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***\*Direct Mail to Glenwood Springs***

DATE: December 15, 2023  
TO: MINTURN TOWN COUNCIL  
FROM: TOWN ATTORNEY  
RE: METROPOLITAN DISTRICTS

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Over the last few years, the Town of Minturn has been approached by developers requesting the formation of metropolitan districts as part of land use approvals. At those times, the Town has engaged in ad hoc discussions about the virtues of metropolitan districts and the risks they can create. This memorandum is intended to provide information about how metropolitan districts can constructively be used to accomplish town goals in a manner that does not create risks for future homeowners and that maintains consistency in Town governance. This discussion particularly relates to land use approvals that Battle Mountain will be submitting for development of the Maloit Park area.

Colorado law provides for several kinds of governmental “districts” that can be used to provide services in addition to those services provided by municipal and county governments. These districts can also be used to help finance improvements benefitting the local government and the developer. Some districts are simply extensions of a municipality that are governed by the Town Council. These include general improvement districts and special improvement districts. Both of these types of districts can impose assessments on property within the district that is collected in the same manner as a property tax.

The most common form of district that is governed separately from the municipality is a “metropolitan district.” A metropolitan district is often referred to as a Title 32 district referring to the provisions of Colorado law that govern such districts. A metropolitan district is a mini government governed by an elected (or appointed under certain circumstances) board of directors. Metropolitan districts can provide a broad range of governmental services including: fire protection, mosquito control, parks and recreation, safety protection, sanitation, solid waste disposal facilities or collection and transportation of solid waste, street improvement, television relay and translation, transportation, and water. C.R.S. § 32-1-103. Metropolitan districts can impose property taxes to provide revenue to provide services and to pay off debt.

For a metropolitan district to be formed within a municipality, the Town Council must give its consent. C.R.S. § 32-1-204.5 This is done by the Council approving a “service plan” for the metropolitan district. The service plan details what infrastructure the district can construct, what services it can provide, what taxes it can impose and what debt it can issue. Once created, the metropolitan district is governed by an elected board. The actions of the elected metropolitan district board are constrained by the service plan approved by the municipality. In other words, if the approved service plan limits a metropolitan district from providing a certain service, or imposing a property tax above a certain level, the metropolitan district cannot undertake such actions without obtaining the municipality’s approval.

There are several examples of metropolitan districts in Eagle County such as Eagle Vail and Edwards. These districts are used to provide governmental services in unincorporated Eagle County. The use of metropolitan districts within municipalities is generally more restricted. Most frequently metro districts are used to finance improvements of larger commercial developments that then use the district to own and maintain common elements (e.g. landscaping, parking areas, lighting). In such situations, commercial property taxes and dedicated sales taxes combine to repay debt funded improvements and services.

Metropolitan districts are also used in purely residential developments located within municipalities, albeit creating additional concerns to be addressed. There are several examples of metropolitan districts being used for individual residential developments located in the Town of Gypsum. Metropolitan districts used for residential developments frequently have the bulk of their activities directed to assuming and repaying debt. Commonly this debt is related to subdivision improvements that otherwise would be paid for by the developer. Because metropolitan districts can provide and pay for public improvements, developers are keen to shift the costs of subdivision improvements from their balance sheet to that of the metropolitan district. The district then repays bonds (often issued at lower interest rates due to the governmental status) which become the obligation of the metropolitan district to repay using property tax revenue. This essentially becomes an additional mortgage payment that must be made by residential owners. Frequently, the tax bill associated with metropolitan district debt can add several hundred dollars per month of cost to a residential purchaser.

Challenges arise with the use of metropolitan districts within municipalities for residential developments in several ways.

- Metropolitan districts are mini-governments within a Town. They can have powers to tax, condemn land, and provide services as provided in the service plan. Because they have elected boards separate from the municipality, metropolitan districts can use their government apparatus to promote agendas that are at odds with the municipal government. At times, metropolitan districts have sued municipal governments. Because metropolitan districts require elected boards there must be enough candidates to run for those positions.

As evident in Minturn, frequently it is hard enough to find 7 people to serve on Town council. Multiply that need for engaged citizens to sit on metropolitan district boards.

- Metropolitan districts can be expensive. Because they are governments, they have reporting requirements to the Department of Local Affairs that include budget and audit obligations. Districts must hold elections. Generally metropolitan districts have staff (full or part time) and must engage attorneys and auditors. These can be expensive transaction costs avoided by using the existing municipal government for these purposes.
- Using metropolitan districts to finance public improvements is essentially a taxpayer subsidy to the developer. In most residential developments, the developer must factor in the costs of infrastructure and the revenue of anticipated lot sales to make certain the project is viable. Having a metropolitan district issue debt guaranteed to be repaid with district taxes shifts an amount of that risk from the developer to the residents who buy into a development. That can result in financially imprudent development decisions that ultimately saddle the residents with years of taxes to pay off long after the developer walks away with the profits and no longer has any responsibility for what has been created.
- By issuing debt and requiring the metropolitan district taxpayers to repay the debt increases the tax burden for a portion of Town residents. This creates a situation where one part of Town is far less likely to vote for new taxes than the other part of Town.
- Finally, separate metropolitan districts can make residents of those districts feel “separate” from the larger Town. There is already a concern that Bolts Lake/Maloit Park will be difficult to connect with “old Minturn.” The use of metro districts can contribute to creating separate identities making the vision of a unified Minturn harder to obtain.

