

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

M E M O R A N D U M

TO: Town Council, Town of Johnstown
Avi Rocklin, Town Attorney

FROM: Carolyn Steffl, Esq., special counsel to Town regarding special districts

RE: **Proposed Amended and Restated Service Plan for High Plains Metropolitan District No. 2 and Revere at Johnstown Metropolitan District Nos. 2-9**

DATE: May 26, 2021

As special counsel to the Town, I have reviewed the application for an Amended and Restated Service Plan (the “Amended Service Plan”) for High Plains Metropolitan District No. 2 (“HP2”). The proposed Amended Service Plan is a consolidated service plan for HP2, along with eight proposed new metropolitan districts to be known as Revere at Johnstown Metropolitan Districts Nos. 2-9 (collectively, the “Districts”).

This memorandum summarizes background information about the application, the legal requirements for approval, the most significant changes to the existing HP2 service plan, and ways in which the proposed Amended Service Plan deviates from the Town’s model service plan. I will attend the public hearing scheduled for June 7th, to answer any questions.

BACKGROUND

The initial service plan for HP2 was approved in March 2008 (the “Original Service Plan”). HP2 was part of a collection of related districts, High Plains Metropolitan District Nos. 1-5 (the “HP Districts”). Development stalled after approval of the Original Service Plan, and the HP Districts were formed but never issued debt or constructed public improvements.

Now, a new developer (Forestar Real Estate Group, Inc.) will be purchasing the GBH and Great Plains parcels, resulting in updated development plans. Consequently, HP2 submitted the Amended Service Plan: 1) to separate HP2 from the other HP Districts and organize new metropolitan districts to coordinate financing of the capital improvements for the GBH and Great Plains properties; and 2) to increase the debt limit, based on increased estimated costs for the public capital improvements needed for the development.

LEGAL STANDARD FOR APPROVAL

A special district is required to amend its service plan if there are any material modifications, defined as “changes of a basic or essential nature” Sec. 32-1-207(2)(a), C.R.S. In this case, the Amended Service Plan clearly includes material modifications, as summarized below. A service plan amendment is processed and subject to approval by a

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

Memo to Johnstown Town Council

Re: Amended Service Plan – High Plains No. 2 and Revere Districts

May 26, 2021

municipality, in substantially the same manner as is provided for the approval of an original service plan. *Id.*

The Amended Service Plan was drafted based on the Town's model service plan, as updated based on prior metropolitan district approvals. In many ways, we reviewed the Amended Service Plan like a new service plan because it has changed so much and it would authorize organization of eight new metropolitan districts. To approve a Service Plan, the Town Council must make the following four statutory findings:

- (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.

Sec. 32-1-203(2), C.R.S. The Town Council has the discretion to approve, disapprove or approve with conditions (modifications) the Amended Service Plan. Sec. 32-1-204.5, C.R.S. Therefore, the Town Council could condition the approval on requiring specific modifications to the Amended Service Plan to conform to the model or to address other policy concerns.

Summary of Major Modifications to Service Plan

Here are some of the major proposed changes between the Original Service Plan for HP2 and the proposed Amended Service Plan.

1. The Original Service Plan anticipated inclusion and district financing of public improvements to serve parcels known as the GBH, Great Plains, Veeman and Ransom properties. Under the Amended Service Plan, only the GBH and Great Plains properties are within the future inclusion area, and HP2 would be authorized to finance public improvements for those properties.
2. Under the Original Service Plan, HP2 was to be coordinated with HP 1, 3 and 4, with joint capital plans, financial plans and debt limits. Under the Amended Service Plan, HP2 will be operated separately from HP 1, 3 and 4.¹

¹ We requested that HP 1, 3 and 4 submit amended service plans that remove any property that is now to be included into the Revere Districts and to provide an updated financial and capital plan, given the smaller service area. The consent agenda for June 7th includes an IGA with HP 1, 3 and 4, which will restrict those districts from including new property, issuing new debt or imposing a mill levy until the amendments have been approved.

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

Memo to Johnstown Town Council

Re: Amended Service Plan – High Plains No. 2 and Revere Districts

May 26, 2021

3. HP2 will change its name to Revere at Johnstown Metropolitan District No. 1. In addition, the Amended Service Plan would authorize organization of eight new Districts, known as Revere at Johnstown Metropolitan District No. 2-9, which will coordinate the financing and construction of the public improvements. The District representatives explained why they proposed so many districts:
 - a. HP2, to be renamed Revere District No. 1, is planned to be the coordinating district.
 - b. Revere No. 2 is planned to be an operational overlay district, to operate and manage the public improvements owned by the residential districts.
 - c. Revere No. 3 is planned to be the financing district for residential property in the first phase of development (PA 14 and 15).
 - d. Revere No. 4 is planned to be the financing district for commercial property in the first phase of development (PA 14 and 15).
 - e. Revere Nos. 5-9 are planned to be financing districts for future phases of residential and commercial development, with multiple districts needed because the area is planned to develop over approximately eleven years.
4. The Original Service Plan estimated that public improvements would cost \$31,000,000. The Amended Service Plan estimates public improvements in the amount of \$232,862,393. Reasons for the increase include inflation, increased construction costs, and changed development plans, but also the Districts are asking for authorization to finance water rights purchases and to finance the North Sanitary Interceptor Project and a water tower, in the event that those projects are not completed by the Town.
5. The Original Service Plan contained a combined maximum debt authorization for HP Districts 1-4 in the amount of \$45,700,000. The Amended Service Plan has a combined debt authorization of \$192,848,687, or \$206,363,487 if the Districts are required to finance the North Sanitary Interceptor Project and build a water tower. This debt authorization allows for issuance of up to 115% of the expected debt capacity shown in the Financial Plan, to provide flexibility in case assessed values increase faster than projected. If the assessed values increase even faster yet, the Service Plan allows the Districts to submit an updated Financial Plan to the Town and receive approval by the Town Manager (which can be appealed to the Town Council) to issue debt up to \$224,308,138, which is 125% of the estimated debt capacity in the Financial Plan, without amending the Service Plan.
6. The Original Service Plan contained a mill levy limit of 40 mills, combined for debt service and operational and maintenance expenses, subject to Gallagher adjustments from 2008 onward. In contrast, the Amended Service Plan allows for a combined mill levy of 50-70 mills. In keeping with the Town's model service plan, there is a debt mill levy

