BURGSIMPSON
BURG | SIMPSON | ELDREDGE | HERSH | JARDINE PC
ATTORNEYS & COUNSELORS AT LAW

COLORADO 40 Inverness Drive East Englewood, CO 80112
P: 303.792.5595 F: 303.708.0527

PHOENIX, ARIZONA
ENGLEWOOD, COLORADO
SARASOTA, FLORIDA
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June 30, 2020

Via Electronic Submission System

El Paso County
Planning and Community Development
Attn: Kari Parsons
2880 International Circle
Colorado Springs, CO 80910

RE: Comments Regarding Proposed Service Plan of Grandview Reserve Metropolitan Districts Nos. 1-5
File #: ID202
Submitter: 4 Way Ranch Metropolitan District No. 1

Dear Ms. Parsons and El Paso County Planning and Community Development,

This letter presents the comments and objections of 4 Way Ranch Metropolitan District No. 1 to the proposed service plan of Grandview Reserve Metropolitan Districts Nos. 1-5 (the "Proposed Districts"). The law firm of Burg Simpson Eldredge Hersh & Jardine, P.C., represents 4 Way Ranch Metropolitan District No. 1 as its general counsel. Please direct all comments and notices concerning this matter to my attention. In particular, we request notice and the opportunity to be heard at any public hearings, including hearings before the Planning Commission or the Board of County Commissioners.

4 Way Ranch Metropolitan District No. 1 ("District 1") is a Title 32 special district that was organized by the El Paso County Board of County Commissioners and the District Court, Fourth Judicial District, for El Paso County, Colorado. District 1 was organized along with 4 Way Ranch Metropolitan District No. 2 ("District 2") pursuant to a consolidated service plan that was submitted in August 2005. All of the property in the Proposed Districts was included within the boundaries of 4 Way Ranch Metropolitan District No. 2.

District Nos. 1 and 2 were controlled by developers Peter Martz and his related entitled and affiliates until May 2018, when homeowners were elected to the board of District 1. District 2 remains under the control of Mr. Martz and his affiliates through this date. When it became clear that homeowners would win the May 2018 election, Mr. Martz and his affiliates transferred substantially all of the developer-owned property out of the boundaries of District 1 into District 2 (which was still under their control). They also transferred the water system and affiliated infrastructure and property rights that was owned and paid for with bonds issued by District 1 to District 2.

It appears that the property that is to be included in the Proposed Districts is all of the original property that was in District 2 before Mr. Martz and his affiliates transferred their additional property from District 1 into District 2.

It is unclear from public filings if the property to be included in the Proposed Districts is still contained in District 2 or if it has recently been excluded from District 2. The El Paso County District court file, 2005CV003775, *In the Matter of: 4-Way Ranch Metropolitan District No 2*, does not reflect the exclusion of this property. See https://www.jbits.courts.state.co.us/efiling/web/caseInformation/caseHistory.htm?caseNumber=21D2005CV3775

The Department of Local Affairs Local Government Information System file for 4-Way Ranch Metropolitan District No. 2 does not reflect any new boundary map on file. See https://dola.colorado.gov/dlg_portal/filings.jsf;jsessionid=9Jb6EfFBS8XNjXn1znxWPHQwydqj_D3Nw2yFB9PT.dolaapp11?id=65452&category=6&jfwid=9Jb6EfFBS8XNjXn1znxWPHQwydqj_D3Nw2yFB9PT%3A0

Therefore, if the property has been excluded from District No. 2, it has done so only recently so that all the formalities of exclusion have not yet been completed.

The owner of the property and the proponent of the District is 4 Site Investments, LLC. Colorado Secretary of State records show that 4 Site Investments, LLC has Peter Martz as its registered agent, and the principal office is the same address as Mr. Martz' address as registered agent. See https://www.sos.state.co.us/biz/BusinessEntityDetail.do?quitButtonDestination=BusinessEntityResults&nameTyp=ENT&masterFileId=20091279270&entityId2=20091279270&fileId=20091279270&srchTyp=ENTITY

Therefore, it appears that this is yet another district being organized by Mr. Martz, his entities, and affiliates – the same individuals and entities that control District No. 2, within whose boundaries this property either is located or was located.

This begs the question: why are the Proposed Districts required if this property was already within the boundaries of a metropolitan district controlled by Mr. Martz, with an approved service plan that would provide all of the same services as the Proposed Districts? Why was it necessary to exclude the property (if in fact the property was excluded) from District No. 2 in order to create this new district? Why couldn't the District 2 service plan be amended (if necessary) instead of excluding substantially all of the original property from District 2 and creating a new district?

The answer appears to be that Mr. Martz and his affiliates are seeking to exclude this property from District 2 to escape legal obligations and debt, and the possibility of additional tax levies to pay for such obligations. This includes the following:

1) District No. 2 is currently a defendant in litigation against District No. 1 and homeowners that are challenging the exclusion of the developers' property and the transfer of the District No. 1 infrastructure to District No. 2. By removing the property from District No. 2, the property may escape any liability for such debt.

