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Honorable Denver City Council  
City of Denver  
1437 Bannock St.  
Denver, CO 80202

Re: Loretto Heights Special District

Dear Councilmembers:

It was an honor to appear before you on August 26, 2019 to address special district abuse and its application to the Loretto Heights Special District. It was a robust discussion but unfortunately many questions you all asked went unanswered.

I wanted to take this opportunity to share with you all some of the information I have learned over the thousands of hours I have spent studying special districts.

I wanted to take this opportunity to answer those questions. I wanted to take this opportunity to make a proposal.

Why should I care about what happens in Denver and why should you listen to someone who is not a constituent.

I do this, all volunteer, so I can sleep at night. I have to share what I have learned with everyone and anyone who will listen. And I am still learning. Someone once referred to me as a cross between Johnny Appleseed and Ralph Nader on special districts.

We all need to understand what is happening here. This special district abuse is corrupting our principles of representative government and sucking billions of dollars of wealth out of Denver, the Front Range and the State of Colorado.

You all control a huge number of special districts - and the financial health and future of their residents. Even if you decide to continue as you have before, you at least need to understand exactly what it is that you are doing. You need to see beyond the fog machine that was running at full capacity during the hearing on August 26, 2019.

First, no city or county should begin to consider a special district application without first watching the following videos. The second video, in three segments, is lengthy but worth every minute - it is an interview with a state legislator in 2008. Nothing has changed since this interview. I didn't see it until after I had completed most of my research. I wish I had seen it sooner. It confirmed everything I had learned the hard way. The first video is from

John Oliver - there is one segment that applies directly to what is happening here.

<http://solterracommunity.org/index.php/2019/09/08/special-district-video/>

Title 32 contains the state statutes that create the opportunity for you to give birth to a new government called a special district. They contain the rules that govern what you do to create, limit and police special districts. Your job is just beginning when you decide to create a special district. I will refer to and quote from several of the key statutes as I address the unanswered questions.

### **1. Staff Neutrality and Objectivity**

First an observation. As I sat in the audience waiting for the matter to be called I watched the interaction between the Director of Finance and the developer and his attorney. I sat a couple of rows behind them.

At the time I did not know them and they did not know me. The way they interacted I thought they were all together. At one point the person I later discovered was the Director of Finance handed his prepared remarks to the developer's attorney. She and the developer reviewed the typed and handwritten remarks and then returned them to the Director of Finance, showing their approval.

This does not inspire confidence among the citizens, particularly where under this service plan the Director of Finance is the person designated to police - be the check and balance - on special district compliance for the City.

### **2. Is the Service Plan that important**

As the City Attorney opined, "this is just the service plan" indicating that approving the Service Plan was just not that important and the councilmembers did not need to concern themselves about the "online" discussions regarding special district abuse.

Is passing a service plan really that big a deal.

Yes, it is. The City Attorney's observation is common. Most cities and counties don't have a clue how big a deal it is when they approve a service plan.

When you approve the Service Plan, you are creating a brand new government. Except there are no voters. Other than the developer and his employees. Who vote to establish oppressive financial obligations on the future residents. And don't tell the future residents. Who don't figure it out usually until it is too late. That's a big deal.

#### **A. Powers**

The special district government you create has to power to levy taxes. CRS 32-1-1201. Charge fees, rates, tolls and charges. CRS 32-1-1001. It has the power to place a lien on

property to collect these monies. Id. It has the power to enter into loans with interest. Id. It has the power to issue bonds. Id.

It has the power to enter into contracts. Id. It has the power to enter into intergovernmental agreements. CRS 29-1-203

It has the power of eminent domain. CRS 38-1-101

The Board of Directors for the special district are elected. CRS 32-1-103, 1-13.5-111. A person who enters into a contract to purchase property is a voter. CRS 32-1-103.

The Boards of Directors owe a fiduciary obligation to the residents. CRS 24-18-103.

In short, by approving a special district, you are giving the developer the power to impose significant financial burdens on future residents and the residents, neither present or future, never have prior notice or a vote. In the 1700's they called this "taxation without representation". And that is precisely what this is.

