



TOWN BOARD WORK SESSION MEETING

May 18, 2015 – 6:00 P.M.

Town Board Chambers

301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.

Members of the public in attendance who have a question related to an agenda item are requested to allow the Town Board to discuss the topic and then be recognized by the Mayor prior to asking their question.

AGENDA

1. NISP update – Brian Werner, Northern Colorado Water Conservancy District
2. Water and Sewer Board verbal update regarding water planning – D. Wagner/ K. Arnold
3. Continuation of Metro District discussion – I. McCargar/ J. Mock
4. Future Meetings Agenda

JAMES M. MOCK, PLLC

ATTORNEY AT LAW
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BOULDER, COLORADO 80301

TELEPHONE: 303-915-3289
E-MAIL: JIM@MOCKLAWOFFICE.COM

MEMORANDUM

May 14, 2015

VIA EMAIL

TO: Town Board
Kelly Arnold, Town Manager
Ian McCargar, Town Attorney
Town of Windsor

FROM: /s/ James M. Mock

RE: **Study Session 3 re Proposed Changes to Town of Windsor Metro District Policy**

The following materials are attached for your review in advance of our Study Session on Monday evening:

1. This Memo
2. Memo re Proposed Changes to Windsor Metro District Policy from James Mock to Town Board dated April 28, 2015
3. Memo from White Bear Ankele (Bill Ankele, Esq.) dated May 14, 2015
4. Memo from Spencer Fane Britt & Browne LLP (David O'Leary, Esq.) dated May 13, 2015
5. Letter from Icenogle Seaver Pogue (Alan Pogue, Esq.) dated May 13, 2015
6. Letter from George K. Baum & Co. (Alan Matlosz) dated May 13, 2015

Solicitation of Metro District Community Input

I circulated my April 28 Memo (Item #2) to attorneys who do metro district work before the Town with the request that they distribute it to their developer clients and other metro

district consultants. We received written comments from five groups. I have received ample (and helpful) feedback from the metro district community. This group was invited to contact me directly, to provide written comments to the Town Board, and/or to send representatives to the Study Session on May 18. I expect that we will have at least a couple attorneys available on Monday night to contribute to the discussion.

Process for Monday Evening

To move the meeting along, I recommend we structure the discussion along the outline in my April 28 memo (Item #2). I will briefly introduce the item, bearing in mind that much of this has been discussed at our previous Study Sessions. You will then have an opportunity to ask any further questions and express your informal approval/disproval of each Section. The public/metro district community will have an opportunity to comment on each item as well. To the extent the Town Board does not object to or modify an item, I will incorporate the item into a draft revised Model Service Plan. This revised Model Service Plan and necessary Code revisions will be brought back to the Town Board in the near future for consideration for approval.

Overview of Metro District Community Comments

- We received a healthy, productive response to the proposed changes. As of this memo, I have had a chance only to skim the comments. I will have reviewed them closely prior to Monday evening.
- Some comments stemmed from the need for clarity that cannot be provided in an intentionally brief memo, while others reflect genuine differences in policy preferences.
- I will work with the individual commentators prior to the Study Session in order to address and resolve the comments that arise from a need for further clarity. I do not expect that we will need to go in depth on each item raised in the written comments.
- Some of the policy differences are of great import, while others are more technical, less consequential.
- I believe the biggest issue will be the length of time taxes can be imposed to pay for initial public infrastructure.

I look forward to meeting with you on Monday night and receiving the Town Board's guidance.

JAMES M. MOCK, PLLC

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MEMORANDUM

April 28, 2015

VIA EMAIL

TO: Town Board
Kelly Arnold, Town Manager
Ian McCargar, Town Attorney
Town of Windsor

FROM: James M. Mock

RE: **Proposed Changes to Town of Windsor Metro District Policy**

This Memo contains a list of proposed changes to the Town's metropolitan district policy. It has been developed and compiled based on my discussions with Town Staff and the Town Board during study sessions and in connection with Service Plan approvals over the past two years. Note that these items do not necessarily reflect the Town Board's or Staff's directives, conclusions or preferences as of this date. The main purpose of this memo is to consolidate, focus, and advance the discussion.

Proposed Changes

1. Developer Reimbursements
 - a. A qualified independent third party shall certify that costs of construction work that hasn't been publicly bid are reasonable prior to reimbursement.
 - b. A qualified independent third party shall certify that capital facilities financed by the District have been built according to approved plans.

- c. The interest rate payable on non-bonded District reimbursement obligations to “insiders” shall not be unreasonably high and, in any event, shall not exceed the legal rate of interest as set forth in Section 5-12-101, C.R.S., as amended [i.e., 8%]. The District shall not agree to a rate of reimbursement that would result in positive arbitrage for an insider.
- d. The total amount of District organization costs (i.e., costs incurred prior to the District’s initial meeting) that may be reimbursed by Districts shall not exceed \$75,000 per project.

2. Debt and Taxes

- a. A District may impose a mill levy on property for purposes of paying the costs of Public Improvements or Debt issued to pay for or reimburse the costs of such improvements for a period not to exceed 25 years after the year a building permit is issued for the property. This limitation shall not apply to mill levies imposed by a District Board (a) that is under no obligation to impose such mill levy and (b) is composed entirely of end-owners of property.
- b. Any Debt secured by such property shall be forgiven after the 25-year period expires.
- c. The Operations and Maintenance Mill Levy may equal the Maximum Mill Levy amount of 39 mills. The Debt Service Mill Levy shall not exceed an amount equal to 5 mills less than the Maximum Mill Levy (i.e., 34 mills). Combined, the O&M and Debt Service Mill Levies cannot exceed the Maximum Mill Levy of 39 mills.

