

Evaluation of Deer Creek Villas Proposed Service Plan

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Orientation resources on special districts:

<https://youtu.be/AlF35fwx6UQ> (Copy and paste into YouTube to activate link)

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

<https://www.coloradofuturescsu.org/wp-content/uploads/2016/12/Metropolitan-Districts-in-Colorado-The-Publicization-Of-Private-Business.pdf> (copy and paste into google search)

<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1156&context=dissertation>
(copy and paste into google search: title "Invisible Suburbs")

Has the Developer Established there is a Need for Metro District Financing

Can the developer establish through verifiable documents the cost of the land, the cost of the infrastructure, the cost of each lot to the homebuyer and the profit on the cost of the lot/home to demonstrate that metro district financing with a loan (principle and interest) and a second loan (bond debt with additional interest) is more cost effective.

Protect Right of Voters to Vote on Tax/Bond Debt

In Section VI. A., The Service Plan foreshadows and the ballot issues will confirm that the Colorado Constitutional right of the residents to vote on future taxes and bond debt are eliminated. The developer board will make the tax and bond debt decisions without a vote of the residents.

It is recommended that 1.) the County not approve the developer issuing loans to the residents, 2.) if loans are allowed, no bonds be approved without a vote by the residents (after the residents replace the developer on the board) and 3.) the County review and approve, subject to public hearing, all fees, charges and loans issued by the developer before the residents occupy all the seats on the board.

The Service Plan references the "loan" that will be established between the developer and the district (same people). This is their effort to establish a contractual obligation on the part of the future residents to pay the developer's "advances"

The Service Plan foreshadows the arrival of the agreement between the developer and himself to create a "loan" between the developer and the district for repayment of the cost of all overhead, infrastructure expenses and profits to the developer. These agreements are single party agreements and unenforceable. The applicant provided a sample of the agreement - which will be signed by the developer as both the developer and the district at the same time.

Service Plan By Sections:

I. Introduction. A. Purpose and Intent

The County, not the applicant, defines the extent of oversight and accountability for the developer's operation of the special district, especially until the residents replace the developer on the board. The developer has an admitted conflict of interest with the future residents. The County is the only check and balance on the operation of the district until the residents occupy all the board seats.

I. B. Need for the District

There is no need to establish a district. The developer can build the infrastructure without financing it through future tax revenue from future residents.

The developer has an obligation under the statute to demonstrate to the County that there is a need to use the metro district financing tool.

The traditional way of financing infrastructure/development is to recover those costs in the price of the lot. The price of the lot traditionally includes the cost of the land, the cost of the infrastructure development and profit to the developer.

The developer must disclose each of these cost components (land, infrastructure, lot, profit) with independently verifiable documentation for the County to evaluate in fact whether or not metro district financing is the only alternative.

Residential developers favor financing infrastructure through special districts because it is a separate profit center - charging cost, profit, interest and interest on interest - guaranteed by "government" mandated tax payments and the value of the homes.

If the new residents need to raise money and decide to tax themselves they can easily apply for the creation of a special district. A metro district is not a reasonable replacement for an HOA - assuming the community requires an HOA.

II. Maximum Interest Rate and Maximum Underwriting Discount.

The County, subject to public hearing, must set the interest rate. 10% is unacceptable.

IV. Proposed Land Use/Population Projections/Assessed Valuation

It is critically important for the County to establish the debt ratio and mill levy caps. The Service Plan does not establish caps.

V. A. Powers of the District and Service Plan Amendment.

The powers of the district are subject to review, monitoring and approval of the County.

The County should also consider only making a conditional approval until the residents have a majority on the boards.

V. B. 3. Total Debt Issuance Limitation.

The total amount of the debt will likely increase. The ballot issues for the first election will contain the actual debt authorization and the ballot issues for each election (before the residents replace the developer employees on the board) must be reviewed and approved by the County subject to a public hearing.

V. B. 4. Service Plan Amendment Requirement.

The County should also expressly require that no modification of the Service Plan is allowed without prior notice, public hearing and approval by the Board of Commissioners.

VI. Financial Plan

No special district is necessary to provide infrastructure.

Financing infrastructure through a special district loans and bonds with cost, profit, interest and interest upon interest is the least economical way to pay for infrastructure. It creates unaccountable profits to the developer and drains the community of financial resources that could be used for schools, police, open space and investment in our neighborhoods.

There is no financial accountability. The County must provide that accountability on behalf of the future residents. The County must 1.) approve all fees and charges, 2.) independently audit, subject to public hearing, the invoices and proof of payments for those expenses the developer proposes to recover through loans and bonds - before the loans and bonds are approved.

The ballot issues provide the actual limit on the debt and debt financing (principal and interest) but the developer has not provided the county with a copy of the ballot issue. No application should be considered without a detailed review and approval of the proposed ballot issue.

VI. C. Maximum Debt Mill Levy.

This needs to be explained in plain language. If loans and bonds are going to be allowed to finance the infrastructure, the debt ratio and mill levy should be set by the County subject to public hearing.

