

GARY R. WHITE
KRISTEN D. BEAR
WILLIAM P. ANKELE, JR.
JENNIFER GRUBER TANAKA
CLINT C. WALDRON
KRISTIN BOWERS TOMPKINS
ROBERT G. ROGERS

OF COUNSEL:
GEORGE M. ROWLEY
BLAIR M. DICKHONER



SEAN ALLEN
NEIL RUTLEDGE
ZACHARY P. WHITE
CASEY K. LEKAHAL
TRISHA K. HARRIS
HEATHER L. HARTUNG
MEGAN J. MURPHY
KRISTIN J. SCHLEDORN
SILVIA FEJKA

MEMORANDUM

TO: Board of County Commissioners, Elbert County

FROM: White Bear Ankele Tanaka & Waldron, Attorneys at Law

DATE: June 14, 2017

RE: Proposed Service Plans for Special Districts to Serve Proposed Independence Project

We have reviewed the proposed service plans (the “Service Plans”) for the Independence Water and Sanitation District, the Independence Overlay Metropolitan District, and the Independence Metropolitan District Nos. 1-4 (the “Districts”) and the exhibits provided therewith. Based on our previous discussions with County Staff regarding interpretation of the Elbert County Special District regulations (the “Regulations”), we have reviewed the Service Plans primarily to determine whether they contain the basic information required by §32-1-202(2), C.R.S., together with those items indicated in the Regulations as “required” or otherwise required “as a condition of approval of the Service Plan”, including Exhibits A-G.

Our engagement as special counsel to the County is limited to assisting staff obtain Service Plans from the applicant that comply with law and the Regulations and NOT to make a recommendation to adopt a resolution to approve or disapprove the Service Plans. Accordingly, this memorandum is intended only to address whether the required information has been presented, not whether the information presented is sufficient to allow the Board of County Commissioners to make the necessary findings to approve the Service Plans. The burden is on the applicant to present sufficient evidence in the Service Plans and at the hearing to support the Board’s findings. Proposed findings in the format contemplated by the statutes will be presented to the Board for consideration at the hearing.

The form and contents of the Service Plans generally follow the form of other service plans previously approved by the County for other special districts within its jurisdiction prior to adoption of the current Regulations. We have found, in one form or another, that each of the proposed Service Plans includes at least one statement or exhibit intended by the applicant to fulfill the following requirements (with the exception of (h) below, which relates to evidence presented at the public hearing):

General Statutory Requirements (pursuant to §32-1-202(2)(a)-(i), C.R.S.):

- a) Description of the proposed services.
- b) 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 of the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.
- c) Preliminary Engineering or Architectural Survey Showing how the proposed services are to be provided.
- d) Map of the Proposed Special District Proposed special district boundaries and estimate of population and valuation for assessment.
- e) 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 comparable with facility and service standards of the County, and interested special districts.
- f) 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
- 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.
- 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.
- i) Such information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203.

Required Service Plan Information Under County Regulations:

- a) Exhibits
- b) Annual Report Requirements
- c) Notice to Board of County Commissioners of Change in Debt Issuance

- d) Five Year Review Requirements
- e) Sunset Clause
- f) Emergency Clause
- g) Inclusion Procedures

In addition to the service plan requirements above, the applicant also provided supplemental information to the County in Appendix A and Appendix B which may be used by the Board of County Commissioners as information to help inform their decision to approve, deny, or conditionally approve one or more of the Service Plans.

As noted above and consistent with our engagement, our review of the Service Plans has focused on whether the applicant has met the basic statutory requirements and substantially complied with the Regulations. We have not evaluated whether the information presented in the Service Plans is factually accurate or whether it is sufficient to allow the Board of County Commissioners to make the necessary findings to approve the Service Plans. We leave such evaluation to the Board of County Commissioners.

In conclusion, we believe that the proposed Service Plans satisfy the minimum statutory requirements and requirements of the Regulations in a manner sufficient to allow the proposed Service Plans to be presented to the County Planning Commission and the Board of County Commissioners in accordance with §32-1-202(2), C.R.S. and the Regulations. We are available to discuss with the Board the nature of the evidence and testimony the applicant might be anticipated to present at the hearing on the Service Plans as well as the actions the Board might take at the conclusion of such hearing.