3. Replace “*enhancements*” requirement with broader “*demonstrated public benefit*” standard. Components of public benefit may include one or more of the following:

- a. Resulting development in conformance with Town Comprehensive Plan;
- b. Significant contribution to needed regional and sub-regional infrastructure;
- c. Enhanced amenities

4. Covenant Enforcement Powers

- a. Costs of new capital facilities and capital maintenance cannot be paid from assessment powers in declaration of covenants.

- b. Require “off-ramp” facilitating handover of covenant enforcement powers to an HOA by a majority vote.
5. Permit Internal/Future Inclusion Area boundary adjustments upon simple notice to Town. Property located in a Future Inclusion Area may not be included into the District pursuant to Section 32-1-401(2)(a), C.R.S. – all Future Inclusion Area property to be included must be included pursuant to the consent of the fee owner(s) of 100% of the property to be included.
 6. Provide that First Reading of an Ordinance to approve a Service Plan will occur no sooner than 60 days from the date of submission of the Service Plan and payment of the review fee and deposit. The period may be reduced to 45 days if there are no requested changes from the Town’s Ordinance and Model Service Plan, and the period may be reduced with the consent of the Town Board upon good cause shown.
 7. Trails which are part of a regional trail system will be open to the general public.
 8. Increase Notice of First Reading of Service Plan Ordinance from 10 days to 20.
 9. Other items already approved in RainDance model and acceptable to legal counsel and Staff.
 10. Other items subsequently proposed by the Town Board, Staff, Special Counsel, or metro district/developer community.

GARY R. WHITE
KRISTEN D. BEAR
WILLIAM P. ANKELE, JR.
JENNIFER GRUBER TANAKA
CLINT C. WALDRON
KRISTIN BOWERS TOMPKINS
ROBERT G. ROGERS



SEAN ALLEN
GEORGE M. ROWLEY
NEIL RUTLEDGE
ZACHARY P. WHITE
BOBBY D. GREENE
SILVIA FEJKA
MEGAN L. TAGGART

MEMORANDUM

TO: James M. Mock

FROM: William P. Ankele, Jr.
WHITE BEAR ANKELE TANAKA & WALDRON, Attorneys at Law

RE: Proposed Changes to Town of Windsor Metro District Policy

DATE: May 14, 2015

This Memorandum addresses certain proposed changes to the Town of Windsor Metro District Policy that were presented in your Memorandum dated April 28, 2015 (the "Metro Policy Memo"). Thank you for the opportunity to comment.

As an initial remark, we would note that the "Raindance Model" that was used on several occasions contains terms and conditions that are generally acceptable and promote the responsible use of Metro Districts within the Town. We feel that model presents a good starting point for future District organizations in the Town. As such, some of our comments are focused on comments made in the Metro Policy Memo that vary from terms previously approved by the Town in the Raindance Model.

Developer Reimbursements

Items "a" and "b" are conceptually acceptable. Most special district attorneys require certifications regarding reasonableness of construction costs, and that the improvements are fit for their intended purpose. We do not necessarily call for a certification that the improvements were built according to plans, since the "fit for intended purpose" certification establishes the key element of function ability.

With respect to item "c," we suggest that the Raindance Model already calls for a certification from an "External Financial Advisor" that the interest rate on debt that is issued to related parties, and it would seem we could apply this requirement to interest rates established in reimbursement agreements for developer-built facilities. We find the suggestion that the interest rate not result in "positive arbitrage" to the developer a bit confusing, and probably difficult to apply. We assume that the intent here is to restrict the developer from making a profit via the

reimbursement agreement; however, to apply this concept, one would have to identify the developer's cost of funds in constructing the improvements, and there are numerous challenges to doing so. We doubt that it will be sufficiently clear to be practical. So long as we have an External Financial Advisor opining as to the reasonableness of the interest rate, we feel that adequately protects the public from inappropriately high interest rates.

With respect to "d," we are not clear what interest is being served by limiting the reimbursement for organizational costs. Perhaps this suggestion is based on concern that organizational costs could erode a district's ability to fund infrastructure. As a practical matter, however, it is unlikely that organizational costs would ever become so high as to undermine the mission of the district to fund capital infrastructure, and reimbursement of organizational costs has been a feature of special district structures universally within the State. Therefore, we do not feel this revision would address an issue of significant impact.

Debt and Taxes

We believe that the Raindance Model establishes a sound set of financial parameters concerning debt issuance and the levy of taxes, and would suggest that the Raindance Model be preserved with respect to "a," "b," and "c" in this section. The Raindance Model allows for bonds to have a term of 30 years from the date of issue, and requires all new debt to be issued within a 20 years from the year of District organization. This provides market reasonable bond issuance terms, and establishes a cutoff for issuance under any circumstances. The effect of changing these terms to 25 years after the first building permit is issued will be to sharply curtail the debt capacity of a given District, and significantly reduce the economic benefits of District financing. This, coupled with the relatively low mill levy cap being proposed, will seriously jeopardize the utility of Metro District financing within the Town.

Additionally, the proposed discharge of debt after a stated term (again 25 years, shortened by however many years have elapsed since the initial building permit is issued) is unprecedented as a matter of official policy, and can create problems for bond counsel in issuing tax exempt opinions. We strongly feel that a 30 year term with a "drop-dead" date for issuing new debt is the better approach, and because of the mill levy caps that will apply, will protect property owners from the risk of unreasonable debt burdens.