2) In 2018, District No. 2 assumed the obligation to pay a legal judgment that was entered in favor of KO1515, LLC. To our knowledge, that judgment has not been satisfied. Removing the property from District No. 2 may evade the obligation to pay that judgment. The judgment creditor could seek a mill levy of up to 10 mills on the property to enforce the judgment.

3) In 2020, Woodmen Hills Metropolitan District declared a breach of contract by District No. 2 and Mr. Martz' entities by failing to make certain payments to Woodmen Hills. It is our understanding the Woodmen Hills is seeking to enforce that obligation.

Therefore, the Planning Commission and Board of County Commissioners need to ask themselves whether it is in the public interest to allow Mr. Martz and his affiliates to exclude property from a district that they control, and seek to create five new districts, without satisfying these obligations.

District No. 1 respectfully requests that the proposed service plan be denied. The reasons are as follows:

1. The Proposed Five Districts Must Be Considered Independently. State statutes governing the approval of service plans, C.R.S. § 32-1-203, contemplate the service plan for each district being approved separately on its own merits. The County is being asked to approve five separate districts in a single service plan. Nothing in the statute provides for "consolidated" approval of five districts at once unless the proponent can show that each of the five districts can satisfy the prerequisites of C.R.S. § 32-1-203. Instead, the language of the statute on submission of service plans, C.R.S. § 32-1-202, uses the singular term for each district:

> Persons proposing the organization of a special district, except for a special district that is contained entirely within the boundaries of a municipality and subject to the provisions of section 32-1-204.5, shall submit a service plan to the board of county commissioners of each county that has territory included within the boundaries of the proposed special district prior to filing a petition for the organization of the proposed special district in any district court.

Similarly, the criteria for approval contained in C.R.S. § 32-1-203(2) also require that each district (singular) must independently satisfy the statutory requirements:

> (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.
>
> (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.

The proponent presents only a consolidated service plan that "lumps together" all of the proposed districts' needs and financial capacity. But each of these five districts will have their own tax base, will issue their own bonds, and will have their own needs. Thus, it cannot be determined whether ANY of the five districts have the financial ability to discharge the proposed indebtedness, or even what the proposed indebtedness would be for each district.

2. Existing District No. 2 Has the Ability to Provide the Services.

The property in the Proposed Districts was included in District No. 2, which had the ability under its service plan to provide all of the services requested. For some reason that is not explained by the proponent, the property was excluded from District 2 and a new five-district structure was sought.

Pursuant to C.R.S. § 32-1-203(2), the Board of County Commissioners must disapprove the service plan unless the proponent shows that:

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

There is no reason why District No. 2 (which was created specifically to provide these same services) cannot provide the services.

3. The Property Should Be Held Liable for District No. 2 Debts

As noted above, District No. 2 has unsatisfied financial obligations. Excluding this property would deprive judgment creditors and others of the ability to collect. In the event ongoing litigation between District No. 1 and District No. 2 results in a judgment against District No. 2, this property should not be excluded from liability simply by excluding the property and creating a new five-district structure in mid-litigation.

4. Excluding the Property from District 2 Would Create a Material Modification of the District No. 2 Service Plan.

The property was originally including in District No. 2 to support a large tax base for issuing future bonds by District No. 2. If the property is excluded from District No. 2, resulting the loss of most of District No. 2's built-out tax base that would constitute a material modification of the service plan of District No. 2.

5. It is Not in the Public Interest of El Paso County to Encourage Developers to Play an "Inclusion/Exclusion" Shell Game with Metropolitan Districts

The organization of special districts according to C.R.S. § 32-1-203 contemplates a service plan that contains a specifically defined area of land, a proposed development plan, a proposed maximum amount of bonded indebtedness for the proposed development, a financial plan that demonstrates the ability of the particular area of land when developed to satisfy the bonded indebtedness, and a maximum mill levy to protect taxpayers. Allowing developers such as Mr. Martz and his affiliates to organize districts with their own proposed tax base and mill levy, and then exclude large tracts of property from one district and move them to another district makes these service plans meaningless. How can the County determine whether a financial plan can be satisfied if the developer is allowed to move the majority of the tax base out of the district after the district is organized? If the Proposed Districts are approved, District No. 2 tax base at build out will be dramatically reduced yet it would still have the ability to issue the same bonded indebtedness as if the property were still contained in the tax base on the original financial plan.

It is not in the best interest of the County to encourage developers to simply abandon existing special districts (such as District No. 2) and create new districts with the same tax base simply so that they can maintain control or so that they can escape debt, obligations, or stigma associated with a prior special district.

Thank you for the opportunity to comment on the proposed service plans for the five proposed districts. If you have any questions, please do not hesitate to contact me.

Very truly yours,
BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.

/s/ Brian K. Matise

Brian K. Matise

BKM/hc