

From: [Eric Potyondy](#)
To: [Ted Shepard](#)
Cc: [Paul S. Sizemore](#); [Clay Frickey](#); [Aaron Guin](#); [Jenny Axmacher](#); [Brad Yatabe](#)
Subject: RE: [EXTERNAL] Re: Fwd: Housing Priority Group meeting Friday 8:30 - 10:00
Date: Tuesday, May 16, 2023 7:17:39 PM
Attachments: [image001.png](#)

Hi Ted,

I appreciate the discussion.

As a general matter, I do not think it is safe to assume that the actions and decisions of local governments are unappealable. In our legal system in this country, very few governmental actions are immune from a potential review by the courts, either as an appeal or as another type of legal challenge, with local government actions not really being the type that get a free pass. (Issues like the federal government's foreign policy decisions are the types of things are unlikely to be reviewed by courts.)

For instance, Colorado Rule of Civil Procedure (C.R.C.P.) 106 provides express authority for state district courts to review actions taken by local governments (including municipalities and special districts). Actions and decisions of local governments can also be challenged by lawsuits brought under other legal authorities, like declaratory judgment actions (C.R.C.P. 57), claims that a local government violated a statute or regulations (including its own), breach of contract actions, or tort claims.

It is generally true that special districts are independent, local governments. However, they are subject to numerous state laws and regulations, and are not free from potential review by the courts.

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From: Ted Shepard <tshepard533@gmail.com>
Sent: Tuesday, May 16, 2023 5:23 PM
To: Eric Potyondy <epotyondy@fcgov.com>
Cc: Paul S. Sizemore <psizemore@fcgov.com>; Clay Frickey <cfrickey@fcgov.com>; Aaron Guin <aguin@fcgov.com>; Jenny Axmacher <jaxmacher@fcgov.com>; Brad Yatabe <byatabe@fcgov.com>
Subject: [EXTERNAL] Re: Fwd: Housing Priority Group meeting Friday 8:30 - 10:00

Eric,

Thank you for your prompt response. I can see by your message and the attachments that with regard to an exclusion issue, a special district board decision is appealable to the BCC.

I wish this was made more clear at the hearing that the appeal provision applies only to the exclusion of property issue. At the hearing, my question was not specific to property exclusion but more in general and I should have made this clear. In other words, I am now assuming that not all special district board decisions are appealable. For example, if a special district water provider decides not to serve a property (or properties) for whatever reason, the affected property owners cannot appeal this decision to the BCC. Their only recourse would be to petition out of the district per the statutes that you attached.

Is my understanding correct?

Again, thanks for all your help,

Ted

On Mon, May 15, 2023 at 2:13 PM Eric Potyondy <epotyondy@fcgov.com> wrote:

Hi Ted,

Please see the attached C.R.S. § 32-1-501 (Exclusion of property by fee owners or board – procedure).

- C.R.S. § 32-1-501(1) through -(4) describes exclusion procedures before the board of the special district.
- C.R.S. § 32-1-501(5)(b)(1) states that “Any petition that is denied or resolution that is finally adopted may be appealed to the board of county commissioners of the county in which the special district’s petition for organization was filed for review of the board’s decision.” (Underlining added).
- C.R.S. § 32-1-501(5)(c)(1) states that: “Any decision of the board of county commissioners may be appealed for review to the district court of the county which has jurisdiction of the special district pursuant to section 32-1-303 within thirty days of such board’s decision.”

I believe that this is the statutory section to which FCLWD and ELCO were referring.

The attached C.R.S. § 32-1-502 (Exclusion of property within municipality - procedure) also describes a separate set of procedures pursuant to which, in certain circumstances, a court may order the exclusion of land from a special district.

Perhaps County staff is not aware of C.R.S. § 32-1-501, as these procedures may not be commonly invoked.