Finally, we feel the "all-in" cap of 39 mills (which is still significantly below that allowed in most other jurisdiction in the area (see the attached chart)) that was established in the Raindance Model is preferable to the suggested policy that keeps 39 mills as an aggregate cap, but restricts the debt service component to 34 mills. There is no need to force a division in the mill levy between debt and operations as decisions concerning the allocation between debt service and operations should properly be left to the Board of Directors of the District that is responsible for annual budgeting. It is entirely possible that less than 5 mills could be needed for general administrative costs for a District that has no retained facilities to operate. In such cases, since the policy otherwise allows for up to 39 mills to be levied, there would seem to be no compelling reason to lower this "all-in" limit. In the end, the Board of the District will be required to levy sufficient mills on the operating side to maintain good standing under Colorado law, and otherwise have funds to maintain any District-owned infrastructure, so this will automatically

limit the mills available for debt service.

Enhancements

We would like to invite discussion on whether or not the concept of "enhancements" or, as described in the Metro Policy Memorandum, "demonstrated public benefit" really serves a continuing purpose, and thus whether or not the concept, in whatever form, should be retained. We do acknowledge the effort to soften this historical component of the existing policy, however.

The Special District Act requires certain findings to be made by the Town Board that we believe already incorporate the concept that special districts should be approved only if there are benefits to doing so. The required findings are:

- a) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district;
- b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs;
- c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries; and
- d) The area to be included in the proposed special district, has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

If the thrust of the proposed policy change is to establish that there is a "demonstrated public benefit," it would seem that this standard should be met in conjunction with the Town Board making the required findings outlined above. The findings in "a" and "b" establish that there is a need for public facilities for the area, and that no other entity is in a position to provide for these needs. So, a special district organized to meet these needs clearly is providing a "demonstrated public benefit." The findings in "c" and "d" simply underscore the public benefit being delivered insofar as the public benefits can be achieved in an economical and efficient manner.

We are not sure what need is being served by retaining additional requirements beyond what the Special District Act already provides. We note that 3.a states a component (contributing to a development that is in conformity with the Town Comprehensive Plan) that would almost certainly be met by any submittal, since presumably the Town would only approve development plans that are in keeping with the Comprehensive Plan. Viewed from this perspective, the additional requirement of finding "demonstrated public benefit" as proposed does not seem to add much of substance to the equation.

If the Town Board desires to keep this concept, we would appreciate the opportunity to discuss the language further.

Covenant Enforcement Powers

With respect to 4.b, we would observe that there is no guarantee that an HOA would always be formed as a separate entity, particularly if the District itself is performing those functions. So the handover of covenant enforcement powers to an HOA would not work in this context.

Inclusions/Boundary Adjustments

We assume that the general provisions concerning boundary adjustments in the Raindance Model are to be retained, subject to the suggested revisions in the Metro Policy Memorandum. We are not sure we understand the restriction that boundary adjustments can only be accomplished via a 100% Petition. Section 32-1-401(2)(d), C.R.S. provides for an election within the area proposed for inclusion, which was drafted to provide a democratic basis for including property where less than a 100% Petition is filed. This would seem a reasonable approach and in keeping with the notion that people in the proposed inclusion area would have a say in whether or not the inclusion would proceed.

Thank you for the opportunity to provide these comments, and we look forward to discussing them with the Town Board.

Jurisdiction & Policy/District Name	Year of Organization	Mill Levy Cap (Debt Service)	Mill Levy Cap (O & M)	All-In Limitation	Additional Mill Levy Limitations	Current Total Mill Levy
BERTHOUD						
SMPG Nos. 1-6	2004, SP Amended 2005	50	15	None		0
FIRESTONE						
Cottonwood Hollow	2004	40	6	None		50
Highway 119 Nos. 1-6	2009	50	10			10
Stoneridge	2004	50	7.5	None		50
The Hills No. 1	2004	50	8*	None	*3 mills shall be imposed and remitted to the Town for Parks & Rec capital improvements (included in O&M cap)	Info Not Available
The Hills No. 2	2004	50	3.5	None		Info Not Available
The Hills No. 3	2004	50	3	None		Info Not Available
The Springs	2005	50	6	None		42
The Springs South	2006	50	6	None		42
Neighbors Point	2004	50	6	None		45
FORT COLLINS (not in Weld County)						
Official Policy - Adopted 2008				40		NA
FREDERICK						
Carriage Hills	2006				If District levies for Debt Service, it shall levy 3 mills (O&M) and remit to Town for Capital Improvements. (3 mills included in all-in cap of 50)	50
Godding Hollow	2009				If District levies for Debt Service, it shall levy 3 mills (O&M) and remit to Town for Capital Improvements. (3 mills included in all-in cap of 50)	50
Hinkle Farms	2008				If District levies for Debt Service, it shall levy 3 mills (O&M) and remit to Town for Capital Improvements. (3 mills included in all-in cap of 50)	50
Marketplace	2006				If District levies for Debt Service, it shall levy 3 mills (O&M) and remit to Town for Capital Improvements. (3 mills included in all-in cap of 50)	50
Miner's Village Nos. 1-3	2008				If District levies for Debt Service, it shall levy 3 mills (O&M) and remit to Town for Capital Improvements. (3 mills included in all-in cap of 50)	50/50/20
Wildflower Nos. 1-3	2005					50
Wyndham Hill Nos. 1-3	2004	40				50/50/20
JOHNSTOWN						
High Plains Nos. 1-4	2008			40		0
Johnstown Farms	2007			40		40
MEAD						
Mead Place Nos. 1-6	2008	50		None	Includes debt service roll off provision	0/20/0/0/0/0
Mead Western Meadows	2006	50	8*	None	*3 mills shall be imposed and remitted to the Town for Parks & Rec capital improvements (included in O&M cap)	58
Mead Village	2013	50		None	Includes debt service roll off provision	50
MILLIKEN						
Centennial Crossing Nos. 1-8	2011	50		None	Includes debt service roll off provision	35
Highland Estates	2007	50		None	Includes debt service roll off provision	60
Homestead	2006	50	10	None	Includes debt service roll off provision	45
SEVERANCE						
Hidden Valley Farm	2013	50		None	Includes debt service roll off provision	0
Saddler Ridge	2003	49*	10**	None	No express limits in Service Plan: *Estimated Debt: 49 but decreasing to 43 during bond repayment; **Estimated O&M: 10	50
WELD COUNTY						
Official Policy - Adopted 2005		50		65		
Beebe Draw Farms Nos. 1 & 2	1999	50		None		May-45
Kitely Ranch	2006	50		65		Info not Available
Pioneer Nos. 1-6	2006	50		65		65
Pioneer Regional	2006	50		65		0
St. Vrain Lakes Nos. 1-4	2006	50		65		65

