



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

- AGENDA DATE:** September 18, 2023, *continued from September 6, 2023*
- SUBJECT:** **Public Hearing** – Resolution No. 2023-40 Approving the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7
- ACTION PROPOSED:** Consider Resolution No. 2023-40
- ATTACHMENTS:**
1. Amended and Restated Service Plan for Encore On 34 Metropolitan District Nos. 1-3 and Service Plan For Encore On 34 Metropolitan District Nos. 4-7
 2. Cover letter from Counsel for Proponents of the District
 3. Notice of Public Hearing
 4. Joint Resolution of Board of Directors of Encore on 34 Metropolitan District Nos. 1-3 Approving Amendment to Service Plan
 5. Resolution Approving the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7
- PRESENTED BY:** Town Attorney, Avi Rocklin, and Special Counsel, Carolyn Steffl of Dietze and Davis, P.C.
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AGENDA ITEM DESCRIPTION:

An application for approval of an Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7 (collectively, “Service Plan”) was submitted on behalf of Encore HoldCo, LLC, a Colorado limited liability company, the owner of the property within the proposed boundaries of Encore on 34 Metropolitan District Nos. 4-7, pursuant to the requirements of the Special District Control Act, Title 32, Article 1, Part 2, C.R.S. The amended Service Plan has been approved by the Boards of Directors of the existing districts: Encore on 34 Metropolitan District Nos. 1-3. The Service Plan was submitted in connection with a development known as Encore on 34, generally located north of U.S. Highway 34, east of County Road 3 (High Plains Boulevard) and west of County Road 13 (Colorado Boulevard) (“Property”). The Property is part of previously formed metropolitan districts, Encore on 34

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Metropolitan Districts Nos. 1-3. The development is subject to an Annexation Agreement dated on or about March 20, 2006 and an Outline Development Plan approved on or about November 15, 2021.

To satisfy the statutory requirements, the Service Plan includes: (1) a description of the proposed services, (2) a financial plan as to how the services are to be financed, (3) a preliminary engineering or architectural survey showing how the proposed services are to be provided, (4) a map of the proposed boundaries of the districts, (5) an estimate of the population and valuation for assessment of the proposed districts, (6) a description of the facilities to be constructed and the standards for construction, (7) 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 districts, and (8) a proposed intergovernmental agreement.

The service area for the proposed Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7 (collectively, the “Districts”), including the initial boundaries (450 acres) and subsequent inclusion area boundaries (3 acres), consists of approximately 453 acres. The anticipated population of the Districts at full development is approximately 3,474 people, with 900 single-family residential units, 560 apartments, and 880,000 square feet of commercial / industrial space.

The Districts are proposed to operate cooperatively, pursuant to future intergovernmental agreements among the Districts, with Encore on 34 Metropolitan District No. 1 to act as the coordinating district (remaining small with Directors appointed by the Developer), Encore on 34 Metropolitan District No. 7 to act as an operations overlay district, encompassing all the residential districts, and Encore on 34 Metropolitan District Nos. 2-6 to act as financing districts. The existing service plan for District No. 1-3 already includes a similar structure, with Encore on 34 Metropolitan District No. 1 identified as the operating district, Encore on 34 Metropolitan District No. 2 as commercial, and Encore on 34 Metropolitan District No. 3 as residential. The Service Plan proposes to include a coordinating district due to the amount of public improvements to be constructed over an estimated six year time period, and the large land area that will be contributing to the costs of the public improvements.

The Service Plan proposes 40 mills as the maximum residential debt mill levy, 50 mills as the maximum commercial debt mill levy, and 10 mills as the maximum operations and maintenance mill levy. The maximum mill levies are subject to an assessed valuation adjustment, meaning, primarily, that if the residential assessment rate is changed (the ratio of assessed valuation to actual valuation), the mill levy may be increased above the cap so that the rate change is revenue neutral to the Districts.

The maximum term for imposition of a debt mill levy is twenty years for developer debt from the initial imposition of an ad valorem property tax by a particular district, unless the Town approves a longer term by intergovernmental agreement, and forty years for all debt mill levies on residential property, except that, if a majority of the board of directors of a district is composed of a majority of end users (any owner, or tenant of any taxable property), the board may approve a longer term for a refinancing.

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The capital plan, attached as Exhibit E to the Service Plan, estimates public improvement project costs of approximately \$136,872,315. The capital plan was reviewed by Greg Weeks, the Town's Engineer, who found that the preliminary estimates of cost are reasonable. Mr. Weeks pointed out that the developer may also be required to finance an off-site water line that is not shown on the capital plan, so the costs of the public improvements will likely be higher than projected.

