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HOME BUILDERS ASSOCIATION of METRO DENVER®

January 25, 2021

City of Thornton
Mayor Jan Kulmann
Members of City Council
9500 Civic Center Drive
Thornton, CO 80229

Mayor and City Council:

I am writing to submit formal comments on the proposed amendments to the City of Thornton's (City) service plan governing special districts.

These comments are being provided on behalf of the Home Builders Association of Metro Denver.

Metro Denver HBA represents over 400 homebuilders, developers, remodelers, architects, mortgage lenders, title companies, subcontractors, suppliers, and service providers in the eight metro-area counties we serve.

In the City, HBA Metro Denver represents 7 different builders and developers that are currently active with 543 registered permits over the past 12 months.

Based on the discussion and deliberations by the City at a July 2020 webinar discussing metro districts and a follow up memorandum issued in January, we understand there is policy consideration for a number of changes to procedures governing special districts including mill levies, debt/interest rates, fee limits, and greater transparency/disclosure requirements that City staff will be presenting to City Council at the February 2, 2021 Council Planning Session.

While Metro Denver HBA appreciates the opportunity to submit the formal comments below, we are a bit disappointed that following the July 2020 webinar, our association only received the January 15th email with 10 days to submit formal comments after not hearing anything for months, and did not receive the notice of this comment deadline from the City. We are thankful for and value our regular communications with City Staff, and want the time necessary to thoughtfully respond to the City on all matters related to producing more housing for Thornton residents. The proposed updates to the City's service plan is an important issue that will undoubtedly have a resounding impact on our industry's

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ability to contribute much needed housing development in the municipality and we feel as though the proposed changes need to be worked on collaboratively to avoid future problems or unintended consequences.

Residential vs. Commercial District Regulation

- "Commercial District" defined and includes "income-producing multifamily development, such as apartments" (Section II)
- "Residential District" defined and includes "all metro districts that include or are expected to include any residential property, with the exception of income-producing development" (Section II)
- **Practical Issue:** As drafted, if there is a single tax parcel assessed residential within a large, functionally commercial district, that single tax parcel would subject the district to all limitations in the service plan applicable to "Residential Districts" (*i.e.*, mill levy caps).

Maximum Debt Mill Levy – Adjustment Date

- The 50-mill Maximum Debt Mill Levy may be adjusted for changes to the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement is changed by law…occurring after [date of service plan approval]. (Section VI.C.1)
    - This adjustment is currently allowed for any changes occurring after January 1, 2004. The change to allowing this adjustment to changes occurring after the date of service plan approval will result in current special districts that have already been approved having a higher Maximum Debt Mill Levy than special districts approved under this new model service plan. This will provide a competitive disadvantage to the developments that have special districts approved under the proposed new model service plan.

Debt and Interest Rates

- "Debt" now includes any bond, note debenture, contract, or any other financial obligation of the district "used to fund Public Improvements" and which is payable from, or which constitutes a lien on, ad valorem taxes or other legally available revenue of the district (Section II)
    - The expansion of this definition will have the practical result of applicants requesting higher debt limitations under the service plan.
    - Maximum net interest rate on Debt or other obligations payable in whole or in part from the Debt mill levy is not to exceed 12% with simple per annum interest (Section VI.B.)A change to simple interest, rather than compounding, is not the standard for current special district financing and could myriad consequences on the ability of districts to finance public improvements.
- **Drafting Issue:** Section VI.B. says "…other District obligations payable in whole or in part from revenues derived from the Debt Service Mill Levy..." "Debt Service Mill Levy" is not defined, the intent may have been to use "Maximum Debt Mill Levy".

Operating Mill Levy

- A district may not impose the Operating Mill Levy until the district has an Approved Conceptual Site Plan and a City IGA has been executed (Section VI.I.)
    - This change would hamstring the special district's ability to utilize the already limited Operating Mill Levy to cover some the general cost of operating the special district in the early stages of

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development and leads to the need for increased advances from the Developer which are then expected to be repaid with interest, thus, costing the special district more over time.

- Maximum Operating Mill Levy for Residential Districts is 10 mills unless: (i) prior to a majority resident-controlled board, the board may petition to the City for approval of both a service plan and IGA amendment on the basis of a detailed justification for the increase; and/or (ii) upon a majority resident-controlled board, the board may increase the Maximum Operating Mill Levy as necessary by majority vote (Section VI.J.4)
    - The practical effect of this very limited Maximum Operating Mill Levy combined with the limitation of fees (discussed below), is that developments will have very limited amenities or will employ the use of HOAs (and their attendant fee authorizations) to cover the cost of the amenities that the special district cannot fund. The use of HOAs for this purpose causes a proliferation of entities that homeowners have to interface with which leads to increased homeowner confusion and frustration and creates administrative redundancies and inefficiencies in operating both a special district and an HOA, the cost of which is then bore by the homeowners.
- **Drafting Issue:** Section V.A. says "The District shall not be authorized to operate and maintain any part of all the Public Improvements except as described in Section VI.I…" However, Section VI.I. does not discuss any authorization of the District to operate and maintain Public Improvements, only the District's authorization to impose the Operating Mill Levy. The only relevant language in Section VI.I. says, "the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained."

Fee Limitation

- O&M fees specifically shall not be imposed on an End User subsequent to a Certificate of Occupancy unless and until there is a majority resident-controlled board and the majority of the board has voted in favor of imposing fees (Section V.A.18)
    - Please see the discussion above regarding the interplay between the limitation of the Maximum Operating Mill Levy and the fees.

Community Engagement

- Written information must be provided by the district prior to virtual meetings (Section V.A.26.b)
- **Practical Issue:** Section V.A.26.b does not specify a time frame to provide written information for virtual meetings nor where such information should be posted. Additionally, providing written notice of meetings will create an additional administrative expense for special districts that already have limited budgets. Since the City is implementing a website requirement it would be more efficient and cost-effective to require all special districts to post notice on that website.

Disclosure Requirements

- "Each home buyer will be asked to acknowledge receipt of such notice at the time of entering into the purchase contract" (Section IX.2)
- **Practical Issue:** The Model Service Plan does not specify, though it is implied, whether the special district is responsible for ensuring that home buyers acknowledge the disclosures at time of contract. The concern with making this a responsibility of the special district is that the special district is not involved in the home buying/selling transaction and therefore cannot effectively comply with this requirement. Other jurisdictions have required that the special district provide the information to developers within

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the special district and/or post the information on its website; these requirements are more practical for the special district to comply with.

Approval of Conceptual Site Plan Requirement

- The proposed change to the city code that would require a Conceptual Site Plan be approved prior to the imposition of any mill levy or fees.
    - In addition to the concerns noted above relative to the Operating Mill Levy, this would inhibit the ability of some special districts to issue early-stage debt and would force developers to find alternative funding sources. These alternative funding sources will undoubtedly be at a higher interest rate and ultimately have an adverse impact on the price of homes in the City. Perhaps a more sustainable alternative would be to require that the property need to be zoned prior to the imposition of any mill levy or fee. This would allow the bond market to determine the proper time to issue early state debt.

In conclusion, we strongly encourage the City Council to consider the implications of the proposed changes to its regulations applicable to special districts and their impact on the future residential development within the City. We also hope that the Council will consider offering an opportunity for stakeholder engagement on this important issue before any final decisions are made. We are available for additional consultation with the City staff, as necessary.

Thank you for your time and consideration of our analyses.

Sincerely,

Ted Leighty
Chief Executive Officer
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