

Memo

To: Fred Starr, AICP, Town of Erie Planning & Development Director
From: James A. Mann, Senior Municipal Advisor/Principal
Sherry Villafane, Municipal Advisor
Date: January 22, 2021
Subject: Lafferty Canyon Metropolitan District Service Plan Review

Comments contained herein are based on a review of the proposed Lafferty Canyon Service Plan, as prepared by White Bear Ankele Tanaka & Waldron, and the DA Davidson Financial Plan dated June 29, 2020 (as Exhibit E of the Service Plan).

When reviewing districts, Title 32 identifies nine decision points that unless sufficient evidence is provided form the ability of an approving authority to disapprove of a proposed special district creation. Specifically, they are as follows:

Title 32-1-203(2) – Shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented (paraphrased):

- a) Sufficient existing and projected need for organized service in the area
- b) Existing service is inadequate for current and future needs
- c) Ability to provide economical and sufficient service
- d) District has or will have financial ability

Title 32-1-203(2.5) – May disapprove the service plan unless evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

- a) No other jurisdiction will be able to provide the services proposed in a reasonable time and on a comparable basis
- b) Service standards are compatible with the overlapping jurisdiction(s)
- c) Compliance with a master plan
- d) Compliance with a water quality plan
- e) The district will be in the best interest of the area to be served

The above four mandatory and five permissive decision points are all to be evidenced through the creation of the service plan of the proposed district. Title 32-1-202(2) identifies eleven components of a service plan that must be present:

- a) Description of proposed services (must be two or more)

- b) Financial plan
- c) Preliminary engineering or architectural plans
- d) Map of and projected population of district
- e) General description of proposed facilities and standards to be followed
- f) General description of estimated costs for the project(s)
- g) Description of any proposed agreements for the provision of services
- h) Information to support the provision of Title 32-1-203
- i) Such additional information as the approving authority deems necessary to make its findings under Title 32-1-203
- j) Additional information required to satisfy Title 32-17-107(2) (mental health care district)
- k) Additional information required to satisfy Title 32-19-106(2) (health assurance district)

As Lafferty Canyon is a proposed metropolitan district, subs j and k do not pertain to the review of the plan.

Plan Background:

The proposed Lafferty Canyon Metropolitan District consists of approximately 109.622 acres of land that proposes development of 320 single-family residential homes. At build-out, it is anticipated that the assessed value of the development will be approximately \$10.2M, and the development will add 944 residents to the Town.

1. The purpose of the district is to authorize the District to provide for the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the following Public improvements from the proceeds of Debt to be issued by the District: earthwork, erosion control, sanitary sewer, watermain, storm sewer, concrete-flatwork, paving, street improvements, landscape and trails.
2. To accomplish the installation of infrastructure to affect the growth in AV and population, it is estimated that the district will need to spend approximately \$45.9MM and need borrowing authority of \$21.6MM.
3. District shall have the authority to issue limited General Obligation (GO) debt on an ad valorem tax basis provided that the debt levy does not exceed 50 mills for debt issued in an amount greater than 50% of the assessed value.
 - a. Said levy may be adjusted to reflect changes in the assessment method mandated by the state.
 - b. Debt issued by the District shall be the sole responsibility of the District and without any obligation from the Town to repay it.

4. District Operating costs are estimated to be \$100,000 in the first year, which is anticipated to be derived from District Revenues and other payments. District Revenues are defined as monies generated from an Operating Mill Levy imposed upon all the taxable property within the District's boundaries. The Service Plan identifies that there will be an Operating Mill Levy imposed by the District to fund District administrative, operating and facilities maintenance expenses.

5. Exhibit D-1 and Exhibit D-2 contains the capital cost estimates associated with the public improvements of the District as provided by CWC Consulting Group Inc. as of June 23, 2020. Generally, the breakout of costs include earthwork, sanitary sewer, water, stormwater management, roads, landscape, trails and a 15% contingency and are summarized as follows:

