclusion proceeding”) requires petition by property owners of new area, resolution by District Board, and final approval required from District Court
- [Note no Town involvement, unless the Town indicates it intends to provide the services the District provides to the subject area]

9. LAWS GOVERNING METRO DISTRICTS

- Laws specific to metro districts – Mostly Title 32, C.R.S.
- Laws applicable to governmental entities generally
 - Colorado Open Records Act (CORA)
 - Colorado Open Meetings Laws (Sunshine Act)
 - Public meetings
 - Executive session
 - TABOR
 - Budget and audit requirements

10. A DEVELOPER'S TYPICAL USE OF DUAL METRO DISTRICT APPROACH – TAX DISTRICT AND SERVICE DISTRICT

- Problem for a developer developing a large project: Loss of control to purchasers before necessary infrastructure and improvements are completed
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- If the developer sets up a single district, once they sell properties within the district, the purchasers become eligible voters/directors, potentially causing developer to lose control over the improvements the district will make.
- Solution: Dual metro district approach:
- Developer controlled "Service District"
- "Tax District" where properties are sold to purchasers who are then taxed in order to pay the Service District's bonds
- IGA between Control District and Taxing District that provides generally for the issuance of bonds by the Service District and the pledging of the tax revenues from the Tax District to repay the bonds. Also allocates responsibilities for constructing and operating improvements.

11. SUMMARY OF SENATE BILL 21-262 – CONCERNING TRANSPARENCY FOR SPECIAL DISTRICTS

Specifies methods for providing notices:

- Mail
- Prominent part of newsletter
- Official website

Requires the District to establish an official website by 1/1/23 that contains:

- Names, terms, and contact information for current directors and manager
- Current fiscal year budget
- Prior year's audited financial statements
- The annual report of the district
- Schedule of regular meetings for the year
- The current map of the District's boundaries

The annual report must include:

- Boundary changes made during the previous year
- IGA agreements entered into or terminated with other governmental entities
- Access information to obtain a copy of rules and regulations of the District
- Summary of litigation involving public improvements owned by the District
- Status of the construction of public improvements by the District
- List of facilities or improvements constructed by the District that were conveyed or dedicated to Town
- Final assessed valuation of the District
- Copy of the current year's budget

Notices of meetings must be posted on the official website at least 24 hours in advance

Disclosures by developers to buyers of newly constructed homes:
(1/1/22)

- Copy of Service Plan
- Authorized debt
- Maximum mill levy

12. DEVELOPER INITIATED METRO DISTRICTS IN THE TOWN OF GRANBY

- Grand Elk General Improvement District
- Establishing Ordinance rather than Service Plan
- Governing board – Town Board, rather than owners within the District
- Governed by Title 31, rather than Title 32
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- Granby Ranch Metro Districts

- The initial Dual District approach:

- Both Districts were authorized for broad range of purposes:
 - Streets, Roadways and Drainage
 - Traffic and Safety Protection
 - Parks and Recreation
 - Sanitation
 - Water
 - Transportation
 - Mosquito control

According to the HWMD and GRMD Service Plans, the purpose of the dual district structure was ""to provide assurance that all public improvements needed for the Development are constructed and paid for in a timely and cost effective manner without any cost to the Town."

- Services District: Headwaters Metro District – Includes a small parcel of land owned by Developer and therefore control of HMD is retained by the Developer.
 - HMD/Service District is to finance, construct, manage and operate public facilities and services throughout the Granby Ranch Development
- Tax District: Granby Ranch Metro District
 - GRMD/Tax District is to pledge a limited tax obligation to secure payment of the bonds issued by the Tax District/HMD

Service Plans for both Districts provide: Property tax levy of the Tax District/GRMD not to exceed 50 mills for operating and debt repayment and bond amount maximum set at \$40 million

- Expansion of the Tax Districts – Granby Ranch Districts 2-8

- Original idea:

- If Granby Ranch Developer wanted to develop one piece of Granby Ranch, it could take one of the available Metro Districts and use it to pay for infrastructure or amenities related solely to that piece.

- OR

- The Granby Ranch Developer could offer such available metro district to some other entity that came along and wanted to purchase and develop a particular part of Granby Ranch

- QUESTIONS???

- FUTURE DISCUSSIONS OF SPECIFIC ISSUES?