



MEMORANDUM

To: Rob Zuccaro, Planning & Building Safety Director, City of Louisville
Kathleen Kelly, Kelly PC, City of Louisville Attorney
Kim Crawford, Butler Snow LLP

From: McGeady Becher P.C.

Date: February 7, 2020

Re: **Service Plans for the Redtail Ridge Metropolitan District Nos. 1-4: Compliance with Statutory Requirements**

The Service Plans for the Redtail Ridge Metropolitan District Nos. 1-4 are identical so that the Districts have the ability to work together to serve the Development. The Service Plans meet the statutory requirements under Sections 32-1-202 and 32-1-203 as shown in bold italics below (capitalized words are defined in the Service Plans and references to Sections, other than Statutory references, are to the Sections in the Service Plans):

32-1-202, C.R.S.

(2) The service plan shall contain the following:

(a) A description of the proposed services;

A description of the proposed services is contained in Sections V.A. (Types of Improvements) and V.B. (Other Powers and Limitations).

(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.

Section VII contains all of the elements of the Financial Plan, which Financial Plan includes the Financial Plan set forth in Exhibit E, the Maximum Term of Debt, Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term, Total Debt Issuance Limit, the Maximum Voted Interest Rate and the Maximum Underwriting Discount.

The Districts are required to include a notification to the City of any alteration or revision of the proposed schedule of debt issuance set forth in the Financial Plan in Exhibit E as a part of the Annual Report to be filed pursuant to Section VIII.

(c) A preliminary engineering or architectural survey showing how the proposed services are to be provided;

The preliminary engineering survey of the proposed improvements and services is included in Section V which contains the description of the proposed powers, improvements and services, Section VI, which contains an estimate of the Public Improvement costs and Exhibit D which contains a Cost Estimate of Public Improvements.

(d) A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;

The initial District boundaries for each District are described in Exhibit A-1 (Initial District Boundary Legal Description and in Exhibit C-1 (Initial District Boundary Map), the property that would be eligible for inclusion into one of the Districts is described in Exhibit A-2 (Inclusion Area Boundary Legal Description), Exhibit C-2 (Inclusion Area Boundary Map), the estimate of the population and valuation for assessment of the proposed Districts is set forth in Section IV. (Proposed Land Use/Population Projections/Assessed Valuation) and in Exhibit E (Financial Plan).

(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);

A general description of the facilities to be constructed, defined as Public Improvements, is set forth in Section V and in Exhibit D (Cost Estimate of Public Improvements). Section V.C. requires that all of the Public Improvements are to be designed and constructed in accordance with the standards and specifications of the City and other governmental entities having proper jurisdiction and in accordance with the Approved Development Plan.

Section VII.A. includes a requirement that the Districts shall not impose a mill levy, impose any Fees or issue Debt until a Comprehensive Plan Amendment is approved that allows for the build-out assumed in the Financial Plan in Exhibit E. This Section also contains a requirement that a Service Plan Amendment be approved by the City to update the engineering cost estimates and descriptions in Exhibit D to coincide with the final plats for specific portions of the Project prior to any Debt being issued.

Section VI, which includes the estimated cost of the Public Improvements, includes reference to the fact that the construction cost estimates were based on the assumption that construction must conform to applicable local, State and Federal requirements.

(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;

Section VII.H. includes a general description of the estimated cost of acquiring land, (no land acquisition is anticipated to be incurred as a cost of organization or initial operation), engineering services, legal services and administrative services, related to the initial operation of the Districts, with an estimate of \$200,000 for all such costs for all Districts. The initial proposed indebtedness is included in the Financial Plan referred to in Section VII and set forth in Exhibit E. The initial cost of operation of the Districts is \$50,000 for the first full budget year for all of the Districts.

(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;

A draft of the form Intergovernmental Agreement with the City related to Service Plan provision enforcement is set forth in Exhibit J.

A description of other possible intergovernmental agreements with the City are included in Section V.B. regarding the possible funding and construction of a fire station, in Section 5.B.4., regarding the possible funding and construction of a communications tower and in Section 5.B.2., regarding the possible provision of security services in the future.

A description of the intergovernmental agreement(s) between the Districts is set forth in Section V.P.

(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;

The applicant will include in the PowerPoint presentation to the City Council in the public hearing the following:

- a) the inadequacy of the current infrastructure to serve the proposed Redtail Ridge Development;***
- b) The need for the Districts to exist and have the authority to finance the planning, design and construction of the Public Improvements as well as ongoing services to address the inadequate current infrastructure; for the proposed Redtail Ridge Development to be successful;***

- c) the lack of any other local government to provide the financing and services proposed within a reasonable time and on a comparable basis;*
- d) the assumptions in the Financial Plan in Exhibit E and Section VII that support the conclusion that the Districts are capable of providing economical and sufficient service to the Redtail Ridge Development; and*
- e) the assumptions in the Financial Plan in Exhibit E and Section VII that support the conclusion that the property to be included in the Districts will have the financial ability to discharge the proposed indebtedness on a reasonable basis.*

(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;

We are not aware of any additional information that is required at this time. Please advise if there is additional information required.

(j) For a mental health care service district, any additional information required by section 32-17-107(2) that is not otherwise required by paragraphs (a) to (i) of this subsection (2);

Not Applicable

(k) For a health assurance district, any additional information required by section 32-19-106(2) that is not otherwise required by paragraphs (a) to (i) of this subsection (2).