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

Memo to Johnstown Town Council

Re: Amended Service Plan – High Plains No. 2 and Revere Districts

May 26, 2021

limit of 40 mills for residential districts and 50 mills for commercial districts, plus a limit of 10 mills for operations and maintenance costs (all subject to future Gallagher-like adjustments after June 2021). In addition, the Amended Service Plan would allow the Districts to impose up to 10 mills for a Regional Improvement Mill Levy for the Big Thompson Outfall Project and, if not completed by the Town, the North Sewer Interceptor Project and a water tank, pursuant to a separate IGA, as discussed below.

7. The Original Service Plan included a prohibition on using District debt to purchase water rights, which is proposed to be removed, as discussed below.

Variances from Model Service Plan

During the review process, the Districts revised the Amended Service Plan to address most of our concerns. However, I wanted to highlight two areas where the final draft of the Amended Service Plan deviates from the model service plan or from past practices of the Town.

1) Metropolitan District Financing of Water Rights Purchases

Under the Special District Act, metropolitan districts which provide water services are expressly authorized to acquire water rights, unless there are restrictions in its service plan. Sec. 32-1-1006(1)(e), C.R.S. However, it has been the Town's policy that metropolitan districts shall not be used to finance the acquisition of water rights.

Under the Town's model service plan, metropolitan districts may not reimburse developers for the cost of acquiring real property, easements, or water rights that are required to be dedicated for public use by annexation agreements, development plans or Town Code, *unless* the Town consents to the reimbursement by resolution or intergovernmental agreement. It is my understanding that the Town has not consented to allow other metropolitan districts to finance the cost of acquiring water resources. Similarly, the Original Service Plan prohibited HP2 from purchasing or reimbursing the developer for water rights that the developer was required to dedicate and convey to the Town or another public entity.

In variance to the model service plan, HP2 has submitted the Amended Service Plan with language that would expressly allow the Districts to reimburse developers for purchase of water rights. The District representatives explained that this reimbursement is needed because water acquisition is a very big cost component of the development and a cost that has to be paid early in the development process. The Districts estimate that they will need over 1,000 AF of renewable water and estimate that will cost \$62,945,000, assuming that they can purchase Home Supply water. In fact, the estimated costs of acquiring the water constitute more than a quarter of all estimated costs of public improvements for the Districts. The Districts plan to present their request to you at the public hearing.

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

Memo to Johnstown Town Council

Re: Amended Service Plan – High Plains No. 2 and Revere Districts

May 26, 2021

Municipalities are split on whether to allow metropolitan districts to finance water rights. For example, Colorado Springs has a provision in its model service plan that is very similar to Johnstown's restriction. Windsor does not have a restriction in its model service plan, but the Town Attorney reports that it has never allowed metropolitan districts to finance acquisition of water rights. In contrast, other municipalities routinely allow for financing of water rights. If the Town allows for district financing of water rights for this development, that may open the door for other developers to request that metropolitan districts be allowed to finance water rights.

2) Extra Mill Levy for Regional Improvements

The proposed Amended Service Plan authorizes the Districts to impose an additional 10 mill levy to finance Regional Improvements, similar to that approved for the Johnstown Village Metropolitan District Nos. 1-5. This is limited to financing the Big Thompson Outfall Project to carry stormwater offsite, the North Sanitary Interceptor Project and the Water Tower Project (if not completed by the Town). The Districts would be required to enter into an intergovernmental agreement with the Town before they could begin charging the Regional Improvement Mill Levy. The IGA would require the Districts to account for the costs of the Regional Improvements (including financing costs) and revenue from the Regional Improvement Mill Levy and any off-site property owner reimbursements and report to the Town, to ensure that the Regional Improvement Mill Levy will cease to be imposed after the subject improvements have been fully financed.

As you know, the model service plan caps the debt service mill levy at 40 mills for residential property and 50 mills for commercial property. This is already an increase from the aggregate mill levy limit of 40 mills contained in the Original Service Plan. The Town will need to determine whether it is comfortable authorizing up to 10 additional mills if needed to pay for Regional Improvements. Exhibit F-2 shows the projected revenue from an additional 10 mills, and it shows that the 10 mills would generate enough to pay for the estimated \$13 million in Regional Improvements, plus financing costs, well before the other public improvements, so it is likely that the Regional Improvement Mill Levy rate will be less than 10 mills or kept at 10 mills but imposed for a shorter term.

CONCLUSION

The Town Council may approve, disapprove or approve with conditions a service plan application. In this case, the Town Council will need to determine whether there is sufficient need for the Districts to finance raw water costs and for the Regional Improvements Mill Levy, requested deviations from the model service plan, when considering whether to approve the Amended Service Plan.