

# ***City Council***

## ***Study Session Agenda***

**January 28, 2018**  
**Library Meeting Room**  
**951 Spruce Street**  
**7:00 PM**

- I.** Call to Order
- II.** Discussion – Metropolitan District Overview
- III.** Advanced Agenda & Identification of Future Agenda Items
- IV.** Adjourn

**SUBJECT: DISCUSSION – METROPOLITAN DISTRICT OVERVIEW**

**DATE: JANUARY 28, 2020**

**PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY  
HEATHER BALSER, CITY MANAGER  
ROB ZUCARRO, PLANNING AND BUILDING SAFETY DIRECTOR**

**SUMMARY:**

Please find attached a memo regarding an overview of metro districts by Kathleen Kelly, City Attorney. This memo has been drafted with assistance from the City’s special district counsel, Kim Crawford with Butler Snow, who will be in attendance at the January 28, 2020 study session along with the City Attorney. A power point is also attached. The City Attorney in collaboration with Kim Crawford will review the power point at the study session and respond to questions.

Also please find attached some recent newspaper articles on metro districts as well as some CML slides on the topic from 2019.

**PROGRAM/SUB-PROGRAM IMPACT:**

The subject of Metro Districts has the potential to impact the Community Design subprogram objective regarding “A well-connected and safe community that is easy for all people to walk, bike, or drive in. Neighborhoods that are rated highly by residents and thriving commercial areas.” In addition, the discussion helps to fulfill our Administration and Support Services goal to “Ensure inclusive, responsive, transparent, friendly, fiscally responsible, effective and efficient governance, administration and support.”

**RECOMMENDATION:**

Discussion

**ATTACHMENT(S):**

1. Metro Districts Memo
2. Presentation
3. Recent Denver Post Articles on Metro District
4. Fort Collins Article on Metro Districts
5. CML Materials

**STRATEGIC PLAN IMPACT:**

<input checked="" type="checkbox"/>	 <b>Financial Stewardship &amp; Asset Management</b>	<input type="checkbox"/>	 <b>Reliable Core Services</b>
<input type="checkbox"/>	 <b>Vibrant Economic Climate</b>	<input type="checkbox"/>	 <b>Quality Programs &amp; Amenities</b>
<input type="checkbox"/>	 <b>Engaged Community</b>	<input type="checkbox"/>	 <b>Healthy Workforce</b>
<input type="checkbox"/>	 <b>Supportive Technology</b>	<input type="checkbox"/>	 <b>Collaborative Regional Partner</b>



**Kathleen M. Kelly**  
(303) 298-1601 tel  
(303) 298-1627 fax  
*kathleen@kellypc.com*

**MEMORANDUM**

TO: Mayor Stolzmann and City Councilmembers  
City of Louisville

FROM: Kathleen M. Kelly /s/

DATE: January 23, 2020

RE: Metropolitan Districts

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**Introduction.** This memorandum has been drafted with assistance from the City’s special district counsel, Kim Crawford with Butler Snow, to provide you general information on a number of topics related to the formation of metropolitan districts, and to assist with the discussion at your January 28<sup>th</sup> Study Session. It is intended to assist you in evaluating district issues generally, and is not intended to address specific issues for specific existing or proposed districts. Ms. Crawford will be attending the Study Session and can answer more specific questions about the public finance aspects of special districts, including how bonds are issued and the appropriateness of certain limitations or restrictions in metro district service plans.

**Purposes of Metro Districts.** A metropolitan district (or “metro district”) is a special purpose local government that provides two or more of the following functions: street improvements; water facilities; sanitation facilities; park and recreation facilities; safety protection; transportation; television relay and transmission; and mosquito control. A metro district is organized pursuant to the same laws applicable to other types of special districts already existing within the City, such as the Colorado Tech Center Metropolitan District, the Takoda Metropolitan District, and the Louisville Fire Protection District. Rather than being a single purpose district, such as a fire district, a metro district provides at least two services. A metro district is a separate governmental entity, with a separate elected board and its own taxing and borrowing powers.

Metro districts are often established by developers to finance the significant up-front costs of constructing public improvements required in connection with development, such as water lines, sewer lines, street improvements, storm drainage, etc. Often the district will finance and install improvements, and then dedicate those improvements to a municipality; under such a scenario,

the district would remain in existence to levy taxes and pay its debt. A district may also own and maintain specific improvements, and impose an operating mill levy in addition to a debt service mill levy. A district can issue tax-exempt municipal bonds, and levy property taxes to repay the bonds. This access to the tax-exempt municipal bond financing mechanism is the primary financial advantage to a developer forming a metropolitan district. A district can also impose fees and charges for construction or use of improvements, if so permitted by its service plan.

**Revenue Raising Powers of Metro Districts.** Metro districts are authorized to raise revenue in several ways:

- May levy a property tax imposed on the property within the district;
- May levy special assessments on benefitted property within the district; and
- May impose fees, rates, tolls, charges, and penalties for revenue-producing services or facilities.

**Metro District Financing.** Metro districts may issue general obligation bonds, revenue bonds, and special assessment bonds.

**Contents of Metro District Service Plans.** Section 32-1-202(2) of the state statutes require the service plan for a metro district contain the following:

- A description of the proposed services;
- 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 by a modification or amendment of the service plan. 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 is required to notify the City Council of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.
- A preliminary engineering or architectural survey showing how the proposed services are to be provided
- A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed metro district;

- 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 metro district are compatible with the City's standards;
- 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;
- A description of any arrangement or proposed arrangement with any political subdivision for the performance of any services between the proposed metro district and such other political subdivision, and, if a form contract to be used is available, it shall be attached to the service plan;
- Information, along with other evidence presented at a hearing (see next section, below) satisfactory to establish each of the criteria set forth in C.R.S. § 32-1-203, if applicable, is met; and
- Such additional information as the City Council may require by resolution on which to base its findings pursuant to C.R.S. § 32-1-203.

**Procedures and Criteria for Formation of a Metro District.** The formation of a metro district requires generally the following:

- Establishment of a service plan for the district, and submission of the service plan to the appropriate governing body for approval. If a district is to be located wholly within the City, the service plan must be approved by City Council resolution after a public hearing. (When a district is located within a county, the plan must be submitted to the board of county commissioners.) If the district will be located wholly within the City, the City has a great deal of influence over the content of the service plan because the City possesses, in essence, a veto power over the formation of the district.

The statutes authorize the City Council to approve, conditionally approve or disapprove a proposed service plan. If the service plan is disapproved, a court may remand the matter back to the municipality for another hearing *if* the court determines the municipality's action was arbitrary, capricious or unreasonable. With regard to review criteria, the statutes provide the governing body "*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; and

(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.

This last finding is discussed further below in the section entitled “Financial Issues.”

- If the service plan is approved, the district proponents file a petition for organization with the district court in the county in which the territory of the proposed district is situated.
- A court hearing is held on the proposed district, after compliance with certain notice requirements.
- Approval by the court and the setting of an election on the proposed district (the “organizational election”).
- An “organizational election” is held on the proposed formation of the district. Eligible electors at district elections include persons registered to vote in Colorado who: are residents of the district; or owns (or spouse or civil union partner owns) taxable real or personal property in the district. A person obligated to pay taxes under a contract to purchase taxable property is considered an owner.

In a “developer district,” the voters in this election are usually the developer and a small number of affiliated landowners. At this election, the district also usually seeks and obtains all voter approvals required by applicable law (including TABOR) for any district taxes, debt, and other fiscal obligations.

**Issues from City's Perspective.** The City Council may already be aware of some of the issues that can arise with special districts within a municipality, including:

- The City Council, as the governing body of the one and only “general purpose” local government in the area, may desire to establish overriding priorities for key issues affecting its citizens. A metro district, however, has its own elected officials and may choose to pursue its own priorities within its boundaries, which may or may not conflict with the City’s priorities.
- For this reason, the establishment of a metro district can erode the power of the City Council to determine the City’s direction and destiny—a measure of the City’s power is, in essence, transferred to the district. To reduce problems in this area, a service plan can place limits on a district’s powers and autonomy.
- A district’s voting constituency (as well as its governing body) is made up of “eligible electors,” who are not necessarily taxpayers and need not be residents of the district. In the early period after formation, when key financial decisions are made, the taxpaying electors and governing body members are typically limited to those directly connected with the developer. In addition, on an ongoing basis, the interests of nonresident taxpaying electors may not necessarily be aligned with those of residents. In residential districts, control of the district is ultimately transferred to the residents; however, in a multiple-district structure this control may not include the ability of the residents to impact financial decisions already made or obligations already incurred by the district.
- A municipality is typically a highly visible form of local government, while a district can be “invisible.” Citizens often do not even know that one or more services are being provided by districts. In the event of dissatisfaction with those services, the City can become the focus of complaints, because everyone knows where “City Hall” is, but not necessarily “Metro District Hall.” Therefore, care should be taken to distinguish the roles of the City and any districts.
- Because a district can be “invisible,” citizens and homeowners may not be fully aware of the tax consequences of residing within the boundaries of one or more districts. If district boundaries encompass only a portion of the City, one resident’s overall property tax burden may be different from another’s. In the typical development infrastructure financing district, service plan approval is commonly sought for financing that imposes an additional mill levy of 50 mills for debt.
- In addition to differential taxes for those owning property located within or without a specific district, additional district taxes may be perceived as having an effect the City’s ability to raise its own taxes. Therefore, some assessment is typically made regarding the appropriateness of both differential and overlapping tax mill levies. Some municipalities

address these issues by capping the mill levies a district may impose, irrespective of whether such a cap is otherwise required by the statute.

State law authorizes a district to issue general obligation bonds if it meets the statutory debt limit (which is that the total general obligation debt of the district is either less than \$2 million dollars or does not exceed 50% of the valuation for assessment of the taxable property located within the district).

Notwithstanding the debt limit mentioned above, bonds can be issued if the debt fits in to one of the exceptions to the debt limit restriction, such as the bonds being rated in one of the four highest rating categories by a rating agency, or is issued to financial institutions or institutional investors. Additionally, bonds may be issued outside of the debt limit if the mill levy on the bonds does not exceed 50 mills. So most “new” metro districts issue bonds that are limited to repayment by whatever revenue 50 mills generates, but some districts have higher mill levies, and some have lower, so mill levies between districts, even districts in the same or similar locations, may fluctuate.

- Similarly, when a district provides services in only a portion of the City, a resident may receive different types and levels of services from neighboring development, depending on where they live, and dissatisfaction may result. Conversely, a district may provide amenities or savings in housing costs, by allocating the initial improvements over time, that are not realized in non-district developments. Further, a district may provide funds for additional projects beyond those required by the City’s land development standards.
- In a “worst-case scenario,” a district may default on its bonds, causing potential problems for the residents, bondholders and City. As you may know, well-publicized problems arose with metro districts in the 1980s, when bonds were issued, infrastructure was built, and the developer became financially insolvent before full build-out; this left a small number of homeowners saddled with massive property tax levies to repay the bonds. In response to these problems, the statutes were substantially amended to impose greater debt and mill levy limitations, and to impose certain requirements on how district financing is issued and sold. These provisions create incentives to protect homeowners through mill levy limits and were intended to reduce the risk of unlimited mill levies in limited tax districts. The limited tax nature of bonds authorized under most service plans are intended to mitigate this risk, but it is still important that the service plan include limitations and provisions to ensure the financial viability of the district and reduce the risks associated with bond default.
- Unless controlled properly, districts can lead to proliferation and fragmentation of local government, “turf battles” over properties to be served, inefficient use of tax resources,

duplication in facilities and functions, and citizen confusion and unhappiness. And although, theoretically, districts are not supposed to duplicate services – in fact, that is one of the required findings the local government body makes when approving a service plan – district residents may perceive they are being taxed by both the City and the district for the same services.

Some of the issues identified above can be addressed with appropriate provisions in the service plan. For this reason, the service plan is a key document from the City’s standpoint.

**Financial Issues.** The statutes require that the service plan for a proposed district include a financial plan describing all proposed indebtedness. As noted above, the applicable review criteria provide that the governing body *shall disapprove* a proposed service plan unless the governing body is presented satisfactory evidence that “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 following discusses this statutory finding, as well as investor and tax base issues that may be relevant considerations in reviewing a metro district proposal.

**A. Required Statutory Finding.** It is possible that, if a municipality approves a service plan for a special district that subsequently defaults on its bonds (or otherwise becomes involved in litigation or controversy as to its financial obligations), the municipality might be sued on the theory that it failed to meet a standard of care based on the above-quoted statutory provision. We know of no case where this has actually occurred, and there are very strong counter-arguments and defenses that could be made against such a claim; for example, it could be argued that, if no contrary evidence is presented, the municipality may simply rely on the special district proponents’ statements that the district’s financial plan is sound. But, of course, even a successful legal defense can be expensive.

Apart from this risk, a municipality presumably has a general interest in fulfilling its statutory duties in a good-faith, reasonable manner, and there may also be concerns as to possible impacts on the reputation of the municipality or an associated community or area. Therefore, for all these types of reasons, the City may wish to impose standards for proposed service plans aimed at minimizing the risks of special district defaults and financial controversies. Also, conducting a diligent and responsible service plan review may in itself afford considerable protection for the City.

If the City determines that its consideration of the financial plan for a proposed special district should be substantive rather than pro forma, the following are some service plan elements that may affect the ability of the City Council to make the required statutory finding:

- Specificity of financial plan. As with other aspects of the service plan, the financial plan should be specific and mandatory in nature – that is, all proposed indebtedness of the district should be described with reasonable specificity, and no financing transactions structured other than as shown in the financial plan should be considered authorized. (Property tax-based financing is the most common type of special district debt and may be viewed relatively favorably since it is the least dependent on continuing special district operations.)

It is common that the financial plan presented in a service plan will not likely match exactly the structure in which bonds are issued in the future, because the finance plan attached to the service plan is simply a snapshot of the market at the time of approval of the service plan. However, the City Council could require or limit how future bonds are issued that are not structured in essentially the same way. For example, the financial plan in most service plans contemplates the issuance of limited tax general obligation bonds. When it comes time to actually issue the bonds, the proposed bond issue may contemplate both a “senior lien” limited tax general obligation bond and a subordinate series of bonds (i.e., issuing subordinate bonds or even third level subordinate bonds). The City could require the district submit that updated financing plan to the City in the event that subordinate bonds are contemplated. The City could also require an independent financial advisor provide some assurance to the City at the time of proposed issuance that the proposed finance plan is reasonable.