Eric Ryan Potyondy

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From: Ted Shepard <tshepard533@gmail.com>
Sent: Monday, May 15, 2023 1:53 PM
To: Paul S. Sizemore <psizemore@fcgov.com>; Clay Frickey <cfrickey@fcgov.com>; Aaron Guin <aguin@fcgov.com>; Eric Potyondy <epotyondy@fcgov.com>
Subject: [EXTERNAL] Fwd: Housing Priority Group meeting Friday 8:30 - 10:00

All,

You may not be aware that I also volunteer on the Housing Sub-committee of the Partnership for Age-Friendly Communities. At our monthly meeting last Friday, Laurie Kadrich, assistant County Manager, presented on the topic of Larimer County acting as a convener of water providers in Larimer County as a forum to address a variety of topics. I asked Laurie about the testimony from the two managers of Elco and the FCLWD. Please see the response from the County Attorney's Office.

I'm forwarding this message because I'm concerned that P & Z received misleading information during our hearing on amending the Land Use Code regarding water supply standards. At our special hearing on April 26, 2023, the two managers of the Elco and FCLWD informed the Commission that if a party disagreed with a Special District Board decision, that party would then have the ability to appeal the decision to the Board of County Commissioners.

This turns out to be incorrect.

I think it's important that the entire Commission receive this information. When this item comes back to P & Z, could we get a memo that clarifies this?

Thanks,

Ted

----- Forwarded message -----

From: **Alea Rodriguez** <rodrigal@co.larimer.co.us>

Date: Mon, May 15, 2023 at 12:15 PM

Subject: Re: Housing Priority Group meeting Friday 8:30 - 10:00

To: Sue Ballou <sueballou@yahoo.com>

Cc: Diane Cohn <cohndm@gmail.com>, Sue Beck-Ferkiss <sbeckferkiss@fcgov.com>, Ted Shepard <tshepard533@gmail.com>, Blake Chambliss <blake_chambliss@pinkardcc.com>, Alan Kress <utoalan@gmail.com>, Nancy Luttrupp <nancyluttrupp@gmail.com>, Katy Mason <yo_masons@hotmail.com>, Michele Christensen <mchristensen@housingcatalyst.com>, Andy Goldman <andy_goldman@hotmail.com>, Bill Swalling <bill@actuallyp.com>, Karrie Hatfield <hatfield.karrie@gmail.com>, Roberto Rey <rrey@aarpp.org>, Elicia Ratajczyk <elicia.ratajczyk@colostate.edu>, Lorye McLeod <ed@pafclarimer.org>, Trish Warner <trishwarner27@gmail.com>, Claire Bouchard <claire@nocofoundation.org>, Sam Better <sbetters@comcast.net>

Hello Housing Priority Group,

I am following up on Ted's question to Laurie during the meeting on Friday. She reached out to our County attorney and received the following reply:

No, a water district is a quasi-municipal entity (basically a "mini" local government of its own) and the BCC does not have oversight or review authority over water district decisions.

Please let me know if you all have any follow up questions for her and I would be happy to relay them.

thanks,

Alea Rodriguez (she/her)

Housing Stability Program Manager

200 West Oak Street

Fort Collins, CO 80521

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On Tue, May 9, 2023 at 4:49 PM Sue Ballou <sueballou@yahoo.com> wrote:

Hello friends,

The next Housing Priority Group is this Friday, May 12 from 8:30 - 10:00 via Zoom:

<https://us02web.zoom.us/j/85620936829?pwd=MHA0UjZCWkF1QzZ4TE9GSGpzbkQ0UT09>

As usual, it's a busy meeting. Laurie Kadrich, Assistant County Manager will join us to talk about water issues in the County and then Ian Shuff from Alm2s architects will talk about the 4 plex he's trying to build in Old Town. Not to mention the other things we've been working on.

Also, think about if we could move to quarterly meetings in person and if we do, whether they should be at this time or combined with a happy hour, like we did in September. I miss you all.

As always, please let me know if you can't come. Call or text my cell if you can't get on the Zoom link (phone number below).

Sue



Sue Ballou
Housing Priority Group Co-Chair
Board and Steering Committee
970.493.7550 (h) 970.310-7678 (c)