The residents, not the developer should decide at a public election whether or not to refinance any bonds and extend the payment time.

VI. F. TABOR Compliance.

The applicant will “comply” with TABOR by eliminating TABOR Constitutional requirements at the first “election” where the only voters are employees of the developer. The TABOR Constitutional requirements they will eliminate include 1.) eliminating the right of the residents to vote on issuing bond debt (paid with their taxes), 2.) eliminating the limit on the amount of debt and 3.) eliminating the limit on the amount of taxes.

The County must approve all ballot measures, subject to a public hearing.

VI. G. Operations and Maintenance Debt

The County should consider eliminating financing operations and maintenance costs. The maximum mill levy should include operations and maintenance debt.

VII. A. Annual Report

The County will determine what is contained in the Annual Report. The County should also consider requiring monthly reports.

VII. B. Disclosure to Purchasers

The Service Plan prescribes disclosures but the content is vague. Enclosed is a simple, precise and informative disclosure. The enforcement power will be enhanced by requiring disclosures at each of three points of contact with the homeowner and establishing more precise (fill in the blank) disclosures.

The County must require all the disclosures set forth below be made to 1.) prospective homebuyers, 2.) homebuyers when they make an offer and 3.) homebuyers when they close on their homes. Signed acknowledgements that the persons read and understood the disclosures must be filed and produced to the County.

Statutory Authority for Regulation of Special Districts by the County

This is a compilation of the statutory excerpts that provide the power of the County to regulate special districts. The County should require monthly reporting and monitoring of the construction costs and income.

I. Monthly Reports

The County, not the applicant, will decide what should be addressed in the Annual Report. CRS 32-1-207 (3) (c)

The following should be required in addition to what the applicant listed:

- 1. Copies of all disclosures signed by prospective homeowners acknowledging receipt and understanding of the governance and financial disclosures required by the County.**
- 2. Names addresses and telephone numbers of persons who purchased homes or property, provided with privacy restraints limiting access to County Staff.**
- 3. Copies of all invoices and proof of payment for all costs incurred by the applicant for which the applicant intends to seek reimbursement from the residents (assuming financing for the infrastructure is permitted). These invoices and proof of payment shall be organized logically by area of work and time of work.**
- 4. Updated projection for infrastructure and any other district costs. Any proposed changes must be accompanied with a formal request to modify the Service Plan.**
- 5. Any proposed ballot measures for the next 18 months and a formal request to approve the ballot measures. This requirement will expire once the residents replace the applicant's sponsored board members.**
- 6. Copies of any proposed changes to the governance and financial disclosures required by the County which must be accompanied with a formal request to modify the Service Plan.**
- 7. Copies of any fees, charges or other requests or demands for money, in any form, addressed to the purchasers of lots and residents or potential residents, accompanied by a formal request to modify the Service Plan to allow for these requests or demands for money.**
- 8. An audit as described in item 9 of the applicant's list with the additional requirement that the auditor be selected by the County.**
- 9. Copies of all proposed agreements entered into between the developer/builder and the district. These agreements should be considered by the County in a public meeting with opportunity for public comment, before they are approved by the County.**

II. Disclosures to Potential Homebuyers:

Important Financial Disclosure Regarding Metro Districts

The home you are potentially buying is in a metro district. The taxes in metro districts are typically higher because you are paying taxes to repay developer debts which include two loans and two sets of interest. Please compare the tax burden in a metro district and homes in non-metro districts.

1. The total amount of the resident debt limit for this district is _____.
2. The total amount of the resident debt finance limit is _____.
3. The total current length of time that residents will be required to pay taxes on the debt is _____.
4. The average total annual payment (principal and interest) by all the residents for the total length of the debt payments is currently _____.
5. The total number of lots that will be created and sold for the metro district is _____.
6. The pro-rata share per lot for the total annual payment of principal and interest for all the metro district debt for the total length of all the debt payments is _____.
7. The maximum interest on any debt is _____.
8. You are eligible to vote and serve on the board of directors as soon as you enter into a contract to purchase the property in the metro district territory
9. The County will continue to regulate the conditional approval of the metro district until the board is 100% residents with no employees, principals or agents of the developer serving on the board.
10. No loan or bond debt or taxes will be imposed on the residents until and unless a majority of the voting residents vote at the next election cycle to impose that loan or bond debt or taxes.
11. Metro district taxes will be higher than taxes for the same property in a non-metro district.
12. The pro-rata share of your cost for the land is _____.
13. The pro-rata share of your cost for the infrastructure is _____.
14. The cost of your lot which includes the cost of the land, the cost of the infrastructure

and profit to the developer is _____.

III. Statutory Authority for Regulation of Special Districts by the County

The County 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 County 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 County 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 County for at least the first five years and thereafter, if requested. CRS 32-1-207 (3)(c) and (d)

The County 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 County 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.**