#### B. Limits - Checks and Balances on this Power

Now, we have a long tradition in this country of creating limited government. Not unlimited government. "We, the people, in order to form" a government "do establish this constitution" which gave some power, not all power; which gave limited power, with checks and balances, to the government they created.

To be sure, the Service Plan is not a constitution. It is not the people creating the government. It is another government creating a new government. It is a charter - much like the charters from England to the various trading companies - a charter to create a "government" to run the new colonies.

So to with the special districts. Title 32 provides the power to you to create a new government - but make no mistake about it - a LIMITED government. Subject to checks and balances. And there are only two checks and balances.

First, you.

Second, the residents.

But of course until the residents arrive, learn on their own they are voters and can serve on the boards, and actually take control of the boards - not until that time - you - are the only check and balance. You.

Here are your duties - your obligations - to police the special districts and provide that check and balance.

#### C. But Wait, the City Attorney Said this is the State Legislature's Issue, Not Ours

A common theme promoted by the developers. As you can see below, the State statutes passed by the legislature give you all the power you need to check and balance - police - special districts. And you create them; so they are yours to control. Even if the state legislature passed stronger controls - it is still up to you to enforce them. These are your children, not the state's.

D. Overview of the Title 32 Obligations and Duties Associated with Creating a District

**The City contributes to the content of the Service Plan and must approve the content of the Service Plan.**

**That approval may be “conditional” which allows the City to continue to oversee and hold the developer accountable for the implementation of the Service Plan, especially during the first several years when the developer board of directors is making all the decisions - before the resident voter base is established and before residents are running the District Boards.**

**There is no limit to the nature of the additional information to be reviewed and no time limit for the conditional approval.**

**CRS 32-1-204.5 (1)** No special district shall be organized if its boundaries are wholly contained within the boundaries of a municipality or municipalities, **except upon adoption of a resolution of approval by the governing body of each municipality.** The information required and criteria applicable to such approval shall be the information required and criteria set forth in sections **32-1-202 (2) and 32-1-203 (2).** With reference to the review of any service plan, the governing body of each municipality has the following authority:

- (a) To approve without condition or modification, the service plan submitted;
- (b) To disapprove the service plan submitted;
- (c) **To conditionally approve the service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan or by agreement with the proponents of the proposed service plan.**

**CRS 32-1-202 (2)** The service plan **shall contain the following:**

- (a) A description of the proposed services;
- (b) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.
- (c) A preliminary engineering or architectural survey showing how the proposed services are to be provided;
- (d) A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;
- (e) A general description of the facilities to be constructed and the standards of such

construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located, and of municipalities and special districts which are interested parties pursuant to section 32-1-204 (1);

**(f)** A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;

**(g)** A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;

**(h)** Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met;

**(i)** Such additional information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203;

(J) and (k) omitted as not relevant (health service districts)

**CRS 32-1-203 (2)** The board of county commissioners shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented:

**(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.

**(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.

**(2.5)** The board of county commissioners may disapprove the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

**(a)** Adequate service is not, or will not be, available to the area through the county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

**(b)** The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204 (1).

**(c)** The proposal is in substantial compliance with a master plan adopted pursuant to section [30-28-106](#), C.R.S.

**(d)** The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

**(e)** The creation of the proposed special district will be in the best interests of the area proposed to be served.

(3) The board of county commissioners **may conditionally approve the service plan** of a proposed special district upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in subsection (2) of this section. **Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the board of county commissioners.**

**There must be a public hearing before approval is granted. CRS 32-1-204**

**The City must approve any material changes to the Service Plan. There must be a public hearing before any changes are approved. CRS 32-1-207.**

**The developer must submit annual reports to the City for at least the first five years and thereafter, if requested. CRS 32-1-207 (3)(c) and (d)**

**The City is not limited in the nature of information it may require the applicant to submit in the annual report. CRS 32-1-207 (3)(c)**

**The annual reviews may be (should be) held as part of a public meeting with notice to the public. CRS 32-1-207 (3)(c)**