- Debt restrictions. Support for the required statutory finding can also be derived from service plan provisions that limit the special district’s debt in various ways, including the following: maximum dollar amount of debt (as well as limits on interest rate and other terms); maximum term for all debt; requirements that development reach a certain point before the special district incurs financial obligations to third parties; refunding debt restrictions; and provisions demonstrating that a reasonable portion of the cost of public improvements is paid by the developer rather than being financed with district debt. State law debt limits are described above, but the City can further limit or provide parameters around the issuance of debt by a metro district.

We generally encourage metro district proponents to include some mix of the above types of limitations and provisions in their proposed service plans, even if not required by statute.

B. Investor suitability. This area of concern overlaps, but is also somewhat separate from, support for the statutory finding of financial ability as discussed above. For liability and other reasons, it may be reasonable for the City to seek assurances in the service plan that special

district bonds will be marketed only to investors having financial sophistication and resources appropriate for the risk level of the bonds (even though such assurances do not really provide support for the required statutory finding). Investor suitability requirements typically combine minimum bond denomination requirements with provisions limiting sales to institutional or accredited investors, with investment grade ratings and/or credit enhancement as an alternative. Concerns as to the marketing of the district's bonds may also be addressed by requiring a City disclaimer in all offering materials. Early issues of bonds by metro districts are not typically sold to the general public. These bonds are considered "riskier" bonds as the development has typically not yet occurred and is not guaranteed. The bonds are sold at higher interest rates and to "accredited investors" who are individuals or organizations that are sophisticated investors and thus able to bear the risk of loss of their investment. Additionally, these bonds are typically sold in denominations of \$500,000, so the purchasers of these bonds are financially able to purchase bonds in large denominations.

In some instances, a district may want to issue bonds for the commencement of public infrastructure before they are able to be sold to investors, even accredited investors. In that case, a district may issue a bond to a developer, which would allow the district to start these improvements, and then the district would "refund" this obligation when the district has some assessed value and issues bonds. These obligations sometimes take the form of "cash flow bonds," and are not repaid until the proposed district issues bonds to the public. Sometimes these bonds are structured in such a way that any unpaid amounts, principal and interest, continue to accrue interest on the interest, or "compound" interest. The City Council should consider whether it wants to prohibit or at least regulate the possible issuance of this type of financing in the service plan.

Frequently districts enter into agreements pursuant to which a district agrees to reimburse a developer for up front costs of public infrastructure. This agreement may or may not take the form of an actual bond, and may or may not accrue interest. The City could restrict the repayment of developer "debt" by limiting the interest rate payable on developer debt or bonds, or putting similar restrictions on this issuance.

C. Protection of taxpayers and tax base. Finally, service plans may be required to state a maximum mill levy in order to protect future owners of property within the special district from excessive property taxes (if the special district issues property-tax based debt and then does not develop as planned). Mill levy limits are typically subject to a "Gallagher adjustment" to compensate for changes in the legally prescribed ratio of assessed value to market value, providing that such adjustment does not, to the extent possible, enhance or diminish actual tax revenues.

Special district proponents sometimes propose a mill levy limit that becomes inapplicable when the district's ratio of debt to assessed valuation drops below 50%, or a limit which applies only to the debt service mill levy. Provisions qualifying the mill levy limit should be closely evaluated in terms of the City's policy goals, particularly since the policy behind a mill levy limit may need to be balanced against the policy of avoiding special district defaults. Taxpayer protection provisions might also include prohibitions or limitations on non-property tax fees and charges that can be imposed by the special district.

**Service Plan Amendments / Material Modifications.** At any time that a district is taking actions, like issuing bonds, which actions are outside the limits of a service plan, a "material modification" is deemed to have occurred. In some instances, a material modification will require a service plan amendment. In others, it may be cured, or at least addressed, by the 45-day notice. Service plan amendments need to go through the same process of notice and hearing as the original service plan. It is recommended that any provisions of a service plan that are of particular concern to the City Council provide that any deviation from such provisions would be a material modification that require either consent of the City Council or an amendment of the service plan, as deemed appropriate by the City Council.

**Recommendations.** The following are some recommendations that might be considered in a service plan review process, in order to maintain control, flexibility, and protection. As noted above, implementing these recommendations is often a matter of negotiation with district proponents. The following is intended to generally introduce these recommendations to you, as some or all of them may be matters for more specific discussion in the context of a particular proposal.

- Ensure that the district is established primarily for infrastructure financing, and limit the provision of ongoing services by the district to those expressly permitted by the City either in the service plan or an intergovernmental agreement between the City and the metro district, particularly if these services could duplicate those that the City can provide.
- Require the district to construct all facilities and public improvements to the standards of the City and other entities having jurisdiction, and to dedicate them, at no cost, to the City or other appropriate entities upon completion.
- Include provisions in the service plan to ensure that the City can require the dissolution of the district at such time as is in the City's best interests. The plan should include provisions requiring the district to cooperate in its own dissolution, subject to applicable law. The absence of outstanding district debt, while not an absolute requirement for dissolution, is certainly a simplifying factor. However, districts can be dissolved for all

purposes except to certify a mill levy each year to pay debt service on any outstanding bonds.

- Require specificity in the financial plan and, if desired, limitations in the financial plan that go above what state statute requires.
- Prohibit changes from being made to the district's boundaries unless first approved by the City Council. Within a multiple-district structure, it may be appropriate to allow boundary changes among the districts, but only for property within the development.
- If a multiple-district structure is permitted, require safeguards to ensure that property owners in all districts are able to meaningfully participate in financial decisions affecting them.
- Require both the district proponents and the district, when formed, to execute indemnity letters in favor of the City; however, the practical value of any indemnity is of course limited by the financial resources of the indemnifying party.
- The service plan (and/or related intergovernmental agreement) should also include agreements as to payment of and security for the City's expenses in connection with service plan modifications, administrative approvals and the statutory process for review, every five years, of the status of the district's financing.

**Conclusion.** The above information is intended as an overview of metro district issues. If desired, we can provide more specific information on any of the issues noted above or on how these issues are addressed within specific service plan proposals.

If you have any questions, please feel free to contact me.

cc: Heather Balser, City Manager  
Kevin Watson, Finance Director  
Rob Zuccaro, Planning and Building Safety Director

# Metropolitan Districts

City of Louisville  
City Council Study Session  
January 28, 2020

Kathleen Kelly, Kelly PC  
Louisville City Attorney

Kim Crawford, Butler Snow LLP  
Special Public Finance Counsel

## What is a Metropolitan District?

- A type of “special district” organized under Colorado law
- Is a separate political subdivision and a “quasi-municipal corporation”
- Similar to other special districts with a limited purpose – i.e., fire district or recreation district – but called a metropolitan district because they provide two or more services
- Has its own
  - Board of Directors (usually five)
  - Elections
  - Powers and Duties
- Governed by state law and a service plan

## How are Metropolitan Districts Used?

- Statutes provide list of services that districts may be authorized to provide
- Developers often establish metro districts to finance public improvements required to serve a project, either directly or through reimbursements
  - For example, water lines, sewer lines, streets, storm drainage
- Property taxes generated from district mill levy, imposed on taxable property within the district, pays for the improvements
- District may also impose fees, if permitted in service plan
- District may conduct ongoing maintenance, or provide ongoing services, if permitted in service plan

## Metro Districts as Local Governments

- Subject to Open Meetings Law and Open Records Act
- Subject to Local Government Budget Law and Audit Law
- Statutes contain requirements intended to provide transparency
  - Annual reports
  - Notices to electors
  - Public disclosure document and map
- But unless otherwise required in service plan, district meetings not required to be held within the district or even the City

## Metro District Revenue Raising Powers

- May levy a property tax imposed on the property within the district
- May levy special assessments on benefitted property within the district
- May impose fees, rates, tolls, charges and penalties for revenue-producing services or facilities

## Metro District Financing

- General obligation bonds
- Revenue bonds
- Special assessment bonds
- Access to tax-exempt municipal bond financing is financially advantageous
- Under certain circumstances may issue bonds backed by a pledge of tax increment revenue (TIFS) or public improvement fees (PIFS) pursuant to agreements with such financing authorities (urban renewal authorities)

## Metro District Service Plans

- State statutes require service plan to contain:
  - A description of the proposed services
  - A financial plan showing how these services are to be financed
    - All proposed indebtedness is to be displayed together with a schedule showing the year or years in which the debt is scheduled to be issued
    - The district board of directors is required to notify the City Council of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan
  - A preliminary engineering survey
  - A map of the proposed district, an estimate of the population, and valuation for assessment
  - A general description of the facilities to be constructed and the standards of such construction

## Metro District Service Plans

- State statutory requirements, continued:
  - General description of the major expenses related to the organization and initial operation of the district
    - Land acquisition, engineering services, legal services, administrative services, initial proposed indebtedness
  - Description of any proposed IGAs, with form if available
  - Information to establish each of the statutory criteria in C.R.S. 32-1-203 are met
  - Such additional information as the City Council may require by resolution on which to base its findings pursuant to C.R.S. 32-1-203.

## Organizational Requirements

- Formation of a metro district within the City requires:
  - Filing of a proposed service plan with the City
  - City Council holds hearing, with notice provided to public
  - City Council may approve, conditionally approve, or disapprove the proposed service plan
  - If disapproved, standard of review is arbitrary, capricious, or unreasonable
  - If approved, district proponents file petition with district court
    - Petition signed by 30% or 200, whichever is less, taxpaying electors within the proposed district
  - After hearing, court orders election on organization, board election, and financial matters

## District's Organizational Election

- Eligible electors include persons registered to vote in Colorado who
  - Are residents of the district; or
  - Own (or spouse or civil union partner owns) taxable real or personal property in the district
    - A person obligated to pay taxes under a contract to purchase taxable property in the district is considered an owner
- In a “developer district,” these voters are usually the developer and a small number of affiliated landowners (typically employees or related parties of the developer) who are eligible electors based on a “contract to purchase”
- At this election, the district usually seeks and obtains all voter approvals required by law (including TABOR) for any district taxes, debt, and other financial obligations

## Criteria for Formation

- State statutes provide the City Council “shall disapprove” the service plan unless evidence satisfactory to the City Council of each of the following is presented:
  - There is sufficient existing and projected need for organized service in the area to be serviced by the proposed district
  - The existing service in the area to be served by the proposed district is inadequate for present and future needs
  - The proposed district is capable of providing economical and sufficient service to the area within the proposed boundaries
  - The area to be included in the proposed district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis

## Some Policy Issues

- City Council may desire to remain the one and only “general purpose” local government in the area
  - City to establish priorities for key issues affecting all citizens
  - Metro district would have its own elected officials and may choose different priorities (but still subject to City codes and regulations)
- Metro districts can erode the power of the City Council to determine the City’s direction and destiny
  - A measure of power is, in essence, transferred to the district
- District’s governing body and voting constituency is made up of “eligible electors”
  - Not necessarily taxpayers or residents of the district or City

## Policy Issues, continued

- Interests of nonresident district electors may not be aligned with those of current or future residents
- In multi-district structure, residents may not be able to impact financial decisions made by developers in early stages of development affecting property owners
- While the City is a highly visible form of government, a district can seem invisible
  - City can become the focus of district resident complaints
- Because district can seem invisible, tax consequences not always apparent
- Unequal tax burdens of property owners within the district and neighboring areas

## Policy Issues, continued

- Unequal services or amenities within the district and neighboring areas
- District mill levy could impact City's ability to raise taxes
  - Property owners paying the additional district mill levy may not be willing or able to vote in favor of additional City taxes (however any City tax increase would be submitted to all voters within the City)
- Proliferation and fragmentation of local governments can lead to
  - "Turf battles"
  - Inefficient use of tax resources
  - Perceived duplication of facilities and functions
  - Citizen confusion

## Policy Issues, continued

- In worst-case scenario, district may default on its bonds, causing potential problems for the residents, bondholders, and City.
  - Statutory debt and mill levy limitations and other requirements enacted to address impacts of default
  - Limited tax nature of bonds authorized under most service plans are intended to mitigate this risk (no default occurs so long as the district is imposing a “required mill levy”)
  - But still important that service plan include limitations and provisions to ensure financial viability of the district and reduce the risk associated with bond default
- Note that bond default by a metro district within the City is not a City default, but City reputation is a consideration

## Some Financial Issues

- Statutes require service plan to include a financial plan
- Statutes also provide City Council “shall disapprove” proposed service plan unless satisfactory evidence is presented to the City Council that the area to be included in the proposed district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis
- This required finding raises some considerations for the City
  - What standard of care applies?
  - Can City Council simply rely on the proponent’s statements that the financial plan is sound?
  - Should the City Council utilize its own consultants to review the financial plan and any market projections?