WINDSOR						
Model Service Plan		30	10	35		NA
Greenspire Nos. 1-3	2008	30	10	35		32.989
Greenwald Nos. 1 & 2	2008	30	10	35		0
Highpointe Vista Nos. 1 & 2 - Larimer	2005			35		35
Iron Mountain Nos. 1-3	2006	35	10	35		30
New Windsor	1996			30		30
Poudre Tech and Water Valley Nos. 1 & 2	1995			No express limit in Service Plan		0/39/39
Windshire Park	2005					35
Windsor Highlands Nos. 1-5 (per 2011 Amendment to Consolidated Service Plan)	2004			35		35
Winter Farm Nos. 1-3	2000			No express limit in Service Plan		41
Village East Nos. 1-3	2008	30	10	35		0
Surrounding Areas						
Centerra - Larimer (Loveland)	2004			Commercial: 35; Residential: 50	Includes debt service roll off provision for Residential	42.6
Loveland Midtown - Larimer (Loveland)	2005	40				40
Serratoga Falls - Larimer (Timnath)	2001 (Amended 2005)	35		50		35
South Timnath MD - Larimer (Timnath)	2007	35		50		35
Thompson Crossing 1-6 - Larimer (Loveland)	2005	No limitations stated in SP				72.475
Timnath Ranch 1-4 - Larimer (Timnath)	2007	35		50		0/35/25/25
Timnath Farms North 1-3 - Larimer (Timnath)	2006	35				0
Wildwing 1-2 - Larimer (Timnath)***	2007	50				45
<u>Jurisdiction & Policy/District Name</u>	<u>Year of Organization</u>	<u>Mill Levy Cap (Debt Service)</u>	<u>Mill Levy Cap (O & M)</u>	<u>All-In Limitation</u>	<u>Additional Mill Levy Limitations</u>	<u>Current Total Mill Levy</u>

Other Weld County Jurisdictions with Metro Districts
 Dacono
 Erie
 Hudson
 Lochbuie

Weld County Jurisdictions with **no** Metro Districts
 Eaton

SPENCER FANE

BRITT & BROWNE LLP

Attorneys & Counselors at Law

Memorandum

To: Board of Trustees
Town of Windsor
James M. Mock
Kelly Arnold, Town Manager
Ian McCargar, Town Attorney

From: David S. O'Leary Esq.

Re: Comments on Proposed Changes to Town of Windsor Metro District Policy

Date: May 13, 2015

We have reviewed the memo dated April 28, 2015 from Jim Mock to the Town Board regarding proposed changes to the Town of Windsor Metropolitan District policies and procedures. I have also had conversations with Mr. Mock and other attorneys, District Managers, Bond Counsel and Underwriters to get additional perspective for the Town. I have discussed some of my initial comments and suggested changes or modifications of the proposed provisions with Jim and have outlined those thoughts below. We appreciate the opportunity to discuss any thoughts and questions the Town may have.

We have processed many service plans and amendments with the Town of Windsor over the last 15 years and have utilized the "Raindance Model" that was used last year. The provisions in that model and terms and conditions, as well as the process of ushering through Districts last August utilizing that plan was efficient and seems to promote the interests of the Town, Developers and constituents regarding reasonable accommodation for development and limitations on financing and operations of public improvements needed for various projects.

I believe, in discussing these issues with Mr. Mock, clarifications can be made to match the concerns and objectives of the Town while still promoting responsible growth and incentives for development of projects utilizing metropolitan districts as a financing tool.

1. **Developer Reimbursements.** Items 1 a. and 1. b seem reasonable and are typically used by the Districts already.
2. **Developer Reimbursements.** With regard to item 1.c., there seems to be some potential confusion on the language used here. I would suggest that this be clarified to apply to rate of interest on initial "developer" type obligations that would exist prior to a formal pledge of revenue in a bond/loan type situation. Typically there is a financial advisor opinion on fairness of rate and standard in the marketplace used in most service plans. I believe that concept is contained in the current model and should be maintained. When

you use the term “insider”, you may be referring more to someone who is a developer or under the control of the developer, which should be clarified in that manner.

