



TOWN OF ERIE

645 Holbrook Street
Erie, CO 80516

Town Council

Board Meeting Date: 5/26/2020

File #: 20-287, **Version:** 1

SUBJECT: GENERAL BUSINESS

PUBLIC HEARING: A Resolution of the Board of Trustees of the Town of Erie Approving the Third Amended and Restated Service Plan for Sunset Parks Metropolitan District (continued from the May 12, 2020 Board of Trustees Meeting)

DEPARTMENT: Planning & Development

PRESENTERS: Michael Davis, Attorney for the Applicant
James A. Mann, Senior Municipal Advisor/Principal, Ehlers
Malcolm Fleming, Town Administrator
Fred Starr, Planning & Development Director

TIME ESTIMATE: 30 minutes

STAFF RECOMMENDATION:

Approve the Resolution with conditions.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The applicant submitted a request to approve the Third Amended and Restated Service Plan for the Sunset Parks Metropolitan District (Service Plan) for the Sunset Development. This Service Plan is intended to amend and restate the existing and all prior service plans for the Sunset Parks Metropolitan District (the "District"). The Town approved the original Service Plan by Resolution No. 08-07 on February 12, 2008 and the Weld County District Court ordered the organization of the District on May 27 that year. The Town subsequently approved a First Amended and Restated Service Plan on February 14, 2012 and a Second Amended and Restated Service Plan by Resolution No. 15-55 on April 14, 2015.

The District is generally located Northwest of the intersection of County Road 5 and County Road 6, in the SE Quarter of Section 20, Township 1 North, Range 68 West. Among other things, the Service Plan specifies the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term. The Service Plan proposes a Maximum Mill Levy of fifty (50) mills for the purpose of debt service, and an additional ten (10) mills for operations as stated in the service plan proposal.

This request was originally scheduled to be considered by the Board on February 11, 2020, but was continued in conjunction with the Preliminary Plat for the Sunset development. The request was subsequently set for Public Hearing on May 12, 2020, and continued at the request of the applicant until the May 26, 2020 Board meeting.

State Statute requires the Board of Trustees approve by resolution the Service Plan of any special district organized within the municipal limits of the Town.

As stated in the Service Plan, the purpose of the District is to provide funding for the Public Improvements required for the proposed Sunset development, which will be located within the District. The Plan identifies improvements and services expected to be provided by the District, and describes how activities will be financed. The Plan identifies powers of the District as well as describes the limitations. In addition, the form for disclosure of the District is included; this disclosure is required to be included with closing documents to advise potential property owners to investigate financing, servicing of indebtedness, etc.

The Town contracted with Ehlers Public Finance Advisors to conduct a Review and Analysis of the proposed Service Plan and provide their commentary and conclusions regarding this proposal. Ehlers' review is attached. Among the issues identified in Ehlers' review are the following:

1. **Development pro forma.** Ehlers' suggests requiring the applicant to provide a development pro forma, reflecting full sources and uses of the overall project. This pro forma would help the Town determine the necessity for the District. Based on \$126,000,000 of market value being generated by the development, Ehlers suggests that land sale revenue, using a benchmark of 20% of market value, would generate in excess of \$25,000,000. The Miller & Associates response states, "The proponent's private return on investment is not relevant to the District's financing plan for public improvements." The Miller & Associates response further suggests there is a project gap of approximately \$4,200,000. Ehlers notes that the likely return on land sales would be more than adequate to cover this gap, and that without review of the full sources and uses, the need for \$9,800,000 of future taxpayer funded debt may be called into question as unreasonable taxation of those future taxpayers. For these reasons, prior to approving the proposed Service Plan, Ehlers recommends, and staff concurs, requiring the applicant to provide a development pro forma, reflecting full sources and uses of the overall project to demonstrate the need for the metropolitan district financing mechanism.
2. **Rates, Fees, Charges, Assessments or Exactions.** 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. A previous plan authorized the District to impose a system development fee in the amount of \$2,000 per unit without the written consent of the Town. Ehlers recommended, and staff concurred, that this language be restated in the Third Amendment to ensure proper disclosure to potential purchasers and to clarify the \$2,000 system development fee is what the District could impose without written consent of the Town, but that other Rates, Fees, Charges, Assessments or Exactions would require written Town consent. The applicant responded to that recommendation by adding the recommended language to the Service Plan. However, Ehlers still notes that based on the 241 units included within the development, the \$2,000 will provide an additional \$482,000 of capital to the district/proponent. We reiterate concern that without review of the full sources and uses of the developer and district, that it is impossible to tell whether there is a need for the additional system

development fee.