**CRS 32-1-207 (3) (c) . . . .** If a special district files an annual report pursuant to this paragraph (c), **such report shall include but shall not be limited to** information on the progress of the special district in the implementation of the service plan. The board of county commissioners or the governing body of the municipality **may review the annual reports in a regularly scheduled public meeting, and such review shall be included as an agenda item in the public notice for such meeting.**

**The City may require a hearing every five years after debt is issued on the status of implementing the Service Plan with particular attention to the burden of the financial debt repayment upon the residents:**

**CRS 32-1-1101.5 (2)**

**II) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of the special district's general obligation debt and that such implementation will place property owners at risk for excessive tax burdens to support the servicing of such debt.** If the board of county commissioners or the governing body of the municipality makes such a finding, **it shall deny a continuation of the authority** of the board of the special district **to issue any remaining authorized general obligation debt.**

#### E. Essence of the Service Plan

As set forth above, there are principally three elements to the Service Plan that you are approving.

First, what is the limited purpose of the district. Fire and Rescue. Library. Sanitation. Water. Building homes/commercial and financing the infrastructure. A special district created for the purpose of building homes cannot decide one day to change into a special district to provide regional sanitation services outside its territory for a profit. The statute

says any material modification must be approved by you, after public application, hearing and vote. Just like the original application to create a new district.

Second, what is the limited physical territory of the new government you are creating. They cannot go outside that boundary.

Third, specifically how are they going to finance the purpose of the district. Limits on amounts to be paid, financed, and interest.

The Loretto Heights service plan had defects in each of these areas.

#### F. Recipe for Abuse

Why are special districts prone to abuse. Because they are run by developers and developers are looking for every way to make more money. That's part of their DNA - nothing wrong with it. But if you aren't providing the oversight, checks and balances, policing compliance in the public interest (on behalf of those future residents); then no one is.

Who is checking the amounts paid against the work done to make sure the future residents are paying a fair price for pipe in the ground. From my research, no one is. Who is checking to see if the amounts paid to the developer from issuing public debt (taxpayer debt) bonds is paying for actual work related to the project's infrastructure. From my research, no one is.

(There is a requirement for an "audit" - but the audit is performed by the developer's agent and in our community he candidly admitted that he simply took what the developer gave him and did no further research - the only source of information was the developer)

So, approving the creation of a special district is a big deal. A really big deal.

And the developer has no right to a special district. It is a privilege. That you grant at your discretion.

### **3. Why is the "management" district so small and do the residents get to vote on decisions made by the "management" district.**

District 1 for Loretto Heights is the "management" district. That district is about 1/10th of an acre in size. No residents will ever be able to own property in that 1/10th of an acre. It will always be owned by the developer.

In our community, the "management" district was only 10 square feet.

The Board of Directors for District 1 will always be the developer and his employees. No residents will ever be able to serve on that board or vote for that board until the developer resigns. Until then, residents would have to live in that 1/10th acre - which they never will.

And, under the Service Plan, District 1 will make all the decisions about how much money to tax as fees and taxes. They will make all the decisions about what to spend that money on. They will make all the decisions on how much to pay the developer (themselves) for infrastructure costs.

The developer and his attorney create this "management" district for one simple purpose - to exercise complete control - excluding the residents and voters - over the taxing and spending decisions for the residents - particularly until the residents wake up - which is usually too late.

This is an abuse - a clear manipulation of the statute in absolute violation of the public trust.

You are the only check and balance on the decisions the developer makes on spending and taxing decisions.

You have the power to refuse to create a special district that has a District 1 "management" district as defined in the Loretto Service Plan.

#### **4. Will the Future Residents Ever Stop Paying for the Infrastructure**

Probably not. But you don't have the amount and quality of information to begin to evaluate the answer. There is no limit in the Service Plan to the total cost authorized to build all the improvements. There is absolutely no identification of the work or costs for regional improvements.

There is a limit - the mandated statutory limit - of the amount of mills that may be levied. But that amount is increased by the additional mill levies for operations and maintenance, performance operation, and regional (outside the boundary of the district) improvements. The total mill levy is 95 mills.