3. **Developer Reimbursements.** With regard to item 1.d., organization costs, the Development costs could exceed \$100,000 if there are significant exchanges, issues or plan modifications. The limit on reimbursement for organizational costs doesn’t seem to serve any financial interest of the Town particularly where you won’t have organizational costs that materially impact financing capacity. We would suggest maintaining the proposed estimate of costs in the language of the service plan but permitting reasonable costs related to formation and organization be permitted.
4. **Debt and Taxes.** With regard to item 2.a., the limitation on the mill levy imposition term to repay debt to 25 years from the first building permit is too restrictive. Currently the Raindance model and service plans in neighboring jurisdictions use a limitation based upon years of issuance. With some significant residential or commercial developments full absorption could take 10-20 years. There could also be delays due to market constraints, housing demands or downturns in the economy that cannot be predicted. Most bond issuances or public financing documents utilize a 30 year debt repayment schedule. Please consider as well the delay in assessed valuation from building permit to final construction and sale, particularly in residential districts the assessed valuation lags behind sales by 1-2 years. With most residential districts not able to feasibly issue bonds until year 4 or 5 after formation, a 25 year limitation would impede the ability of the District to use typical public tax exempt bonds. We would recommend that the mill levy limitation be 30 years and be a limitation on the assessment of a debt service mill levy. Perhaps consider a period of time during which bonds can be issued with a full 30 year term – e.g. you must issue within 5 years and any issuance within 5 years gets you 30 years from date of issuance. The 25 year limit will artificially limit the ability to finance, and potentially create incentives to over issue or issue early, with potentially damaging consequences. Additionally, refinancings or refundings should be allowed where there is net present savings or potential benefit to the taxpayers.
5. **Debt and Taxes.** With regard to item 2.b., proposing a debt limitation where debt is forgiven after 25 years would jeopardize the ability to issue tax exempt opinions and marketability of bonds. Speaking with underwriters and bond counsel, a 25 year term with discharge provisions would put Windsor special districts on a different playing field in terms of possible financings. For municipal bonds, a discharge provision that applies at the final maturity date of bonds would present a problem in terms of delivering a tax exempt opinion, particularly if the discharge of anything that remains unpaid in at year 25. There would be no leeway if development does not go precisely as planned and Bonds don’t pay precisely as planned.
6. **Debt and Taxes.** With regard to item 2.c., there is no reason to micromanage the use of the mill levy as between O&M and Debt. If there is a concern that there is sufficient O&M mill levy revenue, you could say something such as a minimum of 5 mills should be allocated to operations and maintenance, but flexibility, particularly in the early years is essential to provide operating revenue until absorption can meet operating demands.

7. **Enhancements.** The language provided in Sections 3.a, b and c seem fine.
8. **Covenant Enforcement.** With regard to item 4.a., some Districts do not utilize HOAs for covenant enforcement and design review. Typically, Districts consolidate or turn over their boards to residents through normal election process over time and completion of a significant amount of development/completion of infrastructure. Additionally, CCIOA (or HOA) governed boards turn over at some point in the build out process that ties to development thresholds. I don't believe the intent is to form an HOA if there is not one, it seems as though the concern is turning over to resident controlled boards at some threshold time, which seems reasonable.
9. **Inclusions.** With regard to item 5, the inclusions are already subject to statutory procedures under 32-1-401 C.R.S. There are times when inclusions occur pursuant to elections or consolidations which may be less than 100%. I would recommend staying to the current model and statutory provisions to avoid potential conflicts where an election for inclusion is necessary (e.g. inclusion into a fire district sometimes requires an election).
10. **Service Plan Approval Process.** Typically, statutes require approval by resolution rather than ordinance, however, we have done this in Windsor for at least 15 years.

Thank you for the opportunity to comment and discuss the memorandum and changes to policy We look forward to working with the Town on this matter.



ICENOGLE SEAVER POGUE

May 13, 2015

William P. Ankele (via email: wpankele@wbapc.com)
White Bear Ankele Tanaka & Waldron, P.C.
2154 East Commons Ave., Ste. 2000
Centennial, Colorado 80122

David S. O'Leary (via email: doleary@spencerfane.com)
Spencer Fane Britt & Browne LLP
1700 Lincoln St., Ste. 2000
Denver, Colorado 80203

Re: Town of Windsor Metro District Policy

Dear Bill and David:

I am writing to convey my thoughts on certain proposed changes to the Town of Windsor Metro District Policy. I understand the Town, through its special counsel Jim Mock, has solicited your thoughts in advance of considering some fairly meaningful changes to the Town's current metro district policy. I appreciate the opportunity to offer comment, and provide the following thoughts on the revisions as I understand them:

1. **Developer Reimbursements:** Proposed changes include a requirement for a third-party certification of construction costs, and a certification that capital facilities are built according to approved plans. Both seem reasonable and, in fact, are fairly standard in the industry.
2. **Developer Reimbursements:** Proposed change that a District shall not agree to an interest rate on reimbursements that would result in positive arbitrage for an insider. I would suggest that the focus on interest rates be placed on the fairness and appropriateness of the rate the District will be required to pay, rather than to whom it is paid. Industry standard is to require a fairness opinion as to interest rates, and that would address the concern. Positive arbitrage would be difficult to ascertain, as the source of funds advanced by a developer may or may not be borrowed, and the rates charged would be the product of negotiations the District is not privy or party to.
3. **Developer Reimbursements:** Proposed change to cap the amount of District formation costs that may ultimately be reimbursed by the District. I'm not entirely certain I follow the concern this proposed change seeks to remedy. Formation costs have long been considered appropriate for future reimbursement, and the amount is a fraction of the total debt capacity a District may have, so I do not readily see the need for such a limitation.
4. **Debt and Taxes:** Proposed change to limit the imposition of a mill levy to repay debt to 25 years following the date a "building permit is issued for the property," and to require unpaid debt be forgiven after the 25 year period expires. It seems to me that starting the clock on any debt repayment

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William P. Ankele
David S. O'Leary
Re: Town of Windsor Metro District Policy
May 13, 2015
Page 2

limitation on the day a building permit is issued is not appropriate. A requirement that the debt must mature within so many years of the date of issuance is the more common approach. Development can delay significantly after initial construction commences and a 25 year limit from the first building permit could result in a District being virtually unable to repay the debts incurred for early phase infrastructure. Also, I would think 30 years would be a more common maturity term, and I would think allowing refundings beyond that time period, to allow a District to take advantage of a potentially more favorable rate environment would be prudent and benefit the taxpayers.