3. **Maximum Voted Interest Rate and Underwriting Discount.** Section VI(B) states, “The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The proposed maximum interest rate on any Debt shall not exceed 18%. The maximum underwriting discount shall not exceed 5%.” In contrast to the proposed maximum interest rate, the Financial Plan identifies interest not exceeding 4.5%. Further, a reasonable underwriting discount should be significantly less than 5%. To ensure any bonds are issued with a reasonable interest rate that does not impose an excessive burden on future tax payers in the District, and to ensure the underwriting discount is not inflated, Ehlers recommends, and staff concurs, the maximum interest rate should be set to be the Prime Lending Rate plus 4.0%, not to exceed 12.0%. Based on the current Prime Rate of 3.25%, the maximum interest rate would today would be 7.25%. Ehler’s also recommends the maximum underwriting discount be not greater than 2.5%, as that amount is adequate to cover underwriting costs on a bond issue such as this one.
4. **Operating Mill Levy.** Ehlers notes applicant provided no operational budget that supports the proposed 11.055 mills operating levy (10 mills adjusted to reflect “Gallagherization” since 2008), so it is unknown whether that mill rate is excessive or insufficient. Ehlers recommends requiring an operational budget that covers the anticipated 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.). Staff concurs, and also notes that requiring an operating budget that identifies the infrastructure to be maintained by the District will avoid future questions about whether the Town or the District is responsible for specified maintenance (which has been a problem in other metro districts in the Town).
5. **Extraordinary Costs and Need for a Metro District.** Ehlers notes that “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.” Further, Ehlers notes all of these issues are areas that may be called into question by future residents of Sunset Parks Metropolitan District as to the reasonableness of the future property taxes and fees the residents will be subject to.

Staff notes that the reasonableness of tax levies in metro districts has been one of the chief criticisms of metro districts among the public, and over the long term is of concern to local governments. Staff believes metro districts are an important financing tool to facilitate new development, and a metro district enables new development to “pay its own way without imposing new financial burdens on the existing community”. Additionally, compared to home owners associations (HOAs), metro districts provide a more stable organizational structure to ensure that maintenance responsibilities assumed by the property owners within a district are fulfilled. Finally, unlike HOA dues, taxes imposed by metro districts are tax deductible.

However, in addition to the concerns future residents of the Sunset Metro District may have with the reasonableness of the levies imposed by the District, the additional taxes levied in metro districts impose a total tax burden that may make voters who live in metro districts less likely to vote for potential tax and or bond measures proposed by the Town, school districts, counties, or fire district to

fund capital improvements. Consequently, staff recommends the Board of Trustees authorize metro districts only when demonstrated to be necessary and when they produce amenities that justify higher taxes when compared with the surrounding/adjacent community.

Staff realizes that requiring a pro forma and the other information recommended above suggests a higher standard for the Board to approve a metro district than has been applied in the past. The reason for this proposed requirement is that metro districts have come under increased scrutiny throughout Colorado recently, and that has raised legitimate concerns about some aspects of how metro districts are used. To address these concerns staff believes the applicant should provide this information to clearly justify the need for the metro district financing mechanism.

Going forward, if the Board concurs it is a priority, staff will prepare a Metro District Review Policy for Board consideration. The intent of the Policy would be to make clear the Town's policy objectives for metro districts, expectations on metro district submittals and the timeline for reviewing applications for metro districts. For comparison, the City of Fort Collins has the following [Policy for Reviewing Service Plans for Metropolitan Districts <https://citydocs.fcgov.com/?cmd=convert&vid=4&docid=3265403&dt=RESOLUTION&doc_download_date=AUG-21-2018&RESOLUTION_NO=079>](https://citydocs.fcgov.com/?cmd=convert&vid=4&docid=3265403&dt=RESOLUTION&doc_download_date=AUG-21-2018&RESOLUTION_NO=079).

ATTACHMENTS:

1. Resolution
2. Proposed Service Plan
3. Financial Plan 50 mills
4. Ehlers and Associates review and comment
5. Applicant's Response to Ehlers' Review of MD Service Plan
6. Ehlers response to Applicant's response to Ehlers' response.
7. 5.12.2020 Public Hearing Notice - Sunset Parks Metro District
8. Certificate of Mailing