The financial plan, attached as Exhibit F to the Service Plan, provides that the Districts will have the ability to issue debt in the amount of \$124,452,750, yielding project funds of \$109,247,875. The maximum debt authorization (aggregate for District Nos. 1-7) under the Service Plan is \$125,000,000.

Prior to the issuance of any debt, the Districts are required to submit a resolution from the issuing district approving the debt issuance, setting forth the parameters of the issuance, to the Town. Subsequent to issuance of the debt, the issuing district is required to provide the Town with bond counsel's opinion letter, a certification from the district that the debt issuance complies with the terms of the Service Plan and a copy of the marketing documents associated with the debt. Consistent with the Model Service Plan, the Districts are entitled to impose a one-time development fee in the amount of up to 2,500 per single-family detached residential unit, \$750 per multi-family residential unit, and \$0.25 per square foot for retail and industrial (all of which may be increased up to 5% per year) to fund the Districts' expenses, and such fee, referenced as a facility fee, is set forth in the financial plan. There is no recurring fee laid out in the Service Plan, so any recurring fee would need to be approved by the Town before being imposed.

The Districts will establish and maintain a public website, and will timely post a copy of all of the following documents: a) call for nominations, b) the transparency notice, c) the recorded declaration of covenants if the District provides Covenant Enforcement and Design Review Services, d) a copy of this Service Plan and all amendments thereto, e) all approved budgets, audits, meeting minutes, Board orders and resolutions, f) any Rules and Regulations adopted by the Board, g) all meeting agendas, and h) any other requirements pursuant to law. The Districts will also e-mail calls for nominations to any email address maintained by the county and provide notice by mail to voters without an email address on file with the county clerk.

The applicants have added language to the Service Plan to require that the Calls for Nominations for districts with residential end users must be mailed to registered voters who receive the Call for Nominations by email at the email address on file with the County Clerk.

Changes to Model Service Plan:

The Service Plan is generally consistent with the Model Service Plan adopted by the Town Council on February 22, 2017, except for the following substantial requested changes to the model:

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1. The Town's model service plan states that the Districts cannot acquire, own, manage, adjudicate or develop water rights unless approved by the Town in an IGA. However, the proposed Service Plan would allow the Districts to finance purchase of water rights, with terms and conditions similar to those required by the Town Council when it approved a service plan for High Plains Metropolitan District No. 2 and the Revere at Johnstown Metropolitan District Nos. 2-9. The Capital Plan does not include a cost estimate for water purchases and the Financial Plan does not include a Water Resources Fee. Therefore, the Maximum Debt Authorization has not been increased to finance water rights, and if the Districts decide to finance water rights, they will have less revenue available for other public improvements. Therefore, we do not see a concern with including the authority to finance water rights. Section V(A)(24) of the Service Plan states:

24. Water Rights/Resources Limitation. The Districts shall not acquire, own, manage, adjudicate or develop water rights or resources except pursuant to an intergovernmental agreement with the Town. Provided however that nothing herein shall prohibit the District from reimbursing the Developer for the costs of raw water dedicated to the Town on the conditions that: (a) all raw water that the District purchases from the Developer or for which the District reimburses the Developer shall be used to meet water dedication requirements for development within the Service Area; (b) the District shall require the Developer to dedicate a sufficient amount of raw water to the Town for each phase of the development of the Project as required by the Town's Municipal Code; and (c) the District's reimbursement to the Developer shall not exceed the amount of the Developer's actual cost for the purchase of the raw water, subject to cost verification report per Section V.A.30. Prior to use of the water for the potable or non-potable needs of the development, the raw water may be leased, subject to any legal limitations.

2. In order to protect future residents and ensure that they will have decision-making control as soon as possible, the Districts added two items to the model service plan, per our suggestions:
 - A. The Service Plan includes a residential operations overlay district (Encore on 34 Metropolitan District No. 7), which will allow residents from all the residential districts to serve on the board of directors of that district and be involved maintenance of common improvements.
 - B. The Service Plan contains language stating that the IGA with the coordinating district will be terminated before full build out, with the authority of the coordinating district transferred to other districts. Specifically, section V.A.34.D states in part:

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The intergovernmental agreements between and among the Districts shall set forth a process for transition of the rights and responsibilities of the Coordinating District to End Users of the Districts, to the Operations Overlay District (with regards to the attached and detached single family residential portions of the Project), or set forth alternative means by which End Users may otherwise have control over the ongoing administration, operations, maintenance and financing responsibilities of the Districts and the Public Improvements that are owned and maintained by one or more of the Districts. Upon or before completion of substantially all of the development within the Districts, the Districts shall cooperate to transition the responsibilities and rights of the Coordinating District amongst the Districts through an amendment or termination of such intergovernmental agreement. Each of the Districts shall have the right to initiate a termination or amendment to the intergovernmental agreements contemplated in this section, however, any termination of such intergovernmental agreement, or any provision thereof, or amendment to any such intergovernmental agreement, without either the consent of all of the Districts or completion of the mediation process outlined below, shall be a material modification of the Service Plan. In the event the Districts are not able to reach an agreement regarding termination or amendment of the intergovernmental agreement, they shall submit the issues to mediation and shall make a good faith effort to come to an agreement with the intent of reaching a cooperative solution that will best serve the residents and property owners of the Districts, as a whole.

Amendments to Existing Service Plan:

The Service Plan differs from the original Service Plan for Encore on 34 Metropolitan District Nos. 1-3 (which it would replace) in the following manner:

Original Service Plan	Amended and Restated Service Plan
Multiple-district structure for three Districts total, with District 1 as coordinating district	Multiple-district structure for seven Districts total, with District 1 as coordinating district and District No. 7 as operations overlay district.
Original boundaries: 307 acres, inclusion area: 146 acres	Original boundaries: 450 acres, inclusion area: 3 acres
Developers were Miracle on 34, LLC and J&J Holdings, LLC	Developers are: Encore HoldCo LLC, J&J Holdings LLC, North Timnath Properties LLC, Clyde Hemberger, and Janice Hemberger
Projected Population: 3,182 Projected Non-residential: 978,000 sq. ft.	Projected Population: 3,474 Projected Non-residential: 880,000 sq. ft.

Estimated Public Improvement Cost: \$69,835,460	Estimated Public Improvement Cost: \$136,872,3150
Aggregate Debt Limit for Districts 1-3: \$66,000,000	Aggregate Debt Limit for Districts 1-7: \$125,000,000
Aggregate Mill Levy for Debt and O&M: Commercial - 50 Mills Residential – 30 Mills *As adjusted for changes in assessment rate after January 1, 2014	Maximum Debt Mill Levy: Commercial - 50 Mills Residential – 40 Mill <i>Plus:</i> Maximum for O&M: 10 Mills *As adjusted for changes in assessment rate after January 1, 2023
No facilities fee without Town approval via IGA.	One time facilities fee of \$2,500 per SF residential unit, \$750 per multi-family residential unit, and \$.25 per square foot commercial/industrial.

Pursuant to state law, the Town Council must approve the Service Plan before the Districts are formed and entitled to operate. The Service Plan must be approved through a public hearing process. Upon approval, the Service Plan, along with a petition for organization of the Districts, must be submitted to the Larimer County District Court, who will then hold a hearing on the petition and order an election regarding the organization of the District Nos. 4-7. Notice of this public hearing before the Town Council was published in *The Johnstown Breeze* and provided to interested persons by the proponents of the Districts.

LEGAL ADVICE:

The Town attorney and the Town’s special counsel have reviewed the proposed Service Plan. The criteria for Town Council approval of a Service Plan are:

- a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed district;
- b. The existing service in the area to be served by the proposed district is inadequate for present and projected needs;
- c. The proposed district is capable of providing economical and sufficient service to the area within its proposed boundaries; and
- d. The area to be included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Sections 32-1-204.5 and 32-1-203(2), C.R.S.

FINANCIAL ADVICE:

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The Town has not engaged an outside financial consultant to review the Financial Plan, but it has been reviewed by Special Counsel, Carolyn Steffl. In addition, applicant's consultant, DA Davidson, has attached a letter stating that, subject to certain assumptions, the Financial Plan shows the Districts' ability to discharge the proposed indebtedness consistent with the limitations contained in the Service Plan.

RECOMMENDED ACTION: Approve Resolution No. 2023-40

SUGGESTED MOTIONS:

For Approval: I move to approve Resolution No. 2023-40, a Resolution Approving the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7.

For Approval with Conditions: I move to approve Resolution No. 2023-40, a Resolution Approving the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7, with the following modifications to the proposed Service Plan, _____, and direct the Town Attorney to revise the Service Plan accordingly.

For Denial: I move to deny approval of Resolution No. 2023-40.

Reviewed and Approved for Presentation,



Town Manager

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