	Costs of Public Improvement	Overall Development Costs
a. Earthwork	860,129.55	5,747,050.00
b. Erosion Control	482,565.25	696,450.00
c. Sanitary Sewer	1,168,771.50	1,791,615.50
d. Watermain	1,876,009.00	2,730,459.00
e. Storm Sewer	1,226,354.00	1,226,354.00
f. Concrete-Flatwork	1,227,496.10	1,486,696.10
g. Paving	2,537,800.72	2,557,800.72
h. Street Improvements	311,900.00	390,300.00
i. Landscape	2,100,000.00	3,549,000.00
j. Trails - Access Paths	307,700.00	307,700.00
k. Removal	96,676.00	96,676.00
l. Clean & Maintain	45,000.00	833,000.00
m. Legal/Consulting	1,280,000.00	4,997,000.00
n. Contingency (15%)	2,028,060.32	3,961,515.20
TOTAL	15,548,462.44	30,371,616.52

6. Exhibit E of the proposed Service Plan sets forth the Financial Plan of the District:
 - a. Two series of limited GO bonds are anticipated, the first issued in 2021 and the second in 2031 in a total amount of \$33.5 M that will net \$18,274,800 of project expense. Both issues carry a term of 30 years.
 - i. Interest rate is 5% and 4% respectively
 - ii. Bond are current interest bonds, meaning that it is anticipated that current interest and principal payments will be made annually
 - iii. Debt service coverage (how much revenue is available for every dollar of debt service due on an annual basis) is anticipated to be approximately 1.00x. It should be noted that the Financial Plan in Exhibit E solves for a

45 mill debt service levy, leaving an additional 5 mill levy cushion for coverage.

- iv. The maximum term of the debt is limited to 40 years, and any amounts remaining after 40 years shall be deemed discharged
- b. Revenues for the repayment of debt and to fund District operations are derived from a 50 mill levy restricted for debt service, a 10 mill levy restricted for operations, and Specific Ownership Taxes (can be used for either debt service or operations)
- c. The development will consist of 320 Residential Units
- d. Per unit market value for a single family for sale house is \$575,000, \$475,000 and \$650,000 for Filing No. 7, Filing No. 8 and Lafferty respectively. The aggregate market value of the development is anticipated to be \$184,575,000 with an assessed value of \$11,287,494 (assuming the current 7.15% residential assessment ratio). All values are based on 2020 prices and will be inflated annually by 2.00%
- e. Full build-out is anticipated to finish in 2025. Biennial 6% tax base reassessments are anticipated to occur throughout the proposed Plan of Finance.

Decision Points - Considerations

Contained below are areas that Ehlers suggests the Town consider in looking at the construct of the Service Plan, the proposed development and the overall finances for the proposed District.

1. No Market study was provided to conduct a full review of the feasibility of the project, including, but not limited to, anticipated development absorption and projected home values.
2. Exhibit D-1 of the Service Plan identifies the list of public improvements, which do not appear to be extraordinary. The line item enumeration of the project costs in both Exhibits D1- and D-2 are limited in detail as to the specifics of the infrastructure necessary for the development. A more detailed plan of development (including artists renditions) would be helpful in reviewing project costs, determining the essentiality of a metropolitan district funding mechanism, and conformity to the service standards of overlapping jurisdictions, compliance with the Town's Master Plan and compliance with the Town's water quality plan.
3. The proposed debt issue will net approximately \$18.27 M of proceeds to be used for \$15.55 M in public improvements identified in Exhibit D-1, which is approximately \$2.7 M greater than the projects identified in said exhibit to be reimbursed. We do note that Exhibit D2 provides a list of "Overall Development Cost Estimate" of which we assume

include the costs enumerated in Exhibit D-1. If we are understanding correctly, that would mean that the proponent is not being reimbursed for approximately \$14.8 M of infrastructure necessary to serve the development. While on the surface it would appear that the proponent is contributing significant capital, the numbers do not represent a full picture of the development finances. For example, most real estate projects assume that approximately 18% of the end home/lot package costs is related directly to the cost of the land and infrastructure. This calculation would generate approximately \$33.2 M of lot sale proceeds that would be used for initial land purchase, infrastructure improvements and other development costs. Therefore, without a full analysis of inflow revenues and outflow expenses, there is no ability to determine if a gap exists that needs to be filled by another source of revenue (through the metropolitan district). A gap analysis and ultimate evaluation of the proponent return on investment will help determine the reasonableness of the proposed metropolitan district. No information was provided regarding:

- i. Land sale revenue (see sub 6 below)
 - ii. Initial Land Cost – Title 32-1-202(2)f C.R.S
 - iii. Other contributions
 - iv. Proponent expected return on investment
4. Exhibit D-1 of the Service Plan identifies 320 residential units; however, no Market Analysis has been provided to determine whether the proposed absorption is realistic.
 5. It does not appear as though there is a corresponding map of improvements to be installed related to the development. A better understanding of the development layout would help determine whether the costs enumerated in the engineering estimate are extraordinary in nature.
 6. The Town may wish to consider expanding language in the Service Plan to address the following areas:
 - a. Developer Advances – while the cash flow identifies no need for developer advances, the Town may wish to require definition of and the terms of any developer advance; define the method of interest calculation (recommend simple interest); define the maximum interest rate.
 - b. In Section II, Definitions, included is a definition of External Financial Advisor. We recommend that the definitions be updated as follows to better reflect terminology present in the Dodd-Frank Financial Regulatory Reform Act:
 - i. External Municipal Advisor: means a consultant Municipal Advisor that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; and (ii) is not an officer or employee of the

District and has not been otherwise engaged to provide other services in connection with the transaction related to the applicable Debt.

- ii. External Municipal Advisor Certificate: Opinion of a registered Municipal Advisor as to the reasonableness of the terms of any debt instrument issued by the District in substantially the form cited below:

We are [I am] a Municipal Advisor within the meaning of the District's Service Plan. We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

- iii. Municipal Advisor: means as any person (who is not a municipal entity or an employee of a municipal entity) that provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or that undertakes a solicitation of a municipal entity or obligated person. Said person shall be registered under Section 15B of the Securities Exchange Act of 1934, as amended from time to time.
 - c. Section VI, sub B, we recommend that the maximum voted interest rate be modified to be the Prime Lending Rate plus 4%, not to exceed 12% as reported at the time of issuance. We further recommend that the maximum underwriting discount be modified to 2.5%.
 - d. Section V, sub B, we recommend adding language requiring a plan of finance to be reviewed by Town staff prior to the execution of any debt obligation. Town should be given 30 days to review financing plan.
 - e. Section V, sub E, we recommend the following language: Issuance of Debt. Prior to the issuance of any general obligation, limited general obligation, revenue, annual appropriation or privately placed debt where the District has not engaged a Municipal Advisor defined herein, the District shall obtain an External Municipal Advisor Certificate from an External Municipal Advisor.
7. While the Service Plan identifies a \$100,000 initial operating budget, Ehlers recommends a full build-out operational budget be prepared in order to understand whether the 10 mill operational levy will be adequate to serve the operation and maintenance needs of the district.

Summary & Conclusions

Based on Ehlers review of the Lafferty Canyon Service Plan, we believe that the Plan substantially complies with Title 32-1-202(2) C.R.S.

Given the information reviewed substantially conforms, other than what is mentioned above, to the provisions under Title 32-1-202(2) C.R.S., Ehlers believes, contrary to any additional information the Town may have, there is enough evidence provided to substantiate the creation of a Metropolitan District. Based on our review, we believe there is existing and projected need for organized services to be provided; existing services available in the area are not sufficient to meet the current and projected needs; the proposed Plan provides an economical and sufficient service delivery to the area; and the proposed District will have the financial ability to discharge any obligations associated with the development.

Based on the above facts, Ehlers believes the mandatory disapproval criteria has been satisfied, however in the Town's final determination of whether to allow the proposed creation of the District may also take into consideration the provisions of Title 32-1-203(2.5) C.R.S. that it may disapprove the service plan unless evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

- a) No other jurisdiction will be able to provide the services proposed in a reasonable time and on a comparable basis
- b) Service standards are compatible with the overlapping jurisdiction(s)
- c) Compliance with a master plan
- d) Compliance with a water quality plan
- e) The district will be in the best interest of the area to be served

In respect to the above criteria, if the Town chooses to evaluate the plan utilizing Title 32-1-203(2.5), we believe additional information should be provided to confirm that subs (a-d) are based on the something more than a general statement; and that Sub (e) is evaluated through a full accounting of sources and uses for the project to determine that the proponents return on investment for the project is not excessive.

When an approving authority is asked to create a Metropolitan District, Part 2 "Control Act", 32-1-202(2) identifies the components that must be included in the service plan, and includes sub h and sub i give broad authority to require additional information in making its determination under 32-1-203(2) and 32-1-203(2.5). The Town may want to exercise its authority to obtain additional information.