5. Debt and Taxes: Proposed change to allocate the maximum mill levy of 39, specifically between debt and operations. The allocation of an available mill levy amount is a legislative action that the District board must take, and should be left to the District's elected officials and not dictated, arbitrarily, in a service plan limitation.

6. Covenant Enforcement Powers: Proposed change to provide for an "off-ramp" to transition handover of covenant enforcement powers to an HOA. Typically, if a District is exercising covenant enforcement powers, particularly in a newer development, there will not be an HOA; rather, the covenants will designate the District as the enforcement entity. I'm not sure I appreciate the concern, but once a project builds out, the District enforcing covenants would be controlled by homeowners, who would assume all District responsibilities, including covenant enforcement. If a coordinating District initially enforces covenants, then perhaps a requirement that that responsibility be transferred to another, homeowner controlled District, at some point in the build-out process that ties to the CCIOA provision governing HOAs, would be a reasonable requirement.

7. Inclusions: Proposed change not to permit inclusions based on the election process set forth in Section 32-1-401(2)(a), C.R.S. The state statute provides for inclusion following an election of the affected property owners/voters, and I'm not immediately seeing a reason to limit that in a service plan. If an inclusion is sought, and the electorate votes in favor of it, it seems that would suffice, as the statute suggests that it does.

8. Service Plan Approval Process: Proposed change to require approval by ordinance, with extended time periods. I am not aware of the concern this revision seeks to remedy, but as you know, the statute requires approval by resolution, which seems perfectly adequate in my experience.

Thank you again for the opportunity to comment and if you have further items to discuss please let me know.

Sincerely,
ICENOGLER | SEAVER | POGUE
A Professional Corporation



Alan D. Pogue



George K. Baum & Company
INVESTMENT BANKERS SINCE 1928

May 13, 2015

Board of Trustees
Town of Windsor
301 Walnut Street
Windsor, Colorado 80550

Dear Trustees:

George K. Baum & Company has reviewed the memo dated April 28, 2015 from Mr. James M. Mock to the Town Board regarding potential changes to the Town of Windsor's metropolitan district procedures and policies. Sections 2a and b of the memo are especially troubling.

It is not clear why a 25 year limit would be applied to both a debt service mill levy or the debt secured by that levy. Development projects often experience fits and starts and the development process is not often a smooth one. Limiting the term of the debt service mill levy and the term of the debt would in effect significantly reduce the borrowing capacity of the metropolitan district. The additional provision that all debt outstanding shall be forgiven at that same 25 year mark would further restrict a metropolitan district's ability to borrow money.

We all have experienced or know someone who has experienced challenging financial circumstances. An individual can lose a job or have reduced income because of illness or economic conditions. One way people made it through the recent recession was by refinancing and restructuring financial obligations like home mortgages and automobile loans. These proposed policies would ignore history and provide no opportunity for metropolitan districts to refinance their debt because of an arbitrary 25 year time limit. No ability to refinance or restructure beyond 25 years means that these metropolitan districts would have to wait until the development was very far along before borrowing money. Even at that point in time, investors would only accept a very short borrowing to allow for some future reduction in assessed value. The ability to borrow money is the most important benefit of forming a metropolitan district and that benefit would be nearly eliminated if these policies were put into effect.

Thank you for the opportunity to provide feedback. If you have any questions, please do not hesitate to contact me at 303.391.5503.

Sincerely,

GEORGE K. BAUM & COMPANY

Alan T. Matlosz
Senior Vice President
Colorado Public Finance

JAMES M. MOCK, PLLC

ATTORNEY AT LAW
MAILING ADDRESS: P.O. BOX 11196
BOULDER, COLORADO 80301

TELEPHONE: 303-915-3289
E-MAIL: JIM@MOCKLAWOFFICE.COM

MEMORANDUM

February 26, 2015

VIA EMAIL

TO: Town Board of Trustees
Kelly Arnold, Town Manager
Ian McCargar, Town Attorney
Town of Windsor

FROM: /s/ James M. Mock

RE: **Metropolitan Districts in Windsor, Part I**

With the revival of the real estate market, the Town has seen a big increase in the number of applications to approve the formation of metropolitan districts. Land developers have requested a number of departures from the Town's written policy, which policy was last looked at by the Town Board in 2007. At the same time, the real estate shake-out has resulted in some "lessons learned" for metro districts.

The Town Board has determined to take a step back and look at its policy to determine whether any changes are warranted for the facilitation of desirable development and, moreover, the protection of the taxpaying public. I have been asked to guide the Town Board through a process whereby it can consider these items, and this memorandum provides a summary outline of my introduction to the topic.