## Financial Issues, continued

- Some service plan elements related to the statutory finding
  - Specificity of financial plan
    - Plan should be specific and mandatory in nature
    - All proposed indebtedness should be described with reasonable specificity
    - No financing transactions structured other than as shown in the financial plan should be considered authorized
    - Financial plan is a snapshot of the market at the time of service plan approval, but bonds should be structured and issued as reflected in the financial plan as closely as possible
    - City Council could require an updated financial plan if bonds are to be structured differently (i.e., issuing subordinate bonds)

## Financial Issues, continued

- Debt restrictions
  - Maximum dollar amount of debt
  - Maximum term for all debt
  - Requirements that development reach a certain point before district incurs financial obligations to third parties
  - Refunding debt restrictions
  - Developer contribution toward public improvements
  - Restrictions on developer debt and “cash flow bonds”
    - Prohibit or regulate issuance
    - Prohibit compounding of interest

## Financial Issues, continued

- Investor suitability
  - Restriction that debt only be marketed to investors having financial sophistication and resources appropriate for the level of risk
  - Typically a combination of minimum bond denomination and limiting sales to institutional or accredited investors
  - Use of City disclaimer statement in all offering materials
- Protection of taxpayers and tax base
  - Include a maximum mill levy
  - Typically subject to “Gallagher adjustment”
    - As adjusted, should not enhance or diminish actual tax revenues
  - Consider appropriateness of “mill levy roll-off” provision once the “debt to assessed” ratio is less than 50%

## Service Plan Amendments and Material Modifications

- Any action taken by the district outside the limits of the service plan is considered a “material modification”
  - Sometimes requires service plan amendment
  - Other times can be cured, or at least addressed, by the 45-day notice
- Provisions in service plan of particular concern to the City Council should provide that any deviation constitutes a material modification
- Amendment of service plan follows same process before City Council as initial approval of service plan

## Service Plan Recommendations

- Ensure district is primarily for financing public improvements and limit ongoing maintenance and other services to those expressly approved by the City in service plan or IGA
- Require construction of improvements to City standards
- Include requirement that the district dissolve upon City request
  - If debt has already been issued, district can be dissolved for all purposes except to certify mill levy each year to pay debt service
  - Sunset provision, dissolve if no debt issued within a specific time period
- Require specificity in the financial plan
- Prohibit boundary changes without City Council approval

## Recommendations, continued

- If multiple-district structure is permitted, require safeguards to ensure property owners in all districts are able to meaningfully participate in financial decisions
- Require bond refinancing to show net present value savings
- Require developer and district (when formed) to execute indemnity letters in favor of the City
- Require property owner disclosures
- Limit exercise of eminent domain
- Prohibit receipt of monies from other governmental sources, such as Conservation Trust Funds and GoCo Funds, except pursuant to IGA with the City
- Require district agree not to exercise sales and use tax exemption

## Recommendations, continued

- Require district meetings to be held within the City's municipal limits
- Consider separate limit on O&M mill levy
- Consider requiring district proponents to pay City expenses in connection with service plan modifications, administrative approvals, and statutory process for review every five years
- Consider frequency and type of ongoing notices to require the district provide the City, to keep the City informed of activities within the district

Questions?

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# Colorado metro districts and developers create billions in debt, leaving homeowners with soaring tax bills

Districts were created as answer to TABOR, give developers enormous power

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By **DAVID MIGOYA** | dmigoya@denverpost.com | The Denver Post

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The two-story, five-bedroom place just east of Loveland was as sweet as Tlene and Tyler Sterkel dreamed it would be, from the custom finishes in the basement to the granite countertops and the en-suite master bedroom.

Then their first property tax bill arrived. Already on a tight budget, they stared at a bill that had gone from \$818 at their closing in 2014 to nearly \$3,500 barely a year later, then \$4,400 two years after that.

“We were suddenly buried in property taxes we couldn’t afford,” Tlene Sterkel said. “The mortgage on the house we could afford just fine. But the taxes murdered us. We never saw it coming.”

Their \$312,000 home was one of more than 1,900 planned for a community known as Thompson River Ranch, a 650-acre development on the edge of Johnstown. About 650 of those houses are finished today.

Nearly half the Sterkels’ tax bill — and the reason it had shot up so quickly

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Metro districts are taxing authorities created by subdivision developers, with the consent of the local government, for the sole purpose of selling government-like bonds to finance their projects. Repayment of the bonds is tied to future property taxes assessed to the homes that will eventually be built.



Joe Amon, The Denver Post

Construction continues on a street in the Thompson River Ranch community in Johnstown on Oct. 14, 2019.

But a Denver Post investigation into the inner workings of the state's 1,800 metro districts found a governmental system that operates without the usual oversight of voters, without the usual restrictions on conflicts of interest, and without the usual checks and balances to ensure communities won't spiral into insolvency.

Instead, Colorado law permits developers to elect themselves to serve on a district's board of directors, then use that position to approve tens of millions of dollars in public financing for their businesses, and leverage the property taxes on homes they haven't yet built. No regulations stop these developer-controlled boards from approving arrangements that are financially advantageous to their business, allowing them to finance overly ambitious plans without fear of liability, knowing future homeowners ultimately shoulder the burden.

It has virtually become the exclusive mechanism by which all new development occurs in Colorado today.

The Sterkels are among tens of thousands of Colorado homeowners buried

By law, property owners must vote on any new tax and metro districts are no different, except that when a district is created, the only voters are the developers, their spouses, and a few business associates. The Post found instances in which as few as two or three people created a metro district, then approved millions of dollars of tax obligations for communities of hundreds of homes that didn't yet exist but would be on the hook to pay for decades.

The Post also found a recurring practice of developers buying the very public financing bonds they first approved as metro district board members — a conflict of interest they acknowledge by filing statements with the Colorado secretary of state's office. The bonds that developers typically buy, known as junior bonds, are designed to remain unpaid for decades, allowing interest to compound while ballooning their investment returns.

The Post found at least a dozen large metro districts in Colorado are dangerously underwater with hundreds of millions of dollars of debt and homeowners swimming in hefty property tax bills. The debt obligations are so much higher than the assessed value of the homes leveraged to repay them — some as much as 200 percent higher — that they are unlikely to ever catch up. A few will never stop paying.

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The amount of debt that developer-controlled metro districts have authorized statewide already sits at nearly 100 times Colorado's state government debt of \$17 billion, according to a Denver Post review of thousands of pages of district filings with state and local government offices detailing that debt.

By 2015, those districts had already issued \$19 billion of that, according to the most complete public records available, with another \$1.2 trillion in borrowing waiting to be sold, The Post found. And the number grows each time a new metro district is formed.

The newspaper also found instances where a district's runaway debt stalled only after residents wrestled control of the boards — the Fossil Ridge Metropolitan District in Jefferson County among them — causing developers to resign in the face of recall petitions before they could approve additional funding.

"It's like being stuck in the never-ending cycle of a bad credit card," said Charles Wolfersberger, a Thornton accountant whose eponymous firm

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In Thompson Crossing, for example, homeowners' property taxes haven't been enough to repay bonds the district sold 13 years ago to build its infrastructure — the sidewalks, sewers, streets, and water lines. A refinancing plan has sunk the community deeper into debt, forcing some homeowners to try and sell their way out, while others, like the Sterkels, fell to foreclosure.

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The Sterkels admit they could have been better consumers and checked for the property tax details of their community before purchasing. But with no tax history in a new development, it's unclear how much they could have learned about the tax obligations they would eventually face or the tax promises the metro district had made long before their home was ever built.

"It just doesn't seem that difficult to let a homebuyer in a new development know what to expect," Sterkel said. "It almost seems dishonest not to."

The law doesn't require developers to make readily available or easily found the types of disclosures the Sterkels say could have helped them. Information about future property taxes are often not provided to buyers in new developments, minimal warnings about the general risks of a special taxing district are buried deep in a stack of mortgage paperwork, and complex tax advisories and transparency notices are filed with relatively unknown government offices rather than given to the homeowners they're intended to inform.

■ ***RELATED: [Read more from this Denver Post investigation here.](#)***

"It is us who give (developers) the power of taxation," said Loveland Mayor Jacki Marsh, whose city wrestles with development and has approved only a handful of metro districts, Centerra the largest among them. "It's un-American, really. The metro district, when it's formed, now has the authority to tax people who don't even live there yet, to borrow money that other people have to pay back. And it's only a couple of people making that decision."



Joe Amon, The Denver Post

Jacki Marsh, Mayor of Loveland, in her downtown shop Rabbask Designs, in Loveland on Oct. 11, 2019.

In Windsor, a city of about 18,000 people in Weld and Larimer counties and home to more metro districts than any other city of its size, officials see metro districts as the only way to meet the needs of a growing community.

“If we had not accepted and worked with metro districts, we’d not be able to develop as we have, and the land and amenities would be just too expensive,” said Kim Emil, Windsor’s assistant city attorney. “Development has been crazy.”

Of the more than 3,000 special districts in Colorado today — there were fewer than 1,300 of them a decade ago — better than half are metropolitan districts, every one of them created by a developer, The Post found in a review of public filings with the Colorado Department of Local Affairs.

“Almost every home that sold in the (Denver) metro area that’s new (construction) falls within a metro district,” said Bruce Rau, Oakwood Homes’ president of land acquisition and the president of the Thompson Crossing metro district. “There are very few that don’t.”



Joe Amon, The Denver Post

Bruce Rau listens during the budget discussion in a meeting of the Thompson Crossing Metro Districts 3-6 at the Abundant Life Tabernacle in Johnstown on Sept. 17, 2019. Rau is president of all 4 districts.

## TABOR ushers in new era

There was a time when developers recouped the costs of building a subdivision entirely through the sale of the homes they created. For that reason, subdivisions were often limited in size or scope. Developers kept control of their costs by minimizing how much they spent.

The largest expense is a development's initial infrastructure, which goes into the ground long before a single home is built. Costs quickly run into the tens of millions of dollars. In the past, it was simply a part of the investment a developer made on a new project with the hope of recouping it as homes were sold.

Sometimes a developer was fortunate enough to gain the cooperation of a city or county, which would issue its own bonds to help pay for the infrastructure that connected the new subdivision to the rest of the community. The process rarely included any say from voters as elected officials handled the public policy.

Though metropolitan districts have existed since the 1940s, they weren't as favorable a method of construction, mostly because of the technical details and restrictions on getting projects done

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“Originally metro districts were disfavored by municipalities and counties,” said attorney Brian Matisse, an expert on special districts. “But over time, these counties and municipalities came to see (them) as a way of shifting the costs of public services onto these districts and away from their taxpayers.”

The watershed moment, Matisse said, was the success of the Highlands Ranch Metropolitan District, which was organized in the 1980s and became the largest unincorporated community in the U.S. The Highlands Ranch service plan was eventually amended to allow it to provide most of the services and infrastructure of a municipality.

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Any thoughts of doing a development “the old way,” with cities taking on the infrastructure financing burdens, came to a screeching halt with the passage of the Taxpayer’s Bill of Rights (TABOR) in 1992, requiring any tax increase to be put before the electorate. Voters routinely refused to approve increases to pay for someone else’s construction because, as one financial expert put it, “growth should pay for itself.”

“Metro districts in Colorado exist for a specific reason: to finance public infrastructure,” said Sam Sharp, managing director of public finance and head of the special district group at D.A. Davidson & Co. in Denver, one of the most prominent underwriters of metro district bonds in the state. “It’s mostly because TABOR limits cities from doing it.”

***RELATED: Even Highlands Ranch metro districts, which are considered successful, remain nearly \$30 million in debt***

At about the same time, changes to the Special District Act — the law that was devised for the creation of fire, library and recreational districts — greatly expanded the powers of metropolitan districts by allowing the quasi-government entity to issue unlimited debt as long as the investors were banks or institutions — a group that would eventually include the developers themselves.

“Large infrastructure is difficult to finance, and it’s most difficult to finance in the private sector. You almost can’t get bank financing today for infrastructure,” Rau explained. “Metro districts are a very efficient way to do this.”



Joe Amon, The Denver Post

Home construction continues in the Thompson River Ranch community in Johnstown on Oct. 14, 2019.

The proposers of the district, usually developers who own all the land, create a plan for what's to be built and a rough parameter for how that will happen and how much it is likely to cost. The plan typically outlines how high property taxes can go to repay that cost — all of it dependent on a developer actually building all of the houses promised.

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Once approved by the sponsoring authority, such as a city or county government, the proposers must petition the nearest state district court to be formed and legally recognized.

Then, there is a vote of the property owners within the proposed district — generally just the developers, their spouses and a select handful of business associates who were given an interest in a small piece of property. In a review of thousands of pages of special district documents, The Post found one example where 12 people voted and another where the electorate was two people. The average is about six voters, the review found.

Those same voters also get to decide who will serve on the district's board of directors — nearly always each other — and formalize how much debt the district can incur, debt that's based on no concrete formula yet will be paid by homeowners who eventually move into the district. In the most

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Rau said boards make it that high because getting voter approval at a later date to levy additional taxes – such as after homeowners move in – could be problematic.

“Once you’ve completed the (initial) election, it’s very difficult to do something different,” he said. “These districts have very long lives with many twists and turns.”

Proponents say the arrangement actually benefits both developer and homeowner by spreading the cost of millions of dollars in infrastructure improvements over several years and paying it with property taxes rather than charging it up-front, divvied up per house, in a one-lump sum at the time of purchase.

“The structure provides for the vital infrastructure needed to accommodate our growing population and planned communities, which people want,” said Ann Terry, executive director of the statewide Special District Association in Denver. “They don’t want communities with roads that don’t connect, or no green space or good schools. They want a nice place to live.”

Critics of special districts contend bond interest rates are far higher than today’s 30-year mortgages, which remain at a fixed level rather than fluctuate, as the property tax assessments have done.

“Most mortgages today are at 4% or 5% over 30 years, so the up-front expense can be spread out just like the bonds,” Wolfersberger said. “And the bonds are at a far higher percentage rate. That math doesn’t really hold up anymore.”

## **How a \$1.8 million investment balloons to \$22 million payday**

When developers create a metro district, there is often a reimbursement agreement they sign – they typically are on both sides of that agreement, as the developer and as a member of the metro district board of directors – guaranteeing the district will repay any money the developer has spent during infrastructure construction.

This agreement frequently calls for bonds to be sold to investors to cover the repayment. The developer-controlled board generally agrees to sell the tax-free bonds in chunks; the largest amounts are known as senior bonds, and the smaller ones are known as junior or subordinate bonds.

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Although institutional investors such as banks and pension funds often buy a metro district's bonds, The Post found that district developers, with increasing regularity, are keeping the smaller junior bonds for themselves, according to thousands of pages of bond documents reviewed by the newspaper.

Junior bonds generally have a higher interest rate of return and are repaid only after the senior bonds are retired. As unpaid interest on the junior bonds accrues, the potential paydays to the developers are impressive.

For example, the developer-controlled Big Dry Creek Metropolitan District in Adams County in 2017 issued a pair of senior bonds totaling \$11 million at about 6% interest to cover the costs of building its infrastructure. They were primarily sold to institutional investors and are to be paid over 30 years.

The district also issued junior bonds for \$1.8 million at 9% interest, also for infrastructure costs.



Joe Amon, The Denver Post

Home construction continues at Thompson Crossing in Johnstown on Sept. 19, 2019.

The buyer of those junior bonds will see a \$1.8 million investment become a \$22 million payday, according to bond documents. That's because no payments are scheduled to be made to its investors for at least 20 years, effectively ballooning the interest rate to 29.5%.