Many larger developments do generally construct some infrastructure items for which a form of cost recovery or taxpayer contribution is granted to the developer. This generally falls into major improvements such as roadway improvements, major water system upgrades, regional parks, etc. Metropolitan districts can provide a means of allowing a developer to be assisted for such large-scale improvements.

Municipal governments can enact local ordinances to govern the adoption of metropolitan districts. An example of this that I worked on was done in the Town of Silt. There, the Town adopted a new section of code governing metro district formation (**Exhibit A**) and adopted a model service plan to guide future metropolitan district applications (**Exhibit B**). The Silt ordinance guides metropolitan district formation by requiring that the “applicant shall demonstrate that the development project for which district formation is sought is consistent with the Town’s strategic priorities and will result in a demonstrated extraordinary public benefit, and formation of the district to provide public services

and facilities is needed for the development project to provide the extraordinary public benefit.” The extraordinary public benefit requirement contained in the Silt ordinance means that a developer may not simply request a metropolitan district to offset public improvements that the developer would otherwise be required to construct. Instead, the metropolitan district must provide facilities and services that benefit the entire municipality. While some normal subdivision improvements can be financed through the metropolitan district under this ordinance, the Silt Code provides a structural limit that primarily infrastructure providing the extraordinary public benefit be the subject of metropolitan district debt and repayment. This limits improper shifting of developer costs onto a metropolitan district and helps protect residents against excessive debt being assumed by the district.

Additionally, the Silt ordinance protects future residents by limiting the amount of taxes that can be imposed by a metropolitan district. In Silt, the limits were set as:

- (a) For districts that are authorized to impose an Operations and Maintenance Mill Levy, such shall be limited to no more than ten (10) mills.
- (b) The aggregate of any Debt Mill Levy and any Operations and Maintenance Mill Levy shall not exceed fifty (50) mills (the “Maximum Mill Levy”).

As such, mill levies are capped at 50 mills limiting residential owners exposure to taxes and limiting the amount of debt that can be imposed on a metropolitan district. Further, the Code limits debt repayment to a maximum of 40 years to prevent excessively long repayment periods to add additional debt to the district’s balance sheet.

Some questions to consider in determining the Town of Minturn’s future regulations of metropolitan districts include:

- A. What guidelines for the types of developments that the Town will consider allowing formation of a District? Must it have some commercial? What ratio commercial to residential? Minimum number of residential units or commercial square footage? Minimum assessed value?
- B. What types of public improvements should be financed by a District? What types of improvements should be prohibited or strongly discouraged from financing by a District? Look to Town plans as a guide – Comprehensive Plan; Downtown Development Plan; Economic Growth Plan; Trails and Parks Plan;
  - a. Should there be a requirement that public improvements financed through a district serve more than simply the proposed development?

- b. Potential different rules for commercial and residential developments. Commercial metro district can finance some “private-esque” improvements – e.g. parking lots, development lighting,
  
- C. Should there be a minimum amount of “amenities” provided by a District that fulfill goals in Town planning documents? Do these amenities need to open to the public at large? Can a district provide an amenity on different terms to district tax payers and the general public (e.g. trails, parks, rec center, etc).
  
- D. What are acceptable financial impacts to future owners of property in a District? Mill levy limits should be equated to real tax burden for projected property valuations. What are impacts of higher property taxes in some areas on ability of Town to potentially raise taxes in the future? Should there be guidelines on debt that is carried by the developer / related parties?
  
- E. What happens if a District defaults on its debt? Even though Minturn would not be directly liable, what burdens could that place on residents in the development; what does a default mean for marketability of property in the development (zombie properties?); what have been the burdens that municipalities have been forced to deal with resulting from District defaults?
  
- F. How can the Town Code and Model Service plan be crafted to maximize the potential that the cost savings benefits actually flow down to the future owners?
  - a. Limits on developer financing / interest rates
  - b. Requirements that bond repayments be weighted between developer and lot owners as project starts to be built out
  
- G. What types of on-going services should a District be allowed to provide in Silt? No for services provided by Town or other district enterprises (e.g. water, sewer, fire). What about landscaping, road maintenance, snow removal; irrigation water service within the development; parks/trails maintenance; recreation center; street lighting?
  - a. Should there be different rules for developments that are all commercial and those that include residential.