1. What is a Metro District?

- a. State law
- b. Town Code & Model Service Plan
- c. Economic Underpinnings
- d. Typical Metro District Life Cycle Scenario

- e. A Typical Property Owner's Interaction with a Typical Metro District
- f. Success Stories and Train Wrecks

2. History of Metro Districts in Windsor

- a. Four Phases
- b. Statistics

3. What Do Other Municipalities Do?

- a. Spectrum of approaches

4. Common (although not unanimously shared) Assumptions and Beliefs

- a. Metro districts are necessary for good development
- b. Metro districts cause better development (i.e., higher quality, more affordability)
- c. Metro districts equitably distribute the cost of public improvements over their life cycle
- d. Metro districts create non-transparent windfall benefits for Developers
- e. Metro districts "soak up" the tax base such that the community is unwilling to tax itself for other public improvements and services
- f. Metro districts provide operational efficiencies that benefit homeowners and reduce burdens on the Town
- g. Metro districts should function to reimburse a Developer 100% of its public infrastructure costs
- h. Metro districts should only provide partial reimbursement of the cost of public improvements

5. So, what do we do with all this, where do we go from here?

- a. The Town would benefit from the Town Board taking a look at metro districts and how they fit with Town values, goals and plans
- b. Staff, Consultants, and Development Community would benefit from clarification of policy
- c. **For our next meeting, please:**
 - i. Read the handout
 - ii. Consider the Common Assumptions and Beliefs (Para. 4 above)
 - iii. Identify any areas for clarification and questions you may have
 - iv. Think about where you want Windsor to fall on the “spectrum”
 - v. Time permitting, please familiarize yourself with some of the main Service Plan issues presented in the memo
- d. Next steps in process and outreach to Developer community

JAMES M. MOCK, PLLC

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MEMORANDUM

March 2, 2015

VIA HAND DELIVERY

TO: Town Board
Kelly Arnold, Town Manager
Ian McCargar, Town Attorney
Town of Windsor

FROM: James M. Mock

RE: **Title 32 Metropolitan District Review**

This Memo is intended to pick up where my presentation this evening left off, and it presumes some familiarity with how metro districts function. The memo starts broad, reviewing some of the general policy assumptions and issues I raised this evening, and then it lists some of the more detailed issues we will look at once the Town Board has given its sense of where it wants the Town to fall on the “spectrum” of metro district options available to municipalities.

If you are pressed for time, I recommend you at least see the “Policy Questions” which begin on page 3.

Normal District Practices, Policy Assumptions, Analysis, and Opinions

The following adds some additional analysis to the “Common (although not unanimously shared) Assumptions and Beliefs” portion of this evening’s discussion.

1. Metro districts are common throughout the Front Range. Some municipalities lay little, if any, regulatory scheme over the minimum standards set forth in the Special District Act, while some municipalities, like Fort Collins and Boulder, have rarely if ever authorized them. Some municipalities charge metro districts ongoing fees related to monitoring costs or as a source of revenue for public improvements.

2. Metro districts can enhance the quality and affordability of a community. They offer a way to stretch-out over time the cost of public improvements, and I believe this deferred payment enables a level of affordability at a quality point that might not otherwise be possible without a metro district. However, I am not aware of any independent studies that make the case, one way or another, that desirable and affordable development is not possible without a metro district. Such studies may exist; I simply haven't dug deep enough to find any.
3. A metro district is controlled by the project's developer until the developer has secured maximum repayment of its public infrastructure costs associated with the project. Residents have little to no meaningful control before this time.
4. The TABOR amendment's restrictions on taxation and spending are a "ceiling" protection for property owners, but it is generally inconsequential for a metropolitan district financing. The TABOR election is conducted under the developer's control and a district's bonding authority and power to levy ad valorem property taxes is established well before the time the first "end owner" acquires property.
5. A developer will usually contract for and finance public infrastructure and then convey the improvements to the municipality, district or owners' association. The developer, through its control of the metro district board, will cause the metro district to enter into a reimbursement agreement that obligates the metro district to pay the developer the costs of the infrastructure, plus interest, at such time as the metro district has available funds (either via bond issuance or present tax revenues). This is self-dealing, but it is legal and common, and there are some laws in place and developed practices to mitigate some of the risks inherent to this self-dealing.
6. Metro districts are difficult for a lay-person to understand and may seem like a non-transparent, "black box" to property owners. As such, it is possible if not likely that metro district tax and fee burdens are not reasonably factored into a residential buyer's bargaining purchase price. Municipalities should consider the degree to which they want to ensure that metro districts are fair to homeowners.
7. Metro district taxation is a significant contribution to a property's total ad valorem tax burden. This tax burden may "crowd out," or "soak up," a community's willingness to tax itself to pay for additional public services, such as fire protection, schools, recreation, and general municipal needs.

8. Metro district proponents will frequently take the position that the existence of a metro district causes developers to sell property for less than they would otherwise sell. There is some truth to this statement; however, it can also be misleading. The reality is likely more nuanced. In my view, a developer and a homebuilder will sell a platted lot or home for the maximum amount that the market will bear. A developer or homebuilder will not leave money on the table simply because the developer will be making money from a metro district reimbursement. Put another way, I submit that there is not a direct relationship between the face amount of district debt and the purchase price paid at the initial sale of a home (i.e., by loading \$1 of the cost of public improvements off on a metro district, there is not a corresponding drop of \$1 in the price of an initial sale of a home). I do not see an inherent problem here; however, it is important for policy makers to understand that infrastructure costs that are transferred to a metro district do not have a direct correspondence to the price at which a home is sold.
9. The process by which a metropolitan district expends funds and reimburses its developer for public infrastructure improvements is an exercise in legal self-dealing. A set of practices have evolved to address the potential of developer overreaching, and, in my view, the professionals that advise and manage districts do a good job of policing the line between proper public expenditure and misuse of public funds. However, opportunity still exists for mischief, and some communities regulate more stringently in this area.

Policy Questions

The following is a list of questions that municipal leaders should ask themselves from time to time with regard to metro districts. Your response to these questions will be our guidance for developing proposed changes to the Town's Model Service Plan.