Not Applicable

(2.1) No service plan shall be approved if a petition objecting to the service plan and signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property to be included in such district, is filed with the board of county commissioners no later than ten days prior to the hearing under section 32-1-204 , unless such property has been excluded by the board of county commissioners under section 32-1-203(3.5).

Not Applicable

(3) Each service plan filed shall be accompanied by a processing fee set by the board of county commissioners not to exceed five hundred dollars, which shall be deposited into the county general fund; except that the board of county commissioners may waive such fee. Such processing fee shall be utilized to reimburse the county for reasonable direct costs related to processing such service plan and the hearing prescribed by section 32-1-204 , including the costs of notice, publication, and recording of testimony. If the board of county commissioners determines that special review of the service plan is required, the board may impose an additional fee to reimburse the county for reasonable direct costs related to such special review. If the board imposes such an additional fee, it shall not be less than five hundred dollars, and it shall not exceed one one-hundredth of one percent of the total amount of the debt to be issued by

the district as indicated in the service plan or the amended service plan or ten thousand dollars, whichever is less. The board may waive all or any portion of the additional fee.

(4) In the case of a proposed health service district, submission to the board of county commissioners by the petitioners of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with subsection (2) of this section.

Not Applicable

32-1-203, C.R.S.

(1) The board of county commissioners of each county which has territory included within the proposed special district, other than a proposed special district which is contained entirely within the boundaries of a municipality, shall constitute the approving authority under this part 2 and shall review any service plan filed by the petitioners of any proposed special district. With reference to the review of any service plan, the board of county commissioners 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.

(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.

The applicant is currently processing with the City a proposed Comprehensive Plan Amendment, a General Development Plan, and the first End User's Site plan anticipating development to begin in 2020. Due to the timing on the election cycles for special district organization, there is a current need to organize the Districts in the May 2020 election cycle so that the Redtail Ridge Development will have the Districts that can proceed to finance and construct the required Public Improvements to serve the first End User in 2020 as soon as possible upon the approval of the Comprehensive Plan Amendment, the General Development Plan and the first End User's site plan.

- (b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.

The existing infrastructure is inadequate to serve the proposed Redtail Ridge Development and the Redtail Ridge Development will not be successful without the Districts to plan for, design and construct the Public Improvements and provide the services described in the Service Plan.

- (c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.

The assumptions in the Financial Plan in Exhibit E and in Section VII of the Service Plan support the conclusion that the Districts are capable of providing economical and sufficient service to the Redtail Ridge Development.

(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.

All of the provisions of the Financial Plan in Exhibit E and in Section VII, including the Maximum Term of Debt, Maximum Debt Mill Levy, Maximum Debt Mill Levy Imposition Term, Total Debt Issuance Limit, the Maximum Voted Interest Rate and the Maximum Underwriting Discount, support the conclusion that the Districts have, 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.

The Applicant has provided the required notice to all service providers, including existing special districts, within a three mile radius of each of the District's boundaries, of the public hearing on the Service Plans. The Applicant does not anticipate any of these service providers will come forward to provide the Public Improvements or the services to the Redtail Ridge Development that are described in the Service Plan.

The Applicant is not aware of the willingness of the County, the City or any other municipality or quasi-municipal corporation, including existing special districts, that will provide the Public Improvements and services 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).

The Service Plan requires all of the Public Improvements to be constructed in accordance with the standards of the City and all applicable jurisdictions.

(c) The proposal is in substantial compliance with a master plan adopted pursuant to section 30-28-106, C.R.S.

The Applicant has submitted a Comprehensive Plan Amendment and the Service Plans provides the Districts shall not impose a tax or Fee or issue any Debt until the Comprehensive Plan Amendment has been approved.

(d) The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

The Service Plans require the Public Improvements be constructed in accordance with the applicable City, State and Federal jurisdiction requirements and so the Public Improvements will be provided 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.

The creation of the proposed special districts, with the ability of the Districts to provide Public Improvements and services within the authority and limitations set forth in the Service Plans, will be in the best interests of the area proposed to be served as it will address the need for funding and construction of Public Improvements and services required for the Redtail Ridge Development.

(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.

(3.5)(a) The board of county commissioners may exclude territory from a proposed special district prior to approval of the service plan submitted by the petitioners of a proposed special district. The petitioners shall have the burden of proving that the exclusion of the property is not in the best interests of the proposed special district. Any person owning property in the proposed special district who requests that his or her property be excluded from the special district prior to approval of the service plan shall submit the request to the board of county commissioners no later than ten days prior to the hearing held under section 32-1-204 , but the board of county commissioners shall not be limited in its action with respect to exclusion of territory based upon the request. Any request for exclusion shall be acted upon before final action of the county commissioners under section 32-1-205.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.5), if the service plan submitted by the petitioners of a proposed special district is for a health service district or health assurance district, the board of county commissioners shall not accept or act upon the request of a person owning property in the proposed special district that his or her property be excluded from the special district.

Not Applicable

(4) The findings of the board of county commissioners shall be based solely upon the service plan and evidence presented at the hearing by the petitioners, planning commission, and any interested party.

(5) In the case of a proposed health service district, submission to the board of county commissioners by the petitioners of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with subsections (2) and (2.5) of this section.

Not Applicable