The document that you would not ordinarily see (I will show it to you when it is available) - the ballot measures - will establish the total amount that can be charged and the total amount that can be paid to finance payment of the charge. In our community that total finance "limit" is \$4.9 billion. In the case of Loretto Heights it will be at least three times that amount.

And keep in mind, the only folks who see this ballot measure, before the "election", where the only voters are employees of the developer, is the developer. He is voting to give himself the power to tax future residents to a limit of - whatever amount he decides.

There is no check and balance if you don't require that these ballot measures be made part of the application that you vote on - and can change.

This limit on the amount that can be paid in finance costs is later referenced in the bonds. And what the bonds say to the bond investors is, even though the residents are only required to pay 50 mills for debt service (but they still pay the additional mills for operations, performance, regional), they will pay that 50 mills forever until they have paid



the total amount of the finance limit - again in our case \$4.9 billion.

## **5. Everyone in Special Districts are Happy So There is No Problem**

In response to the guest editorial in the Denver Post several weeks ago, many residents in Denver special districts have reached out to me to try to learn a little more and hopefully relieve the oppressive financial burden and the inability to vote on taxing and spending within their districts. They had to work to find me. There was no number to call or email to write to in the editorial.

I suspect that a genuine survey of all the special districts that you and your predecessors have created will tell a story of financial oppression, voter suppression and outright fraud with valueless profiteering.

And you all have the power to do something about this.

## **6. A Few Modest Proposals**

### **A. Genuine Debate will Clarify the Issues**

Convene a study session with presentations by both sides of the issue and opportunity for questions and rebuttal. A genuine debate on the issue will clear away the fog and clarify the issues and choices.

### **B. Minimum Requirement - Ballot Issues**

No city or county should even consider a special district application unless the ballot issues are all provided to the city or county for review and approval before voting on the application for a special district service plan.

And if the ballot issues - as they all do in every special district - remove the right of the residents to vote on future bond debt and give that power to the boards which are run by the developer for up to 20 years - then you can refuse to approve the special district.

And if the ballot issue sets a limit on the cost and financing of improvements which bears no relationship to the actual cost of the improvements - then you can refuse to approve the special district.

### **C. Minimum Requirement - Disclosures**

The disclosure used by developers says nothing more than the resident is moving into a special district.

If they can state the amount of the cost of infrastructure, the fact that the developer is loaning the money to the residents to pay for the infrastructure, the interest rate on the loan, the amount and interest on future bonds and the total amount of financing - in the

Service Plan, the ballots and the bonds - then they can just as easily print that information on one side of a piece of paper and make sure every prospective homebuyer reads and signs that piece of paper before making an offer on the home.

Tell the person shopping for a home that they will be repaying a loan for the infrastructure.

Tell them the developer will never disclose how much the developer actually paid to build the infrastructure.

Tell them the interest rate on the loan.

Tell them the developer took away their right to vote on future debt and taxes.

Tell them the amount of billions of dollars the developer has set as a "limit" on the amount they will be taxed to pay off the bonds which are paying off the loan.

Tell them they are paying interest on the loan and interest on the interest when they pay the bond debt.

Tell them they can vote and serve on the board of directors as soon as they make a deposit on the home.

As I said, the developers are keeping future residents completely in the dark. Our citizens know more about financing a used car than they do buying a home in a special district. If potential home buyers are informed about these facts, only then can they make an informed decision about buying a home in that community.

I expect many developers will complain that no one would buy a home if they knew the information in these disclosures - which is precisely the point.

And eventually developers will return to the traditional way of financing infrastructure and be accountable for the actual costs. The excessive costs of special district abuse are not paying for anything of value - they are paying for profit - pure profit - profit in excess of what profit was made before special district abuse. And they are an unconscionable drain on the wealth of our state - money that could be used for roads, schools, law enforcement, health care - instead of valueless profits.

These private governments are taxing residents who cannot vote. A private government. Taxing residents. Who cannot vote. Taxes they alone assess. To pay themselves profits. With no checks and balances.

Except you.

John Henderson