

Applicant's Response to Ehlers' Westerly Metropolitan Districts Nos. 1 - 4 Service Plan Review

From: Zachary P. White <zwhite@wbapc.com>

Sent: Friday, January 17, 2020 9:50 AM

To: 'Kendra Carberry' <klc@hpwclaw.com>

Cc: 'Malcolm Fleming' <mfleming@erieco.gov>; fstarr@erieco.gov; Heidi Majerik <Heidi.Majerik@southernland.com>; David Bracht <David.Bracht@southernland.com>

Subject: FW: Metro District Analysis

Kendra,

Thank you for forwarding this along. I must emphasize that the form of service plan Ehlers reviewed and analyzed is, but for project specific changes, almost exactly the same form of service plan that the Trustees reviewed and approved on December 10, 2019. Aside from changing names, project specific figures, previously provisions, and clean-ups, the two service plans are nearly identical. A full redline against the service plan approved on December 10, 2019 is attached for your reference and comparison and you will see very few meaningful changes. Ehlers is a financial advisor and should only be reviewing the financing plan and providing an opinion as to its reasonableness, not commenting on the substantive form of service plan or review criteria that has already been approved by the Town Board of Trustees.

Aside from the service plan form related comments we note that Ehlers has concluded that **"if all the assumptions were to be realized, there is a reasonable expectation that the District would be able to discharge the debt incurred to install the infrastructure in a reasonable time frame."** Although Heidi suggested the finance plans be reviewed by Stifel that is not necessary as Ehlers did indeed verify that both plans are justified. Accordingly, we believe and request that you and Town Staff support the finance plan as presented and attached including a debt mill levy cap of 55 mills and an operations mill levy cap of 10 mills.

Although we do not believe Ehlers' comments should be considered at all, a quick response to each of the comments is below in Red. Per our discussion, I am copying Malcom on this response so that there is no delay in communication.

Since you directed that we publish public notice including mill levy caps of 50 mills for debt and 10 mills for operations, I have finalized and attached the corresponding service plan. (See the attached *Service Plan for Westerly Metropolitan District No. 1-4 (DS50_OM10) – CLEAN*). However, since even Ehlers' conclusion as noted above finds a reasonable expectation that the districts can discharge their debt in a reasonable time should the assumptions be realized, we intend to request at the public hearing approval of mill levy caps of 55 mills for debt and 10 mills for operations. Accordingly, attached for your reference is a corresponding service plan. (See the attached *Service Plan for Westerly Metropolitan District No. 1-4 (DS55_OM10) – CLEAN*).

Please let us know as soon as possible if there are any remaining items to discuss.

Thank you,

ZACHARY P. WHITE, ESQ.

ATTORNEY

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1. The Town's enforcement ability - "specific performance" was removed from the form of IGA with the Town per email from of Ms. Carberry dated 12/3/2019 in which she said "In the IGA, specific performance is not an available remedy against the Town, so please clarify that in Section 2. Sorry, I did not catch that in my last redline."
2. The District's the authority to exercise eminent domain – The authority to exercise eminent domain is a power given by statute to special districts and is one of the defining characteristics of a political subdivision. Limitation on the use of eminent domain could impact the district's ability to issue tax-exempt bonds. We note that the Board of Trustees just approved identical language on 12/10/2019.
3. Coverage on the bonds – Ultimately institutional investors will dictate what debt service coverage amount they are comfortable with, which may ultimately lower the total par amount of what is issued.
4. Basis for assessment - It is projected in the financial plan that there will be a 6% biennial inflation rate on assessments based on best case scenario assumptions. The bonding capacity could be higher if the rate of assessment inflation is greater or conversely lower if the inflation rate is below 6%. We note that the Board of Trustees approved a finance plan which include 6% biennial inflation on 12/10/2019. Presumably that finance plan also received external financial review and the assumption was deemed reasonable or else staff would not have been able to support it.
5. Lack of a market study to conduct a full review of the feasibility of the project absorption and value statements - A market study will be required at the time the district issues bonds in order to determine the feasibility of the project and absorption and values statements. The Town has never required a market study as part of a financial plan review at the service plan approval stage.
6. Lack of detail regarding the required improvements or engineering plans – We have provided to the Town on several occasions engineering detail to support the cost estimates. In our switch to the form of service plan approved on 12/10/2019, the cost exhibits were removed because the form does not require engineering costs exhibits. If the Town Attorney would like to see them included as an exhibit, we are happy to do so.
7. Lack of overall cash flow projection reflecting full sources and uses – The Town has never required cash flow projection as part of a service plan or financial review. There is no need to evaluate the return on investment the proponent is receiving as Ehlers suggests as it is not relevant to determining whether the financial plan proposed is reasonable.
8. No operational budget to support the proposed 10 mill levy for operations - The Town has never required an operational budget as part of the service plan or financial review. The districts will require a source of revenue to provide for their administrative and operational service, whatever they end up being. If the operation budget does not require the imposition of 10 mills for operations, the board of directors will have the discretion to impose a lower operations mill levy. We note that the 10 mills proposed is less than the amount the Town just approved on 12/10/2019.

9. Excessive Maximum Voted Interest Rate and Maximum Underwriting Discount – The proposed maximum voted interest rate and underwriting discount are the same as those that were included in the Town’s prior model service plan, and as are included in the service plan approved on 12/10/2019.
10. Backdating of the Gallagher period to January 1, 2017 – The proposed Gallagher date is exactly the same as was approved on 12/10/2019 and is consistent with the date included in service plans in several jurisdictions in northern Colorado. We also note that every other proposed service plan and financial plan we have filed with the Town since January 2019 has included the same Gallagher date and it has never received any comment from staff or Stifel in their prior reviews of the finance plans.
11. Value of amenities to justify taxes projected on the future homeowners – The Town has never included in its evaluation of service plans the extraordinary benefits to the future residents of the Town and should not become part of the review criteria at this late hour. Nevertheless, plans include ~~40 acres of~~ open space that far exceeds the Town’s requirements to be dedicated to the Town, trails, parks, and street improvements for the benefit and safety of the entire Town, all of which would not be possible without the use of the district to finance infrastructure.
12. No justification for using the maximum debt mill levy – The Town has never included in its evaluation of service plans whether the use of the maximum debt mill levy is justified. Nevertheless, as we have expressed on multiple occasions, the infrastructure costs for a development of this kind are significantly more expensive than the traditional development. In addition, there are significant off-site infrastructure costs that are required by the Town in order to complete the project including several miles of off-site water pipe contemplated in the Town’s water master plan. These costs justify the full use of the maximum debt mill levy in order to maximize the districts’ financing.
13. Terms for Developer Advances – As noted by Ehlers, the proposed service plan includes a requirement that any developer advances for capital outlay must be structured as Privately Placed Debt, which require certification by an external financial advisor that the interest rate and terms of such debt are reasonable.