Of the five members of the district's board of directors to approve the bonds and sale to the investor, two worked for Lennar and two others for the developer, TCIRATO LLC, according to conflict of interest statements filed with the Colorado secretary of state.

"This seems to be a common theme lately, where developers are cashing in on their investments by purchasing their own bonds at ridiculously high rates," Wolfersberger said. "The returns on the investment, what they're charging homeowners, borders on usury abuse."

Lennar representatives did not respond to emails from The Post regarding this story.

The Post found dozens of similar examples across the state, with developers buying a district's tax-free junior bonds – essentially loaning themselves money at huge returns on the backs of future homeowners who buy into the development.

It happened at the Banning Lewis Metropolitan District No. 4 in Colorado Springs last year. The district, the projected site of 3,581 homes, issued more than \$9.4 million in bonds to start development. Records show its developer, Oakwood Homes, which also controls the metro district board that issued the bonds, has an interest in \$1.9 million of junior bonds with an expected payday of more than \$10 million.

**RELATED:** *How developers use bonds, mill levies to ensure they are repaid*

"Developers take the risks to take on those bonds and get paid back over time," Rau explained.

The same is true at Amber Creek Metropolitan District in Thornton, which issued \$17 million in senior bonds in 2017 to investors at varying interest rates up to 7.75%. Another \$1.7 million in junior bonds went to its developer/builder, Lennar Colorado, at 10.7% interest with an expected payday of \$25.8 million over 30 years, bond documents show. The effective interest rate: 39.6%.

Though many say the repayments are not guaranteed – the junior bonds are often referred to as "hope bonds" – and typically have an expiration date that wipes the debt clean if the bonds are not paid in time, bond documents reviewed by The Post show in nearly every case a one-sentence clause buried deep within hundreds of pages of bond paperwork requires a

“In the event the Junior Lien Pledged Revenue is insufficient or anticipated to be insufficient to pay the principal of, premium if any, and interest on the Bonds when due, the District shall use its best efforts to refinance, refund, or otherwise restructure the Bonds so as to avoid such payment shortfall,” according to the Amber Creek junior-lien bond indenture of trust agreement and several other agreements reviewed by The Post.

“How it’s set up, the bondholders – the developers – agree they’ll never fully get paid back and we keep making the payments pretty much forever,” said James Gertson, a resident in Thompson River Ranch who ran for the district board of directors to better understand what was happening to his tax bills.

Frustrated, Gertson eventually resigned from the board, sold his home and moved out.

“The developers weren’t at all worried because they would get their money in the end, through a refinance or other district obligation on the homeowners,” Gertson said. “The whole system is rigged against the homeowners. It’s not set up for them at all. It’s set up for the developers.”



Joe Amon, The Denver Post

Home construction continues in the Thompson River Ranch community in Johnstown on Oct. 14, 2019.

## Increasing taxes catch homeowners by surprise

Homeowners in metro districts frequently say they're caught by surprise when the first property tax bill arrives, often with an enormous increase because Colorado is always a year behind in assessing its taxes. This year's bill pays for last year's assessment, so a new home in a metro district won't see the actual property tax costs for a year or two after the buyer moves in.

Homebuyers already have various self-help tools they can use to determine whether they live in a metro district, SDA's Terry said. There's also a paragraph in real estate closing paperwork that lets them know they could be in a special district that has additional taxes, she said.

Some say the paragraph is hardly specific enough and others say it's too confusing: "Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. ... Buyers should investigate the special taxing districts in which the property is located by contacting the county treasurer, ... the board of county commissioners, the county clerk and recorder, or the county assessor."

There is also transparency paperwork filed with county officials and available online with the Colorado Division of Local Affairs, whose task it is to monitor districts.

"If a homebuyer is considering a home in a planned community, realizing they will have more mills assessed for a house than they would in Lakewood or Denver, for example, those are the choices they can make," Terry said. "That's the beauty of a democracy."

Tlene Sterkel said that's fine and good, but thinks there's a simpler way: "Why can't they just tell me what it's going to cost?"

Like others, the Sterkels' troubles began long before they ever thought of moving in.

Eight years earlier, in 2006, the board that represented their metro district issued more than \$24 million in bonds to pay for installing the subdivision's infrastructure.

Made up entirely of members tied to Oakwood Homes and WR Investments, the board approved bonds that were long-term promises to repay the developers for money they fronted on the project. The more homes they built, the more tax money available to pay it all back.

“Most of these metro districts are set up as a very cozy relationship,” Wolfersberger said.

If the number of new homes didn't keep up with the schedule to repay the bonds, homeowners would quickly find themselves in a jam as taxes reached their zenith. For the Sterkels, had they stayed, they would have been in their 60s by the time the streets they drove or the sidewalks they walked in their neighborhood would be paid for.

That's if things went according to plan. They didn't.

“We had the biggest increase in our first year, about \$700 right away,” Patrick Horell said of his property taxes at Thompson River Ranch. “The next time, it went up another \$200. Our values were the same, but the levy kept increasing. It just keeps increasing and doesn't look like it will stop.”



Joe Amon, The Denver Post

Patrick and Katherine Horell with their four-month-old daughter Emerson and Aspen, the family golden retriever, in their home at the Thompson River Ranch community in Johnstown on Oct. 14, 2019.

The Sterkels also watched as their tax bill kept climbing out of reach, seemingly without explanation. Their home was foreclosed in 2016, just two years after they signed the papers to buy it. Their taxes had exploded to nearly \$5,000, most of it to pay for the metro district's debt.

“We tried everything we could to find a way to keep our house,” Tlene said.

Rau said it's up to homeowners to mind their finances.

“In their first year, homeowners will see much lower costs, and then the second year they will see those additional costs,” he said. “Like anyone, if you have a lower cost and don't budget for the higher cost, you get frustrated.”

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Critics say the problem isn't bad budgeting by homeowners, it's poor money management by the developer-controlled boards that created the debt. And despite that problem, they say, only the homeowners feel the pain.

The bonds issued by Thompson Crossing in 2006 were recently refinanced because the property taxes collected from the homes that had been built there weren't enough to cover the interest payments. The \$24 million tab had exploded to \$34 million, according to bond records.



Joe Amon, The Denver Post

Natalie Allen, new District 4 board member, outside her home in the Thompson River Ranch community in Johnstown on Oct. 15, 2019.

“It's quite obvious that things are not running well here,” said Natalie Allen, a resident and newly appointed board member at Thompson Crossing. “We were not able to pay the bondholders and we were told we didn't have enough revenue. Oakwood said they need to build 1,000 more homes for that to happen, and this year they built 57. That's just not a

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As part of the refinancing deal, the owners of those initial bonds – unknown to dozens of residents in Thompson Ranch who were interviewed for this story – have agreed to accept a single \$28 million payday to cover it all and walk away.

The bonds' owner – Metro District Acquisition Fund 1 – is made up of close professional associates who have worked on other metro district projects with Oakwood Homes, the subdivision's builder and controlling force, The Post found.

Thompson River resident Jerome Burke II was miffed when he learned of the arrangement.

“The builder takes out a loan in the guise of the metro district board, passes the obligation to repay the loan (bonds) to the residents yet to come,” he said. “And then we learn the ones buying the bonds are their buddies. How is this a win/win for anyone other than themselves?”

Metro district advocates insist that they are only looking out for Colorado's future.

“Metro districts are not evil or malicious,” Terry said. “They are an incredible tool to create infrastructure and build homes in Colorado.”

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### Learn more

To find information about individual metro districts, including budget documents, director and election information, and service plans, go to the [Colorado Department of Local Affairs website](#).

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## Citations

Colorado Department of Local Affairs, special districts. [Source link](#)

Nonprofit 990 tax returns, at [GildeStar.org](#). [Source link](#)

Electronic Municipal Market Access. [Source link](#)

## Sourcing & Methodology

The Denver Post delved into the inner workings of metropolitan districts in Colorado after hearing from several residents and some builders about their concerns regarding rising property taxes.

The Post began by researching how metro districts function and reviewing the available body of work concerning this form of quasi-government, both in the private sector as well as public.

The Post studied state and federal lawsuits and other documents and reports to locate experts and sources of information relative to metro districts and their operations.

As the scope of the issue unfolded, The Post focused on the areas that appeared to have the most concern and impact: debt and democracy. How metro districts establish their own debt and issue that debt was critically important to learning how property tax increases occur. Also, unraveling how metro district elections occur and how the election process works offered insight into a democracy that doesn't actually work as one.

Once the scope of the issue was identified, The Post spent more than eight months culling through a sampling of the more than 1,800 metro districts that exist in Colorado to see which worked and which did not. By locating residents and board members in each, The Post was able to stitch together a profile of how metro districts actually operate and what about them

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Resources include GuideStar.org for nonprofit tax information, corporate filings with the Colorado Secretary of State's office, financial filings a district makes with the Colorado Department of Local Affairs as well as the Electronic Municipal Market Access of the Municipal Securities Rulemaking Board.

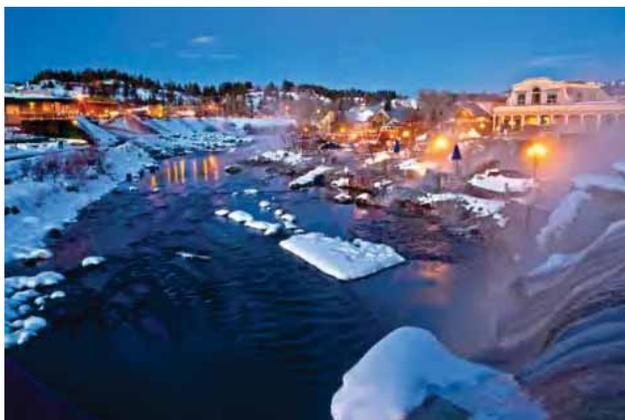
Ultimately The Post reviewed nearly 10,000 pages of documents from those sources and interviewed dozens of developers, builders, residents, community leaders and officials in various offices to piece together its series, Metro Districts: Debt & Democracy.

**TAGS: COLORADO DEPARTMENT OF LOCAL AFFAIRS, COLORADO SECRETARY OF STATE'S OFFICE, CONSTRUCTION, DEVELOPMENT, HOUSING, HOUSING DEVELOPMENT, INFRASTRUCTURE, INTEREST RATES, INVESTMENT, METRO DISTRICTS: DEBT & DEMOCRACY, MORTGAGES, OAKWOOD HOMES, REAL ESTATE, TABOR, TAXES, TAXPAYER'S BILL OF RIGHTS**

**David Migoya**

David writes investigative projects and has been at The Denver Post since 1999. He was a founding member of the investigations team before moving on to write about banking, finance, human services and consumer affairs, then returned to investigations. David has also worked at publications in New York City, St. Louis and Detroit over a 36-year career that began at the Post in 1983.

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# There is little transparency for metro district fees that are supposed to benefit the community

The Post found there are no requirements to divulge how the community portion of the funds is spent or who will manage them



Joe Amon, The Denver Post

Home construction continues at Thompson Crossing in Johnstown on Sept. 19, 2019.

By **DAVID MIGOYA** | dmigoya@denverpost.com | The Denver Post

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It turned into a back-and-forth ordeal without resolution.

Dozens of metropolitan districts across Colorado have for years collected hundreds of dollars, sometimes thousands, from homeowners who sell their houses, a fee assessed no matter how frequently a home is sold, according to a Denver Post analysis of how the districts function.

A portion of the collected fees is given to the district's developers. The rest is to be used for the benefit of the community through a nonprofit of the developer's choice.

Nearly all of the districts that assess the fee will be doing it into the next century.

But there are no requirements for anyone to divulge how the community portion of the funds is to be spent, who will manage the funds, and residents of the metro districts don't necessarily have a say in where it goes, The Post found.

The fees are just one of many funding streams developers have created to profit from the subdivisions they build. [The Post on Sunday highlighted how property taxes within metro districts can rise almost without limit to pay for a community's infrastructure — sidewalks, streets, sewers and lighting — and how developers and builders can profit handsomely from the setup.](#)

Metro district residents say they're confounded by the additional fees, especially when it appears their community is to be the beneficiary, only to learn it's not that simple.

"This is not rocket science," said James Gertson. "A two-sided basketball court for everyone to use. Should be easy, but I gave up trying."

For the past five years, residents of the Thompson Crossing Metropolitan District in Larimer County who sell their homes have paid the district a fee. At Thompson Crossing, the transfer fee is 0.5% of the sales price, so a house that sells for \$250,000 would owe a \$1,250 transfer fee to the district.

Three-quarters of that amount — or \$937.50 — goes to the developer to help cover expenses for building the community.

The rest, about \$312, goes into a nonprofit foundation at the metro district that is called the Thompson River Ranch Foundation.

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“I found out that every time a house was sold in the Ranch, basically a royalty fee went to Oakwood Homes, the developer, and a tiny bit to this foundation. That money was literally just sitting there,” Gertson said. “So we thought, why not use it for the community? We were shot down. Not only that, we had no say in how it was spent or on what.”

Gertson still doesn't know how much money sits within the Thompson River Ranch Foundation and no public record yet exists to let anyone know. Nonprofits are only required to file tax returns if their revenue exceeds \$50,000 and the foundation hasn't filed any since it was formed in 2014.

Colorado incorporation records offer no names for the foundation's board of directors, there is no website and there are no reports offered to Thompson residents for how much has been collected.

Tax records generated when the foundation was created show a board member, Eric Montoya, is also on the board of another Oakwood Homes-associated foundation for the Green Valley Ranch community. An Oakwood Homes spokeswoman said the other board members are Amy Schwartz and company CEO Pat Hamill.

Two other Oakwood Homes executives — Bruce Rau and Brandon Wyszynski — sat on the Thompson Crossing metro district board of directors with Gertson, so he asked them about the foundation money.



Joe Amon, The Denver Post

“It’s like a black hole,” Gertson said. “I got stalled for months and months with no answers back, mostly that they were trying to figure out who had control and where it was.”

Wendy Aiello, a spokeswoman for the foundation, told The Denver Post it expected to file a tax return in November and would not offer any additional information about its finances, except to say it is paying for movies in the community’s park, nor would she address Gertson’s difficulty in getting any information. The foundation had not provided The Post a copy of its tax return as of press time.

