



February 11, 2020

DELIVERED VIA EMAIL

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cc: Fred Starr, Yvonne Seaman, John Cheney, Dianne Miller

RE: Sunset Parks Metropolitan District
Response to Ehlers Service Plan Review Dated February 6, 2020

Dear Kendra,

Thank you for forwarding the Ehlers report to me regarding the Third Amended and Restated Service Plan for Sunset Parks Metropolitan District (the "Service Plan"). We appreciate Ehlers conclusion 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."

Regarding the commentary from Ehlers with respect to particular provisions or assumptions in the Service Plan, please refer to the District's response below:

- 1. Section VI. Financial Plan, F, states that a majority of the Board of Directors are District residents; however, the Third Amended and Restated Service Plan does not include any current Board of Directors, as was previously provided in the Second Amended and Restated Service Plan. A current list of the District Board of Directors should be provided.*

Section VI(F) of the Service Plan does not state that a majority of the Board of Directors are District residents. This section of the Service Plan states: "The District shall not impose a Debt service mill levy for more than forty (40) years after the year of the initial imposition of such Debt service mill levy unless: (1) a majority of the Board of Directors of the District imposing the mill levy are residents of such District ..."

Most service plans do not typically include a list of Directors, since the Directors routinely change from time to time. For your reference, however, below is a list of the current directors and their terms of office for the District.

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Director	Date of Appointment or Election	Term Expiration
Robert C. Swenson	May 2016	2020
Stephen Foley	May 2016	2020
Cindy Foley	May 2016	2020
Yvonne Seaman	May 2018	2022
Vacant		2022

2. *Section V. A-8 “No Rates, Fees, Charges, Assessment or Exaction” in the Third Amended and Restated Service Plan has been modified from the Model Service Plan, and in current form may allow the District to impose unlimited fees, rates and charges without written consent from the Town. The Town should reconsider and require written consent for any increase in rate, fee, charge, assessment or exaction imposed.*

Prior approved versions of the service plan for the District provided that the District could impose a system development fee in the amount of \$2,000 per unit without written consent of the Town. The District (not an HOA) is anticipated to provide covenant enforcement and design review services, and as a result needs to have the authority to establish and impose certain fees for these services.

3. *Section VI. G, Debt Repayment Sources; Developer Advances are usually repaid in one year. That limitation has been removed in from [sic] the Third Amended and Restated Service Plan. This potentially allows multi-year carryovers of Developer Advances, and without annual reconciliations would be even more difficult to monitor and reconcile in an annual audit.*

The District disagrees with Ehlers on this point, as it would be unusual for the District to be able to repay a developer advance in one year or less, particularly when the development is in its infancy. By definition, “Debt” means any bonds, notes, debentures, certificates, contracts, capital leases, or other multiple fiscal year financial obligations of the District. Most developer advances are not treated as multiple fiscal year financial obligations, since they are typically subject to annual appropriations and the availability of District funds (generally bond proceeds). To the extent that a developer advance did fall within the definition of “Debt,” then it would be treated as Privately Placed Debt, payable through revenues received as a result of the Debt Mill Levy.

4. *The proponent did not provide an overall cash flow projection reflecting full sources and uses for the development. It is impossible to determine the return on investment the proponent is receiving without being able to evaluate the overall project cash flow.*

The proponent’s private return on investment is not relevant to the District’s financing plan for public improvements. The estimated cost of Public Improvements is \$11,251,893, and the estimated amount of bond proceeds available for the capital project fund is only

\$6,997,975. The developer will be responsible for funding any shortfall between the actual cost of public improvements and the actual proceeds available from the bonds.

5. *Section VI, B, Maximum Voted Interest Rate and Maximum Underwriting Discount identifies 18% as the maximum interest rate and 5% as the maximum underwriting discount. The Financial Plan identifies interest not exceeding 4.5%, making the maximum interest rate of 18% seemingly excessive.*

The language in Section VI(B) has not changed since the original service plan was approved in 2008, and the maximum interest rate of 18% was approved by the District's electors in the 2008 election. 18% is essentially a default interest rate, not related to the interest rate on the bonds.

6. *The Ballot Questions provided in Exhibit G authorizes a maximum of \$62,730,000 of total principal and Interest, along with a maximum authorized annual debt service payment of \$4,100,000; however, the Third Amended and Restated Service Plan only authorizes a maximum debt issuance of \$9,800,000. Clarification and reconciliation regarding the ballot question on maximum authorized debt service and the Service Plan maximum authorized debt issuance should be requested.*

The ballot questions previously provided in Exhibit G were removed at the request of the Town. (Exhibit G is now the form Intergovernmental Agreement.) Regardless of the voter-approved debt for each category of public improvement, in no event will the District's overall Debt exceed the Total Debt Issuance Limitation of \$9,800,000. To ensure the maximum flexibility for the District's funding of public improvements, the ballot questions were drafted in 2008 to accommodate a scenario in which the District might have to use all of its maximum authorized debt in a single category of public improvements (e.g., streets, water facilities, drainage facilities, etc.). The total principal and interest for each voted category is a worst-case estimate based on an 18% interest rate for the entirety of the debt payment period.

7. *There is no operational budget provided that supports 11.055 mills will be adequate to address the operational needs. The operational budget should include the maintenance and upkeep of any infrastructure the District will remain responsible for, including administrative functions of the District (financial administration, auditing, financial advisory, legal, etc.).*

The Board of Directors approves an operating budget on an annual basis. As you know, the District initially requested an O&M mill rate cap of 20.000 mills, but reduced that request to 10.000 mills based on the Town staff's recommendations. The District anticipates that the maintenance obligations will be significant once the development is complete, including without limitation:

- Pump Station maintenance
- Future conversion of Pump Station to Zone 4 water line
- 2 to 3 Pockets Parks up to 4.53 acres
- 20.5 acres of open space
- Spine Trail open space area 6.78 acres

- Rear lot drainage system
- Entry Features.
- 4.74 acres of on-site landscaping

8. *The proponent did not provide a market study. It would be beneficial to see a market study to conduct a full review of the feasibility of the project absorption and value statements.*

The District will commission a market study prior to the issuance of bonds. The Town has not required market studies for prior versions of the Service Plan.

9. *Based on the overall plan, it does not appear as though there are extraordinary costs associated with the development. The improvements seem to be simple subdivision improvements that are normally paid for through the sale of a lot and house package. The Town may wish to delve further into the need of a metropolitan district structure and taxing authority in order to cause the development to occur.*

The District strongly disagrees with Ehlers' assessment that this Service Plan describes "simple subdivision improvements that are normally paid for through the sale of a lot and house package." In fact, we are not aware of any subdivisions in the region that rely on lot and house sales to pay for public improvements. The development within Sunset Parks Metropolitan District is extraordinary and includes, among other things:

- Water and storm drainage systems required by the Town that are not part of a normal development; and
- Amenities for the future residents of Erie that are above and beyond what is required by the Erie code, including:
 - 2 to 3 Pockets Parks up to 4.53 acres
 - 20.5 acres of open space
 - Spine Trail open space area 6.78 acres

Please let me know if you have any questions about any of the above responses, or if the Town requires any further modifications to the proposed Service Plan.

Sincerely,

MILLER & ASSOCIATES LAW OFFICES, LLC



Michael E. Davis, Esq.