1. How does the Town ensure a continued healthy balance between protection of property owners and the facilitation of desirable development?
2. To what extent should the Town allow developers to be "*made whole*" by metro districts? Is the purpose of a metro district in Windsor to enable a developer to recover all of its public infrastructure costs from the district, or is the purpose of a metro district to simply provide a limited tool to reduce some of the developer's risk and to deliver a more enhanced community? Put another way, should the Town's policy toward developers be something like: "*we will allow you to pull a*

limited income stream from this community for 20 or 30 years and you will have to make do with it” or “we will allow you to charge and re-coup whatever the market and state law will allow”?

3. Should the Town no longer authorize new metro districts?
4. Should the Town allow metro districts to the full extent of state law (including unlimited mill levies)?
5. Should the Town continue to fall somewhere between “no metro districts” and “do whatever state law allows”?
6. Should the Town only allow metro districts to finance specific, identifiable *enhancements*?
7. Should metro districts exist primarily to simply finance infrastructure, or should they be allowed to provide various ongoing community services after the infrastructure has been completed and dedicated?
8. Should the Town allow metro districts to charge the commonly-allowed 50 mills for debt service or should the Town strive to keep metro district tax burdens distinctly lower than those of other communities?
9. How long should property in Windsor be taxed to pay for its initial public infrastructure?
10. Should the Town require additional safeguards to ensure that metro district funds are spent only for public purposes?

The Take-away/Next Steps

After receiving your views on the proper role of metro districts in Windsor at our next meeting, we will then move to possible changes to the Town’s Model Service Plan. Some of the items have been broached and approved or disapproved in the limited context of the first Harmony Ridge Service Plan and RainDance-Service Plan reviews. The remainder of this memo lists items to be considered as a preview of the next area of discussion.

Issues to be covered will likely include:

1. Substantive and procedural limitations on developer reimbursements
2. Limitations on a taxing district's ability pledge its taxing authority to a master district
3. Continuation of "enhancements" requirement
4. Hard limit on the number of years a property can be subject to a debt service mill levy
5. Require bonds/loans to include debt forgiveness clause after debt service mill levy period expires
6. Review and set hard mill levy cap
7. Review "sliding mill levy" concept approved in RainDance
8. Mandatory review period x days from submission to hearing on Service Plan or amendment, subject to limited conditions
9. Deposit and Fee. Increase the Deposit for review of new Service Plans and major amendments
10. Amendments
11. Charge an annual fee
12. Town approval of Inclusion-Area and internal boundary changes
13. Access to district amenities by general public

I believe the Town Board has previously weighed in decisively on the following issues, and, absent a request from the Town Board or the Developer community to re-visit an issue, the following items will be included in my final list of recommended changes to the Model Service Plan.

List of Previously Approved or Disapproved Changes

1. A \$2,500 capital improvement fee payable on the sale of every dwelling unit

2. Ongoing operations and maintenance activities are allowed (special consent not necessary)
3. Removal of the 25-year "re-application" to provide operations and maintenance services
4. Bankruptcy limitation
5. Pledge in excess of Maximum Aggregate Mill Levy is a material modification
6. Limitation on subdistricts
7. Limitation on special improvement districts
8. Additional Annual Report items
9. Service Plan IGA
10. Town Board retains approval of use of eminent domain

I look forward to discussing the matters raised in this memo with you.



FUTURE TOWN BOARD MEETINGS

Work Sessions & Regular Meetings will be held in the Board Chambers unless otherwise noted.

May 18, 2015 6:00 p.m.	Town Board Work Session NISP update – Brian Werner, Northern Colorado Water Conservancy District Water and Sewer Board verbal update regarding water planning Continuation of Metro District discussion
May 25, 2015	Memorial Day
June 1, 2015 6:00 p.m.	Town Board Work Session Update on RTA projects and meeting with development representatives of PeliGrande
June 8, 2015 5:30 p.m./1 st floor conference room	Board/Manager/Attorney Monthly Meeting Traffic Study Report Boardwalk Park Update
June 8, 2015 7:00 p.m.	Town Board Meeting
June 15, 2015 6:00 p.m. Aspen Room / CRC	Town Board Work Session Discussion with Owners of Property in the Northeast Quadrant of the I-25/392 Corridor Activity Center
June 22, 2015 6:00 p.m.	Town Board Work Session Downtown Parking Regulations Minimum Exterior Standards for Non-Residential Metal Buildings Food Cart as Accessory Use Regulations
June 22, 2015 7:00 p.m.	Town Board Meeting
June 29, 2015	5th Monday
July 6, 2015 6:00 p.m.	Town Board Work Session
July 13, 2015 5:30 p.m./1 st floor conference room	Board/Manager/Attorney Monthly Meeting
July 13, 2015 7:00 p.m.	Town Board Meeting Kern Board Meeting
July 20, 2015 6:00 p.m.	Town Board Work Session
July 27, 2015 6:00 p.m.	Town Board Work Session

July 27, 2015 7:00 p.m.	Town Board Meeting
August 3, 2015 6:00 p.m.	Town Board Work Session
August 10, 2015 5:30 p.m./1 st floor conference room	Board/Manager/Attorney Monthly Meeting
August 10, 2015 7:00 p.m.	Town Board Meeting
August 17, 2015 6:00 p.m.	Town Board Work Session Capital Improvement Plan
August 24, 2015 6:00 p.m.	Town Board Work Session
August 24, 2015 7:00 p.m.	Town Board Meeting
August 31, 2015	Fifth Monday

Additional Events

May 18, 2015	CML District Meeting; Fort Collins – attending Adams
June 16-19	Colorado Municipal League; Breckenridge – attending Vazquez, Baker, Melendez, Adams, Morgan, Rose, Arnold

Future Work Session Topics

Development Review Discussion of Commercial/Industrial Preference vs. Residential
Construction Defects