That any of the transfer fee money goes to a nonprofit is a relatively new process. Until 2011, residents in nearly every metro district across Colorado were required to pay a transfer fee of as much as 3% of the sale price of their home to the metro district. The entire amount was given to the developer.

Lawsuits forced a legislative change so that developments built after October 2011 are prevented from charging any transfer fee. Districts that existed before 2011, such as Thompson Crossing, could continue to make the transfer fee assessment, but had to give a quarter of the money they collect to a nonprofit that could only use the funds to support “cultural, educational, charitable ... and recreational” activities, among other things — and not necessarily in the district.

A few metro district boards, typically controlled by the developers who are building the community, created their own foundation, as Oakwood Homes did at Thompson River Ranch.

Others, such as North Creek Farms in Adams County, funnel the funds to a trustee who later is to disperse them to “one or more nonprofit” groups for the “direct or indirect benefit of the community.”

There is no requirement to let anyone know where their money went.

**RELATED:** [Read more from this Denver Post investigation here.](#)

As with Thompson, The Post could not locate any information about funds sent to the Florida-based trustee named in North Creek’s transfer-fee documents, CovenantClearinghouse.com. Its website only says what the fees are for, not where the nonprofit portion of those fees is to go. Efforts to reach the trustee were unsuccessful.

One of the districts he manages, Potomac Farms in Adams County, charges a 1% transfer fee for any home sale on the property for the next 99 years and sends it to CovenantClearinghouse.com, Wolfersberger said.

“Although the developer created the metro district and developed the land within the district, the transfer fee was set up and attached to the land by the developer, not the district,” Wolfersberger said. “So the district is unable to undo that.”

One Colorado nonprofit — Green Valley Ranch Foundation — receives transfer fee money from several metro districts built by Oakwood Homes, according to the foundation’s tax filings reviewed by The Post.

According to its most recent tax filings, the Green Valley Ranch foundation in 2018 received nearly \$150,000, though it’s unclear how much came from transfer fees. If all of it did, then developer Oakwood Homes was able to keep three-quarters of the total, or \$450,000.

Records show the Green Valley Ranch foundation donated \$46,000 in 2017 to a variety of programs and \$129,828 in 2018 including:

- \$1,000 to Denver School of Science and Technology
- \$25,000 to First Tee program at Green Valley Ranch Golf Course
- \$13,000 to Cleo Parker Robinson Dance
- \$23,400 to Martin Luther King Jr. Early College
- \$30,000 to Swallow Hill Music program

Foundation board member Amy Schwartz, who does most of its work, said not having residents be a part of the organization’s decision-making process for grants “is just kind of the way we’ve done it” and isn’t really necessary.

“I think we feel pretty engaged with the community and really confident of our relationship with them,” she told The Post. “I’m in the unique position to understand because that’s my job.”

Following the 2011 lawsuit ruling, some metro districts chose to do away with anything called a transfer fee rather than set up a foundation or use a charity trustee. They simply call it something else.

At Amber Creek Metropolitan District in Thornton, its board charges a flat \$250 fee on the sale of any home and calls it an “account administration

Wolfersberger, whose management firm handles the operations at Amber Creek and Buffalo Highlands, said the costs associated with changing ownership on legal paperwork are built into the flat monthly billing he charges the district.

“But these fees were established before we worked with the districts and were passed when each district’s board was comprised of employees and owners of the builders and land developer,” he explained.

Other districts have developed an array of fees that largely go to the developer.

In the Sterling Ranch Metropolitan District, there are a number of different “development fees” assessed on single-family lots that, in total, are expected to generate more than \$21 million, all of it for refunding the developer for infrastructure costs, district records show.

In the Pradera subdivision in Parker, new buyers are assessed a one-time “marketing fee” of 0.75% on the sale price of the home, also to be kept by the developer.

The Anthology West Metropolitan District in Parker assesses a \$2,000 “capital facilities fee” on a residential home that is issued a certificate of occupancy. And the Wheatlands Metropolitan District in eastern Aurora imposes a “working capital fee” of \$150 anytime a home is sold, of which \$50 is kept for operating costs and \$100 goes into a park fund.

The length of time the fees, transfer or otherwise, remain in effect ranges from 50 to 99 years.

“At the minimum, you would think there would be some community input on how this gets used,” Gertson said.

### **Learn more**

To find information about individual metro districts, including budget documents, director and election information, and service plans, go to the [Colorado Department of Local Affairs website](https://www.colorado.gov/local-affairs).

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## Citations

Colorado Department of Local Affairs, special districts.  
<https://dola.colorado.gov/lgis/>

Nonprofit 990 tax returns at GuideStar.org. <https://www.guidestar.org/>

## Sourcing & Methodology

The Denver Post delved into the inner workings of metropolitan districts in Colorado after hearing from several residents and some builders about their concerns regarding rising property taxes.

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The Post studied state and federal lawsuits and other documents and reports to locate experts and sources of information relative to metro districts and their operations.

As the scope of the issue unfolded, The Post focused on the areas that appeared to have the most concern and impact: debt and democracy. How metro districts establish their own debt and issue that debt was critically important to learning how property tax increases occur. Also, unraveling

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Once the scope of the issue was identified, The Post spent more than eight months culling through a sampling of the more than 1,800 metro districts that exist in Colorado to see which worked and which did not. By locating residents and board members in each, The Post was able to stitch together a profile of how metro districts actually operate and what it is about them that is causing the concerns residents brought to the newspaper that instigated the investigation in the first place.

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TAGS: **CHARITY, DEMOCRACY, DENVER SCHOOL OF SCIENCE AND TECHNOLOGY, DEVELOPMENT, FINANCES, HOUSING, INFRASTRUCTURE, METRO DISTRICTS: DEBT & DEMOCRACY, NONPROFITS, OAKWOOD HOMES**

**David Migoya**

David writes investigative projects and has been at The Denver Post since 1999. He was a founding member of the investigations team before moving on to write about banking, finance, human services and consumer affairs, then returned to investigations. David has also worked at publications in New York City, St. Louis and Detroit over a 36-year career that began at the Post in 1983.

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# Editorial: Rein in the unlimited taxing powers of developers

Denver Post investigation shows metro districts, developers create billions in debt, leaving homeowners with soaring tax bills



Joe Amon, The Denver Post

Construction continues on a street in the Thompson River Ranch community in Johnstown, Colorado on Oct. 14, 2019. The neighborhood is in a developer controlled metropolitan district that has the authority to set taxes and fees, sometimes for decades.

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By **THE DENVER POST EDITORIAL BOARD** |

December 11, 2019 at 6:00 am

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73

As it turns out, giving developers taxing and bonding authority was a bad idea

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Just because we're \$17 billion into this failed experiment of trusting for-profit companies with taxpayer dollars doesn't mean it's too late to stop. In fact, a new metropolitan district is likely being considered by a city council or county commission near you this month. These city and county officials should stop approving the formation of new districts immediately until local officials and state lawmakers are able to gain control of the situation.

The situation, to briefly recap the first part of The Denver Post's investigation "[Metro Districts: Debt and Democracy](#)," is dire. Post reporter David Migoya uncovered multiple ways developers in Colorado are abusing the almost unlimited power granted to them through these metropolitan districts.

Almost no new development is occurring in Colorado that isn't funded, at least in part, with taxpayer money. But it isn't local elected officials spending that money and guarding against fraud and abuse. The developers themselves have complete control, sometimes for decades.

Migoya's reporting included [disturbing examples of developers violating public trust](#).

**RELATED:** [Read more from the Denver Post investigation "Metro Districts: Debt & Democracy" here.](#)

We'll highlight one bad deal from among hundreds:

Lennar Corporation — one of the nation's largest homebuilders — is running a metropolitan district that will help pay for the development of a subdivision called Orchard Farms in Thornton. Homeowners in this relatively small community of about 450 homes on 154 acres are being fleeced by compounding interest, bad debt and transfer fees.

According to a bond document obtained by Migoya as part of his investigation, homeowners in this neighborhood will be paying off the developer's debt until 2053. As of 2018, \$12.9 million in debt had been issued by Lennar's representatives on the metro district board, and it will be paid for through property taxes at rates that rival the city, county and school taxes combined.

Homeowners in Orchard Farms pay about 90 mills in property taxes for Adams County, Brighton School District No. 27J, a library district, a fire district, and the city of Thornton. But for the Big Dry Creek Metropolitan District (now known as Orchard Farms Metropolitan District) homeowners, as of the 2018 abstract of assessment, pay an additional 73 mills (55 mills for the developer's debt and 18 mills for operations of the metro district). For a home that has an actual value of \$500,000, a homeowner would pay about \$2,628 for their metro district taxes and \$3,240 for their schools, city and county governments, fire and library services.

But that \$12.9 million is only part of the story.

One of the bonds that employees of Lennar, who serve on the metropolitan district board, decided to issue are "cash flow" junior lien bonds, meaning there are no scheduled payments on the principal until 2035. During that time, the smaller \$1.9 million bonds will accrue interest at 9%. Lennar employees serving on the board of Big Dry Creek issued these cash flow bonds, and then Lennar purchased the bonds, meaning they will be repaid \$19.8 million by 2053 for a \$1.9 million initial investment. This self-dealing is unethical and must be stopped.

Other debt was packaged more responsibly and sold to outside investors at a reasonable interest rate with payments starting soon after closing. We find it suspicious that this \$2 million couldn't be included in the other bonds to save homeowners millions in debt payments. Why look for a better deal when this benefits the bottom line of the developer? It's a clever way for the builder to maximize their own revenue while not "technically" exceeding the statutory limit that metro district property taxes can not exceed 55 mills for debt.

Oh, and don't forget that the developer, acting as the metro board, also is imposing an "operations fee" which is a \$564 a year fee that is used to pay for operations and maintenance of the district. A separate \$500 transfer fee is imposed every time a home is sold in the neighborhood (homeowners likely won't know about this fee until they sell their home and pay closing costs). The bond document for the "cash flow" bonds also disclosed that a "capital fee" could be imposed on the district to repay debt, although no fee is being assessed now.

To illustrate the depths of greed we are talking about, it should be noted that Lennar did loan the district \$77,702 to get up and running (attorney's fees. etc.). Lennar will be repaid with 5% interest for a total of \$110.124 by

Basically every new subdivision on the Front Range, including urban infill projects in Denver, has a similar scheme of debt, taxes and fees in place likely with no oversight from anyone, except maybe your local newspaper reporter.

City and county officials have lost control of billions of taxpayer dollars. Before any more of these projects are approved significant guardrails and controls need to be put in place.

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# Bruce Rau is one of the most elected men in Colorado but doesn't live in any of the metro districts he represents

Rau has registered more conflicts of interest in his elected capacity than any other official in the state



Joe Amon, The Denver Post

Attorney Jennifer Ivey, left, sits at the head of the table with Bruce Rau, center, during a meeting of the Thompson Crossing Metro Districts 3-6 at the Abundant Life Tabernacle in Johnstown on Sept. 17, 2019. Bruce Rau is president of all 4 districts.

By **DAVID MIGOYA** | [dmigoya@denverpost.com](mailto:dmigoya@denverpost.com) | The Denver Post

PUBLISHED: December 12, 2019 at 5:59 am | UPDATED: December 16, 2019 at 10:33 am

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Bruce Rau is one of the most elected men in Colorado.

And it's unlikely you've ever heard of him.

The 48-year-old Centennial resident sits on at least three dozen metropolitan district boards that, if fully developed and put together, would easily rank among the state's top 10 biggest cities.

Unlike any other public official in the state, however, metro district board members such as Rau — a registered Republican — don't have to actually live in any of the districts they represent. They wield some of the most broad-reaching taxing authority that impacts tens of thousands of people and can be elected by fewer than a dozen voters at a time — sometimes by none at all.

All of that because Colorado's Special District Act lets them.

Rau, an executive with Oakwood Homes, is also one of the most conflicted men in Colorado, having registered more conflicts of interest in his elected capacity than any other official in the state, according to documents filed with the secretary of state's office. He's done it for every single meeting for every single metro district board he sits on.

Every decision Rau makes for the metro districts he represents also benefits his employer, financially as well as practically. And because the other board members typically are also part of the same firm or tied to them in some manner, no one objects to the conflicts because they all have them as well.

“With metro districts, their purpose is primarily to fund construction of infrastructure,” Rau said in an interview with The Denver Post. “That's why they are formed, that's why they operate. My role as an elected official on one of those entities is to implement that purpose.”

**■** ***RELATED:** [Read more from this Denver Post investigation here.](#)*

In nearly every one of the districts he represents, Rau is considered a landowner and eligible to be on the board because he has a contract to purchase a sliver of land, usually from his employer, barely large enough to park his car.

“It's true I don't live in (the metro districts),” Rau said. “I don't see that as fully relevant, that where they live is at all important.”

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“Metropolitan district elections are problematic,” said Brian Matise, an attorney who has served on district boards as well as fought them in court. “The contracts to purchase are rarely recorded publicly and the elections are private affairs.”

Colorado law allows anyone who owns land within a proposed metropolitan district – or is someone with a contract to buy the land, no matter how small – to vote and run for its board of directors.

Because no one usually runs for the seats, and the land is owned by the developers, the board is often made up of developers themselves and a few trusted employees who simply appoint each other.

There are others, like Rau, who serve on multiple metro district boards around Colorado.

Developer Marc Cooper sits on 70 boards that make up 10 different development communities, The Post found. Jonathan Turner is on 48 boards that make up eight communities. Rau represents at least 11 planned communities.

“That whole bit of a developer parcel, a lot they simply split up to make themselves eligible to be on the board is unethical and immoral,” said James Gertson, a former resident and board member of Thompson Crossing Metropolitan District No. 4 in Larimer County. “The whole process was never really in the interest of the homeowners and once the builders and developers could use the system to their advantage, it ran rampant.”

**EDITORIAL: *Rein in the unlimited taxing powers of developers***

Election officials say they often don’t know how metro district elections are even put together or their outcome.

“If they conduct their own election, they’re supposed to send their numbers to us, but not all of them do,” said Jace Richards, Adams County’s voter-records supervisor.

County election officials don’t check to see if the candidates are even qualified for office because they’re not required to be a registered voter in the district – there was even a failed legislative effort last year to allow out-of-state residents to sit on metro district boards – and the election officers who are chosen by the district to monitor the process often are attorneys



Joe Amon, The Denver Post

District 4 assistant secretary Bill Stevens, center, listens during the budget discussion in a meeting of the Thompson Crossing Metro Districts 3-6 at the Abundant Life Tabernacle in Johnstown, Colorado on Sept. 17, 2019. Bruce Rau, foreground, is president of all 4 districts.

The land Rau and others contract to purchase typically is owned by the developer, who divides it up among trusted colleagues, according to documents filed with county election officials. Whenever a change in personnel needs to be made, one contract to purchase is simply switched with another and a new board member seated.

“I simply don’t understand how we can have someone elected by only a few people, yet give them the power to tax me and thousands of others without us having a say,” said Kalli De’Anso, a Thompson River Ranch resident whose board is headed by Rau. “Before we ever got here, he was deciding our fate, our future.”

### Learn more

To find information about individual metro districts, including budget documents, director and election information, and service plans, go to the [Colorado Department of Local Affairs website](https://www.colorado.gov/local-affairs).

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<https://dola.colorado.gov/lgis/>

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Electronic Municipal Market Access. <https://emma.msrb.org/>

<https://www.sos.state.co.us/Conflict/search>

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TAGS: **DEVELOPMENT, ELECTIONS, HOUSING DEVELOPMENT, INFRASTRUCTURE, METRO DISTRICTS: DEBT & DEMOCRACY, TAXES**



**David Migoya**

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# Metro district debt is decided long before residents move in, but some are trying to take back control

Families shoulder the debts, taxes and fees that are decided by people who don't even live there

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By **DAVID MIGOYA** | [dmigoya@denverpost.com](mailto:dmigoya@denverpost.com) | The Denver Post

PUBLISHED: December 12, 2019 at 6:00 am | UPDATED: December 12, 2019 at 10:24 am

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Nov. 3, 2015, was a big day for the 8,672 people who are one day expected to move into the Coal Creek Metropolitan District on the eastern edge of Aurora near Murphy Creek.

It was Election Day, and all the eligible voters within the 598 acres that made up the district were to cast their ballots on several key questions that would impact Coal Creek residents for generations.

The ballot questions took up 23 pages, but the most critical, after actually creating the five metro district pieces that make up Coal Creek, was whether the district could borrow up to \$192 million largely to repay the developers of the property for building the roads, sewers, and sidewalks there.

Every single one of the 28 questions on the ballot – including one that did away with term limits for the newly elected board members – passed unanimously.

Six to zero.

It was precisely the same outcome for all five of Coal Creek's metro districts because the same six people were voting.

“It might be years before this community is ever built, but on that day, a simple vote of six people determines the debt load for hundreds of families, many of them not even in existence yet,” said John Henderson, a longtime critic of how metro districts are formed. “As an attorney, I just find it repulsive.”

The six Coal Creek voters that day – landowner/developers Jonathan Perlmutter, a cousin to the congressman, Marc Cooper, Michael Sheldon, and Jonathan Alpert, as well as two of their wives – also unanimously elected the four men as the initial board of directors for all five of the districts. A fifth seat on each was left vacant.

None of them has responded to requests from The Denver Post for comment.

Two additional voters did not return their ballots, records show.

Those votes allow the board of directors – metro-district-speak for the equivalent of a mayor and city council – to levy property taxes, spend money and determine what gets built and what doesn't for years to come.

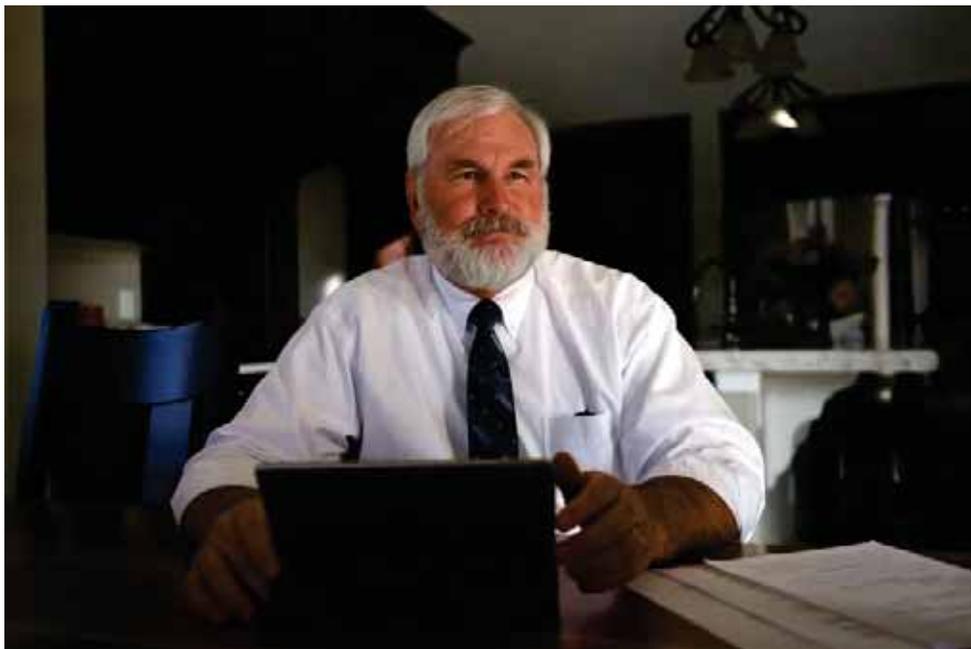
There was also a ballot question they approved allowing the board to raise taxes as it sees fit, basically neutralizing the Colorado Taxpayer's Bill of Rights, and to allow the district to keep any extra tax money it collects. There was even a question that allows the creation of a sales tax of up to 3% sometime in the future.

Much the same thing has happened hundreds of times across Colorado as new metropolitan districts are created – all 1,819 of them with an average of about 300 homes in each.

***RELATED: Colorado metro districts and developers create billions in debt, leaving homeowners with soaring tax bills***

In several instances, as few as two people made the decisions for the metro

“Anything passed by that board is the equivalent to a vote of the people,” Henderson said. “So 15 or 20 years from now, as long as that developer still has control of that board, those taxes never have to come to a vote again and residents will never know it.”



Joe Amon, The Denver Post

Attorney John Henderson at his home office in Lakewood on Oct. 16, 2019.

What’s more, unlike any other form of government in Colorado, where citizens vote for candidates who actually live within the area they wish to represent, members of metropolitan districts’ boards of directors rarely do.

That’s because, in 1970, legislators changed the law to allow taxpayer status and not actual residence to qualify someone to vote in a special taxing district. As a result, anyone who owns a piece of property or just has a contract to buy one – no matter how small the parcel might be – can vote in a metropolitan district as well as hold public office in one.

Board members with direct ties to a district’s developers regularly work both sides of the fiscal fence, often in several different districts at the same time. They approve tens of millions of dollars in financing obligations as district directors and their business pockets those same dollars.

“How do you balance that? I don’t think that’s difficult at all,” said Bruce Rau, an executive with builder Oakwood Homes and president of several metropolitan districts it is developing. “The purpose and activities of the

A number of other antics have occurred, The Post found, including board meetings held in corporate offices miles from the district or its residents, the posting of public meeting notices on light poles at the edge of barren farmland far from an actual home, and the frequent cancellation of board elections because no one ran for positions residents would later say they knew nothing about.

**RELATED:** *There is little transparency for metro district fees that are supposed to benefit the community*

“Elections are problematic,” said Brian Matise, an attorney who represents a number of metropolitan districts whose residents have taken control of its board of directors. “I ran for election in 2006 myself as a homeowner and immediately we changed the meeting place from somewhere outside the district to inside.”

The Post last week described how metro districts are carrying a debt load larger than Colorado’s state budget deficit, with thousands of residents on the hook for bonds they never approved yet pay each year in higher-than-average property taxes.

The taxes and the election can be confusing to homeowners who buy into a district and eventually realize there is no city hall, meetings are just once or twice a year and they have no actual say on matters such as property taxes.

“When we moved in, they made us sign something that we knew we were in a district,” said Fayre Ruszczuk, a resident of the Dancing Willows Metropolitan District in Jefferson County near West Bowles Avenue and South Simms Street. “And I read something that said this was all up to voters, all the bonds and property taxes to pay them, but we don’t actually get to vote.”



Joe Amon, The Denver Post

Fayre Ruszczyk, who says she will be running for the board of the Dancing Willows metro district, poses for a portrait in her home in Littleton on Oct. 10, 2019.

## “Master” districts and “servant” districts

When James Gertson moved into Thompson River Ranch in 2011, he didn't realize the subdivision was actually part of Thompson Crossing Metropolitan District No. 4.

It wasn't until he noticed a distinct jump in his property taxes that he began to question what was happening and who was behind it.

“I didn't know that I could run for the board until I started to research it,” said Gertson, a 37-year-old food-service deliveryman. “The board posted that if no one made a candidacy application, then there would be no election. They would appoint people; their own people.”

The notices were posted in the Johnstown Breeze newspaper.

“I didn't even know we had a newspaper in town,” Gertson said. “And neither did a dozen or more neighbors, so no one ever got the posting about the election.”

He researched the sitting members of the board of directors and learned each was connected to Oakwood Homes, the developer of the property.

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Gertson soon opted to run for election and in 2016, along with another resident, the two were appointed to open seats on the board of directors. There was no election.

Meetings were held at the Best Western Hotel in Loveland, a change from previously.

“Before, no one even knew there was a board meeting,” Gertson said. “The meetings were at the sales office in the neighborhood, which was pretty much their offices.”

**RELATED:** [\*Read more from this Denver Post investigation here.\*](#)

Gertson said he quickly learned of the district’s financial troubles — and a more important lesson: There wasn’t much he could do about it.

“That’s when I found out about master and servant districts,” Gertson said. “As long as they had control of the servant districts, and there was no way anyone could get onto the master district, we couldn’t change anything.”

Also called a “management district,” the master district is a small parcel of land typically owned by the developer and divided up into smaller pieces that are contracted for sale to partners or associates with the developer. In this way, only the members of the board of directors can ever be legal voters within the management district and can never be unseated by a resident in the subdivision.

Through a series of intergovernmental agreements drafted at the time the districts are created – when there were no homes and no other residents to vote on it – the management district establishes itself as the master, and the other districts where homeowners live supply the property tax money, known as the servant district.

“We had no control over how the money would get spent and couldn’t get anything done because of the way those agreements between the districts were set up,” Gertson explained. “And if we refused to send them the money, they would take us to court and it would be a very long, expensive battle. They understood where we were coming from, but on the other hand, they knew we couldn’t do anything about it.”

The five board seats on Thompson Crossing Metropolitan District’s controlling district when it was formed in 2005 were all developers – the same as they are today, records show.

Residents say they're hoping to control the district boards they're able to run for, but acknowledge they can only control their own district's finances – limited to refinancing bonds that were sold to pay the developers for the district's infrastructure.

“There are never open elections, the homebuilder controls the board, our taxes are obscene and all we do is shovel our money to the master district and have no say over any of that,” Thompson River Ranch resident Kalli De’Anso said. “They continue to raise our taxes unchecked and put the burden of their poor negotiations on the homeowner instead of fixing their mistakes. It’s going to bankrupt us.”

## **The Landmark decision allows metro district directors to go unchallenged**

In 2016, the Colorado Court of Appeals made a crucial decision in a metropolitan district lawsuit that should have had a far-reaching impact on district elections and who gets to run in them.

The case involved an Arapahoe County condominium development known as Landmark Towers, whose property owners sued when they learned they were included in the Marin Metropolitan District and would be taxed to pay for infrastructure on nearby homes that weren't theirs.

The managing partner of the project was Zachary Davidson. His unsupervised access to more than \$30 million in bond proceeds led to criminal charges for misusing public funds, embezzlement, and his eventual suicide.

Of critical importance was the initial court of appeals decision – there were be three decisions that included two from that court and one from the Colorado Supreme Court – that examined how Davidson and five of his business associates created the district and elected each other as the board of directors.

The court ruled that the 10-foot-square director's parcel in which the six each had a contract to purchase a small sliver “were sham agreements” even though each director was required to pay his own property taxes.

“The size of the individual parcels ... is so small that ownership of such a parcel would not permit any beneficial use,” the court wrote. “The obligation to pay taxes was illusory.”

As such, the court ruled that none of the directors was eligible to vote in the elections that created the districts, to run for the board of directors or to levy the property taxes on the metro district property owners.

“The court’s decision would still hold – and it still might in a new challenge – if not for the subsequent Landmark decision,” said Matisse, the attorney who represented the Landmark owners.

In its second decision, the court determined the condo owners missed a 35-day window after the district’s election in which a director’s right to the position can be challenged. In essence, it negated the court’s earlier sham-agreement determination.

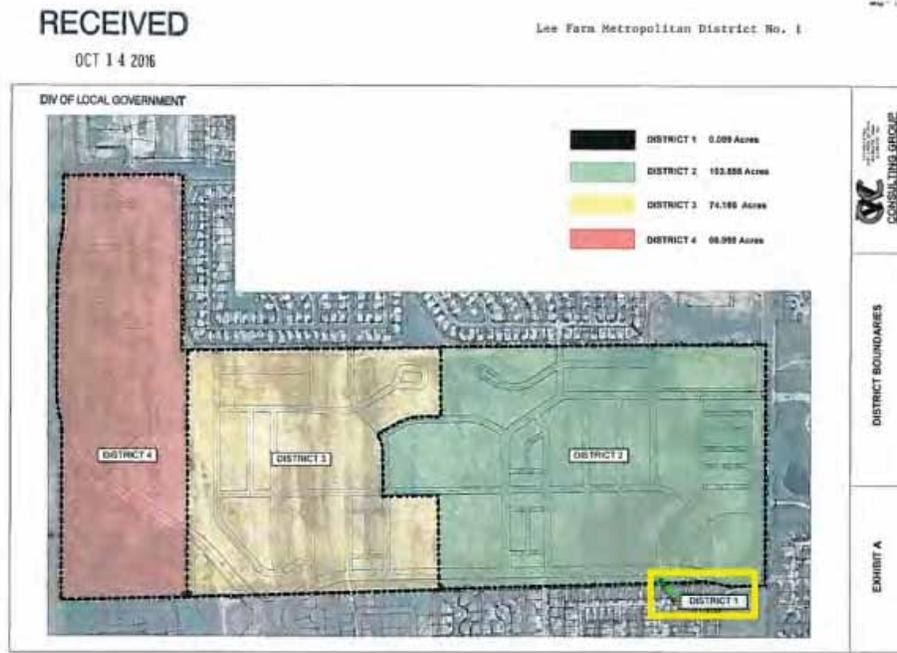
In addition, in an effort to forestall additional challenges to metro district directors, the legislature passed a law in 2016 that any director who held the position before May 2016 could not be challenged.

The Post found metro districts where directors’ parcels remain, but the property taxes are paid by the developer, not the director, and purchase contracts are not filed with the county recorder of deeds.

In the Cottonwood Highlands Metropolitan District No. 1 in Parker, the directors’ parcel is a tiny triangle of 15-by-20-by-13 feet at the end of a block.

County property records show it is owned by Lennar Colorado, the builder in the subdivision.

In the Lee Farm Metropolitan District in Loveland, the entirety of District No. 1 is a 20-foot-square piece of land at the southeast section of the 243-acre development.



Colorado Department of Local Affairs

The directors' parcel of the Lee Farm Metropolitan District (district 1, highlighted in yellow and marked with a lime green square) is 400 square feet in size. Click image to enlarge.

The other three districts that make up Lee Farm, where more than 736 residences are expected to hold 2,200 people, will pay the property taxes that will be controlled by the directors of the tinier district.

### Residents take back control

The residents in the Amber Creek Metropolitan District in Adams County were fed up.

Property taxes were on the rise and the board of directors representing them none of whom was actually elected by any of the residents in the district had just issued another \$19 million in bonds for new development that residents would be repaying for decades.

Residents began asking about the board and wondering why its meetings were held at Lennar Colorado's offices near the Meridian Golf Club, south of E-470 and Interstate 25 in Douglas County 44 miles away.

“Sadly, most homeowners are clueless and believe the city or state will save them from problems like this with metro districts,” said Charles Wolfersberger, whose accounting firm manages a number of metro districts and helps residents seek board representation. “They think the state oversees it all to ensure it’s running properly, but there’s no real mechanism to check it all. There are too many.”



Joe Amon, The Denver Post

Accountant Charles Wolfersberger poses for a portrait at one of his offices in Broomfield on Oct. 16, 2019.

The same happened at Buffalo Highlands Metro District, where residents wondered why they weren’t represented on the board of directors not long after more than \$20.5 million in bonds tied to their property taxes were issued in 2018. They mounted a recall challenge in August.

The board was made up of representatives from the same developer and homebuilder as was controlling the board in Amber Creek.

“It’s really about resident control over their own communities,” Wolfersberger said.

But figuring out how to get a board seat isn’t easy.

“I don’t know if they’re intentionally vague about it, but that’s what it feels like sometimes,” said Gertson, who was on the Thompson Crossing Metropolitan District No. 4 for two years. “It’s self-nomination and you

And unlike other elections, metro district board of director seats come up in May.



Joe Amon, The Denver Post

Attorney John Henderson speaks during public input after the city attorneys reviewed a Lakewood City Council study session at the Lakewood Civic Center on Oct. 21, 2019. Henderson is a longtime critic of how metro districts are formed.

“You really need to file paperwork in February in order to be on the ballot,” Wolfersberger said. “Get that wrong and you’re waiting another two years.”

Sometimes residents take control of the board in time enough to forestall any more financial troubles.

“For more than 11 years, Brookfield (Residential) employees ran the boards” at Fossil Ridge, Henderson said. “For more than 11 years they canceled the public elections ‘because no one wanted to run.’”

Residents mounted a recall campaign in early 2017, Henderson said, “and literally moments before the recall petitions were to be certified as sufficient, all the Brookfield employees resigned from the board.”

Just before their resignations, the board members were about to vote to issue another \$30 million in bonds – including \$17.7 million in bonds that Brookfield would purchase.

The district held its first public election in May 2018, “and not surprisingly, many people did run,” Henderson said.

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### Learn more

To find information about individual metro districts, including budget documents, director and election information, and service plans, go to the [Colorado Department of Local Affairs website](#).

## Popular in the Community

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### Citations

Colorado Department of Local Affairs, special districts.  
<https://dola.colorado.gov/lgis/>

Nonprofit 990 tax returns, at GuideStar.org. <https://www.guidestar.org/>

Electronic Municipal Market Access. <https://emma.msrb.org/>

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## Sourcing & Methodology

The Denver Post delved into the inner workings of metropolitan districts in Colorado after hearing from several residents and some builders about their concerns regarding rising property taxes.

The Post began by researching how metro districts function and reviewing the available body of work concerning this form of quasi-government, both in the private sector as well as public.

The Post studied state and federal lawsuits and other documents and reports to locate experts and sources of information relative to metro districts and their operations.

As the scope of the issue unfolded, The Post focused on the areas that appeared to have the most concern and impact: debt and democracy. How metro districts establish their own debt and issue that debt was critically important to learning how property tax increases occur. Also, unraveling how metro district elections occur and how the election process works offered insight into a democracy that doesn't actually work as one.

Once the scope of the issue was identified, The Post spent more than eight months culling through a sampling of the more than 1,800 metro districts that exist in Colorado to see which worked and which did not. By locating residents and board members in each, The Post was able to stitch together a profile of how metro districts actually operate and what it is about them that is causing the concerns residents brought to the newspaper that instigated the investigation in the first place.

Resources include GuideStar.org for nonprofit tax information, corporate filings and conflict of interest documents with the Colorado Secretary of State's office, financial filings a district makes with the Colorado Department of Local Affairs as well as the Electronic Municipal Market Access of the Municipal Securities Rulemaking Board.

Ultimately The Post reviewed nearly 10,000 pages of documents from those sources and interviewed dozens of developers, builders, residents, community leaders and officials in various offices to piece together its series, Metro Districts: Debt & Democracy.

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TAGS: **CONSTRUCTION, DEVELOPMENT, HOUSING, HOUSING DEVELOPMENT, INFRASTRUCTURE.**

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**BUSINESS > REAL ESTATE**

# Metro districts: Reporter David Migoya answers your questions

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By **DAVID MIGOYA** | dmigoya@denverpost.com | The Denver Post  
December 16, 2019 at 6:00 am

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The Denver Post spent eight months unraveling the inner workings of metropolitan districts in a series called Debt & Democracy. It showed how metro districts are essentially the exclusive way in which development gets done in our state, affecting thousands of homeowners who have little to no say in the taxes they have to pay. Readers were invited to send in their questions for additional insight and information from reporter David Migoya.

**How special districts emerged may be a better story. Who proposed the law, when?**

*J.W.*

**David Migoya:** Special districts have been around for many decades with some still in existence since the 1940s. Metropolitan districts, about which our stories focus, have undergone a number of revisions and changes since the 1970s, and more particularly in the 1980s with the advent of the Highlands Ranch Metropolitan District, the largest of its kind nationally.

**How do I find the financials of the metro district I belong to?**

*T.B.*

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The page is with alphabetic tabs, so click on the one that your district would begin with. Then scroll down to the particular district (remember to locate the # of the district since it might be important). Click and you'll see more choices.

Typically the "finance" tab or the "budget" tab will contain what you seek.

**Thanks for writing the informative article on metro districts in CO. My son is looking at buying a home in the Lakes at Centerra development in Loveland. Are you familiar with how well this development is or is not managed? Also, how would you recommend one goes about investigating the financial health and relative risk of buying in a specific metro district other than requesting information from the builder and reviewing tax increases?**

*D.B.*

**Migoya:** I can't say a lot about Centerra, except for what's in our stories. However, you'd do well to research their financials at the [Colorado Department of Local Affairs website](#), as described above.



RJ Sangosti, The Denver Post

Homes are under construction at Thompson River Ranch on Sept. 16, 2019 in Johnstown.

**Your article was very enlightening and well done. I would like to see the**

*F.H.*

**Migoya:** We'd publish that list, but it would be enormous. However, there is a way to see them.

If you'd check your county tax authority online and seek out the list of tax levies by taxing authority, you will see a complete list of all the metro districts that fall within that county.

**RELATED:** *Metro district debt is decided long before residents move in, but some are trying to take back control*

**Read your article about metro district taxes. What can homeowners do to reduce the bond payments?**

*Y.B.*

**Migoya:** Residents themselves can't change how much a district is paying for debt service since that figure is worked into their property tax bill. However, residents can petition their district board of directors to look at refinancing the existing bonds they already have in order to acquire a lower and more affordable interest rate and terms.

**Excellent article. Do these bonds eventually get paid and property taxes drop as a result? I recall being told at closing the bonds would be paid off in 20 years and property taxes would reduce as a result. I live in Pradera, Douglas County.**

*J.L.*

**Migoya:** Theoretically, the bonds get paid, should there be enough tax base from which to pull the money. Most don't and are simply refinanced, essentially extending the debt for another generation to pay. The bonds always get paid as that's required of the investors, though some might only be interest bonds. The question is whether the debt gets paid off. Refinancing is simply a new debt to pay for the old one.

**I looked at homes for years before buying, possibly unfortunately in a metro district. No realtor discussed any concerns. So if now stuck, what are the options for homeowners in a metro district?**

*K.H.*

**Migoya:** Get involved. The district board of directors, to which you are

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**Which districts have retired their debt, over what time period & for what amount?**

*L.M.*

**Migoya:** I am aware of two metro districts that dissolved after paying their debt: Todd Creek Metropolitan District #2 and Plum Creek Metropolitan District. Both no longer exist. There could be others. One other district — Highlands Ranch — is just now looking to retire all of its debt after nearly 40 years. The dollar amounts have fluctuated but their current amount owed is \$22.9 million. They expect to pay them in the next four years (and interest would be on top of that).

**I thought property tax was targeted for schools. When and how did this tax become a source of debt relief for developers?**

**Migoya:** With changes to the Special District Act in the 1980s, developers were allowed, as the metro district board of directors, to obligate future homeowners through their property taxes to repay the bonds the district issued to repay the developers for infrastructure.

**Is there a district map showing the Castle Rock Meadows districts 1, 2, & 7 as described in your article. We just purchased a house this past April in the Meadows.**

*R.H.*

**Migoya:** Yes there is. You can download a map [here \[PDF\]](#).

**RELATED:** [Colorado metro districts and developers create billions in debt, leaving homeowners with soaring tax bills](#)

**How do Metro Districts account for the maintenance, repair and replacement-burden of their development? Who reviews metro districts' development for adherence to such standards, codes and neighboring cities' operational repair capabilities?**

*A.G.*

**Migoya:** Each metro district board must approve an annual budget and file it with the [Colorado Department of Local Affairs](#). Those budgets will outline the proposed expenses for the year. The following year's audit will show the actual amount expended for operations, etc. More detailed information should be requested of the district, which is a public entity.

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**As a mortgage professional who advises dozens of clients annually what scares me the most is metro districts with junior bond holders. Where can I or my clients find out if a certain metro district allows for junior bond holders?**

*L.G.*

**Migoya:** Tricky answer. All metro districts, by their taxing and bonding authority, allow for junior bonds. Whether your district is one of them can be determined in a number of ways. You can check a district's financial filings with the [Colorado Department of Local Affairs](#), where they are required to file notice of general obligation debt. That notice will reflect if junior bonds have been sold (sometimes called subordinate debt). To determine if a developer is the holder of the bonds you'll have to request a copy of the bond agreement and the indenture of trust agreement from the district. Both are public records.

**I am curious about how to determine whether the district is ever going to pay off the debt or is in one of those endless downward cycles on which you so compellingly report?**

*A.T.*

**Migoya:** The debt service on the bonds will show up in a variety of locations including the annual budget, the finance audit, or, most likely, the bond-issue documents when the same happened. The latter are located at the EMMA website cited at the bottom of the online stories. Or you can Google EMMA, and find the one dealing with municipal bonds. Easy site to manage, but beware....bond docs can run into the hundreds of pages of very dense material. The contents table of the docs though should guide you and you'll find the payment timetable.

**Why did developers stop paying for this upfront and including it in the cost of the house?**

*A.D.*

**Migoya:** When they were allowed to become a metro district's board of directors with the authority to issue public debt leveraged by the property taxes of the homes they were building.

**Do these board members receive compensation for the meetings they attend?**

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**Migoya:** Yes. \$100 per meeting with an annual cap of \$1,600 per district board. A board member is also allowed to waive the compensation if they choose.

**RELATED:** *Colorado metro districts and developers create billions in debt, leaving homeowners with soaring tax bills*

**How does a potential homebuyer find out whether they are looking at a regular house, or in fact a house that is already underwater tax-wise and will never emerge?**

*G.H.*

**I live in a fairly new but smaller neighborhood, how can I tell if I live in one of these districts?**

*R.M.*

**Migoya:** I'll answer both questions: You can obtain a copy of the tax bill for a particular property from the county treasurer. It will list all the taxing entities for a property, including the metro district. Then you can locate the financial information about a district at the Colorado Department of Local Affairs website and look for all the debt service it is paying and compare it to the overall assessed value of the completed properties. Bonds are issued with the expectation of property completion to service the debt. The financials will show where things stand as of the last report.

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OPINION > OPINION COLUMNISTS

# Mamet: Enhance oversight and accountability of metro districts



Photo by Joe Amon/The Denver Post

CPA Kevin Collins, right, speaks during the Thompson Crossing Metro Districts 3-6 meeting at the Abundant Life Tabernacle in Johnstown, Colorado on September 17, 2019.

By **SAM MAMET** |

December 20, 2019 at 12:01 pm

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The recent Denver Post news series and editorial on metropolitan districts, known commonly as “metro districts,” were right on target. I have never

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However, based upon my forty-year perspective on local governance in Colorado, I grudgingly concede that metro districts play an important role in the delivery of local services and will continue to do so for some time to come.

State government cannot possibly finance all of the public infrastructure demands being driven by development pressures. Growth at its core happens locally based upon land use and zoning policies written by counties and municipalities. This is an immutable fact. It is a painstaking process so that all sides can be heard. In any new development plan, there is an expectation such things like streets, parks, and water and sewer are adequately addressed and financing for the project is put in place. This is done frequently using a metro district.

With local decision making comes a level of responsibility, and this is where it gets complicated. There are some approaches to help improve transparency and accountability.

Potential homeowners buying into a new development must closely examine prior to closing any real estate documents containing information about taxing districts, like metro districts. These documents contain their names, and level of taxation. The current and future property tax rate and debt burden need to be scrutinized, which is frequently disclosed in a district's service plan. This is a public document, which should be reviewed along with talking to the members of the district's board. You can get the service plan by calling the metro district in question or by contacting the planning department of your city, town, or county depending on the actual location of the district. If you are uncomfortable with your findings, then caveat emptor.

Realtors also need to be informed on the same information in order to provide the best advice possible to their clients.

At times, counties will approve the establishment of a metro district on the urban fringe, right outside of a city or town. In order to avoid unintended sprawl and a potential duplication of services, an adjacent city or town should be afforded the opportunity to provide input into the metro district approval process.

Once approved, metro districts can be difficult to eliminate because of outstanding debt and contractual obligations. Counties and municipalities as part of their approval of a service plan should require adequate safeguards to oversee metro district finances, and they should get a clear

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A number of towns, cities, and counties have written excellent procedures used to oversee the establishment of metro districts. Specific state agencies, like the Colorado Department of Local Affairs and the state Auditor's Office, are important partners to help foster such best practices.

The relationship between developers, investment bankers, and bond counsel is sometimes hard to understand, but these relationships are necessary if a metro district is to be properly created. These players are dedicated to make sure this happens. The Colorado Securities Commissioner has some oversight in this regard, and an advisory committee exists to aid the commissioner. I sat on it for several years, and it works well.

I do not agree with the proposition more state legislation is needed. There are ample legal tools available to counties and municipalities as part of the metro district service plan approval process. Real estate documents require a certain level of legal disclosure about metro districts. Realtors need to help their clients better understand this information prior to closure. State agencies can continue their partnership with local officials to assure the development of model best practices.

Enhancing public awareness of metro districts is important, and the work of The Denver Post is to be commended.

*Sam Mamet is the retired executive director of the Colorado Municipal League. Contact him at [smamet@comcast.net](mailto:smamet@comcast.net).*

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## Popular in the Community

**OPINION > EDITORIALS**

# Editorial: Disclose metropolitan district tax rates on real estate listings



Joe Amon, The Denver Post

Natalie Allen, new District 4 board member, outside her home in the Thompson River Ranch community in Johnstown, Colorado on Oct. 15, 2019.

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By **THE DENVER POST EDITORIAL BOARD** |

PUBLISHED: December 20, 2019 at 4:02 pm | UPDATED: December 20, 2019 at 4:06 pm

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Colorado lawmakers will return to the Capitol's iconic gold dome in Denver

The Denver Post's David Migoya uncovered a massive fault line in Colorado's home and condo building: Almost every new home in this state is encumbered by a developer-created and -controlled metropolitan district. Many of those districts have abused taxing and bonding authority, maximizing the developer's return on investment and encumbering future homeowners with millions in undisclosed debt. The payments on that debt, done through property taxes, can make a monthly mortgage payment unexpectedly unaffordable if homebuyers are not prepared. In extreme cases, the extra tax payments can force someone to sell only a year or two after moving in or even to go into foreclosure.

The debt is for infrastructure in the new neighborhood, townhome or condo building — water mains, sewer, streets, sidewalks, etc. — but there is no evidence that developers are reducing the prices of homes for sale. Part of the reason for the lack of price adjustment is that homeowners simply aren't aware of the added costs in these areas, especially in newly formed metropolitan districts where there is no prior tax record to rely upon.

Fortunately, the first of many steps to rein in these out-of-control metropolitan districts is the easiest, and it should garner the support of developers, real estate professionals and consumer advocates. Lawmakers should pass a bill requiring disclosure of the property tax rate — also known as the mill levy — on all real estate listings, including a “check-the-box” disclosure if the home is in a special taxing district. In lot sales or new construction sales, the disclosure should include the developer or homebuilder's anticipated metro district tax rate, something they have set themselves while controlling the district and issuing debt.

We know this could be onerous to real estate professionals, but it's important enough for buyers to have this information upfront that it should be mandatory. The Colorado Division of Real Estate could make rules for seller disclosure that ensures transparency while not being overly burdensome to the seller or the real estate professional.

Already, most real estate listings include disclosures of homeowners association (HOA) fees, essential information when considering how much home in a neighborhood a person can afford. Adding mill levy information will simply give homebuyers more control over the most important financial decision of their life.

For example, a home in older, not-redeveloped areas of the city and county of Denver would have this disclosure:

Urban Drainage & Flood Control District: .8 mills

Total: 77.3 mills

A home that is in the city and county of Denver but also in the Stapleton development would have this disclosure:

Westerly Creek Metro: 60.2 mills

City and County of Denver: 28.3 mills

School District #1: 48.2 mills

Urban Drainage & Flood Control District: .8 mills

Total: 137.5 mills

A homebuyer then could do an easy calculation: Take the asking price of a home — let's say it's \$500,000 — and multiply it by the state's assessment rate and then by the tax rate. So outside of Stapleton, the taxes would cost \$2,763 a year or \$230 a month for a mortgage that rolls property taxes into a monthly escrow payment. Inside Stapleton, the taxes would be \$4,915, or about \$409 a month. Assuming no change in downpayment, that extra \$180 a month in a 30-year mortgage could pay for an additional \$35,000 outside of Stapleton at a 4% interest rate.

Some homebuyers save for years to have just enough to cover a down payment and closing costs. If these additional costs are being disclosed at closing or a few days before, it's too late for a buyer who has already invested hundreds of dollars into an inspection and appraisal. The time for disclosure is at the very beginning of the process when someone is picking houses in their price range to tour.

*To send a letter to the editor about this article, submit [online](#) or check out our [guidelines](#) for how to submit by email or mail.*

## Popular in the Community

**BUSINESS** > **REAL ESTATE** • Investigative

# Faced with resident takeovers, metro district developers secure their position — and pocketbooks

Developers say they feel need to act in case residents don't approve bonds



RJ Sangosti, The Denver Post

The Grove subdivision, located in Colorado International Center Metro District #3, in Aurora is pictured on January 16, 2020.

By **DAVID MIGOYA** | dmigoya@denverpost.com | The Denver Post

January 22, 2020 at 6:00 am

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In the weeks before residents of the Colorado International Center Metro District #3 were to take control of their governing board in 2018, the developers who still ran it squeezed in just one more bit of business.

Through a flurry of meetings, several of them held in corporate offices 18 miles from the district located southwest of the Gaylord Rockies Resort, the men behind CIC#3 approved the sale of more than \$3.2 million in bonds. Property owners will pay for those bonds over the next two decades.

The developers say the money was to reimburse themselves for costs of the district's infrastructure – the sidewalks, sewers, and water lines – and they weren't sure they could trust the incoming resident-controlled board to get it done.

The move was just one of at least a half dozen The Denver Post has found where metro district developers, faced with losing their board seats – and ultimately control of the metro districts they helped build – to residents upset over high property taxes and other issues, have approved millions of dollars in additional financing measures.

In one case, the developers used their authority as board members to simply take away the land they still owned. In another, they approved the bond sales and kept them for themselves, a long-term investment to ensure they would be reimbursed for work they'd done and paid for any additional work to come, according to meeting minutes reviewed by The Post and interviews with participants.

Property owners did not get to vote on the bond measures because the developers who formed the districts had already established their debt limits years earlier – some into the billions of dollars – The Post has reported previously.

“Builders and land developers have devised ways to control and manipulate districts to conduct hundreds of millions of dollars of transactions with themselves, relying on taxpayer dollars to pay themselves back,” said Charles Wolfersberger, an accountant whose eponymous firm manages several metro districts. “And they're doing it whenever they want, even in the face of losing control to the very people who have to pay the bonds they're issuing. It's a slap in the homeowner's face, really.”

Among the other examples The Post found:

— On Dec. 18, 2019, the developer-controlled board of Erie Commons Metropolitan District #2, just south of downtown Erie, approved the sale of more than \$32.6 million in bonds largely to repay their companies for infrastructure work. The next day, residents filed petitions with the Weld County District Court to recall the board members. Residents have since decided to run for the board themselves and unseat the developers in the upcoming May elections.

— With builders reticent to purchase property while a resident-initiated recall effort was gathering signatures, the developer-controlled board at Buffalo Highlands Metropolitan District in July 2019 voted to exclude about 75% of the land they owned from the district. That essentially means new bonds or refinancing old ones would be too expensive because there are fewer properties to tax. The developers can also continue their work without resident interference. The board members promptly resigned soon after, forcing the city council of Commerce City to name immediate replacements.

— In April 2018, the developer-controlled board at Amber Creek Metropolitan District in Thornton voted to pay \$10.9 million to developer/builder Lennar Homes for infrastructure costs. Two weeks later, homeowners within the district were elected to take control of the board.

— In May 2018, the five members of the Carriage Hills Metropolitan District in Frederick – all part of the same developer family – approved more than \$7 million in bonds, \$2.6 million of it in a private sale, to repay their company for previous infrastructure expenses just five days before three residents would be elected to the body. In a subsequent lawsuit still pending, another developer accused the former board of purposely first repaying itself with bond proceeds while ignoring the more than \$400,000 he said he is still owed.

Special district board members are the only elected positions in Colorado that do not have to abide by the state's strict rules governing conflicts of interest, an exemption that legislators put into law decades ago, just as metro district developments were gaining in popularity.

“It might make sense for metro districts to have the (conflict-of-interest) exemption when they are just forming, but later, when there are (residents) who are being chosen, elected, to act in the public interest, it should not at all be used for private gain,” said Peg Perl, a public policy

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**RELATED:** [Read more from this Denver Post investigation here.](#)

At CIC#3, developers knew they were to be ousted from the board in February 2018, when five residents filed applications to run for election to the board's five seats. Because there were no other challengers for the May election, the sitting board canceled the ballot, declared the residents the default winners and prepared to have them take over.

On April 4, 2018, the developers – Andrew Klein, Theodore Laudick, Otis Moore III, and Kevin Smith – met near CIC#3 to discuss normal district business. Two district residents – Tami Romeis and Ronald Patterson, each running for the board – were there, meeting minutes show.

“There was discussion about bonds, but it was way over my head,” Romeis told The Post.

The next meeting, on April 16, was held at the developers' Glendale offices – 17 miles away. Minutes show no resident attended.

The bonds were approved unanimously.

“On one hand it doesn't matter, because it's done,” Romeis said. “On the other hand, it's easy to jump to intent and down-play innocent coincidence. Is this a reasonable amount for our neighborhood?”

Klein said it was simply business.

“We paid for the infrastructure and we use the districts to get reimbursed for it,” Klein said of the bond deal that would repay his group, ACM High Point VI LLC, the final dollars they say they were owed.

ACM had purchased the rights to develop CIC #3 – and the right to collect on any advances that had been paid – from its previous developer. District residents were already paying taxes on \$11 million in bonds that were issued in 2016, records show.

“Why would the residents choose to repay us for the money we spent?” Klein told The Post when asked why the developer-controlled board couldn't wait until the new members were sworn in. “We made sure this happened in the right way and the smooth way.”

Klein's Westside Investment Partners is [involved in several other metro districts](#), including a new one in Denver's Loretto Heights neighborhood.

In cases such as at CIC#3, residents were poised to take control via the normal election process when the developers pushed bond financing through. In others, The Post found developer-controlled districts passing last-minute financing measures to reimburse themselves as board members faced recall petitions to oust them.



RJ Sangosti, The Denver Post

Tamila Romeis, a resident of Colorado International Center Metro District #3, is now the board president.

At BNC Metro District #2 in Commerce City, residents filed recall papers Oct. 24, 2019, to oust its three-person, developer-controlled board run by Theodore Antenucci, Janis Emanuel and Robert Bol. Two other seats are vacant.

Antenucci is president of Catellus Development Corp., the project's developer, and Emanuel is an employee there, according to conflict of interest documents they filed with the Colorado secretary of state's office. Bol is a personal friend and neighbor of Antenucci in Evergreen, the latter told The Post.

The California-based company also owned more than \$5 million in BNC bonds that Catellus had purchased from the bank that held them previously, documents show.

On Dec. 23, 2019, at an 8 a.m. meeting held at the Eagle Point Recreation

No residents were in attendance.

“The board passed the new bond (not long) after filing for the recall, and the meeting was scheduled for a weekday in the afternoon, when most homeowners are at work,” BNC resident Joel Person told The Post in an email. “As a homeowner, I have the right to be on the board, to help control the debt being issued by the district.”

**RELATED:** *Metro districts: Reporter David Migoya answers your questions*

The money, Antenucci said, was to reimburse Catellus for funds they’d spent on additional infrastructure construction, as well as to refinance the original bonds the company had owned.

But the bonds were never actually sold to the public. Instead, Catellus kept all \$21 million of the bonds for itself, a tax-free deal with about 6% interest that was closed before the residents’ recall process could advance any further.

“The costs were incurred and it was time to be reimbursed, and the minute the bonds were floated, we got paid,” said Antenucci, who emphasized the bonds were a lower interest rate than the ones being refinanced – 8% on the original bonds as opposed to 6% and 3.5% for the new bonds.

That the board voted at a time its control was threatened by a recall election was merely a coincidence, he said. And the location of the meeting was also a coincidence.

“It was in our plan to issue bonds sometime early (in 2020), but we finished sooner,” he said. “Secondly, it was appropriate to lower the interest rates, and thirdly, we didn’t know what would happen in April or May (when the recall election takes place), of course.”

Antenucci added: “If someone owed you \$21 million to be reimbursed when you were completed, why would you wait any more time for that? It’s crystal clear we are owed the money.”

That the company now owns the tax-free bonds that homeowners are required to repay and didn’t sell them on the open market was a business decision, he said.

“The company is interested in cash flow instead of just cash, and the

Person said it's too comfy of an arrangement.

“I feel there is a conflict of interest when the same people requesting the bonds are also the people receiving the funds at the expense of the homeowners,” he said.

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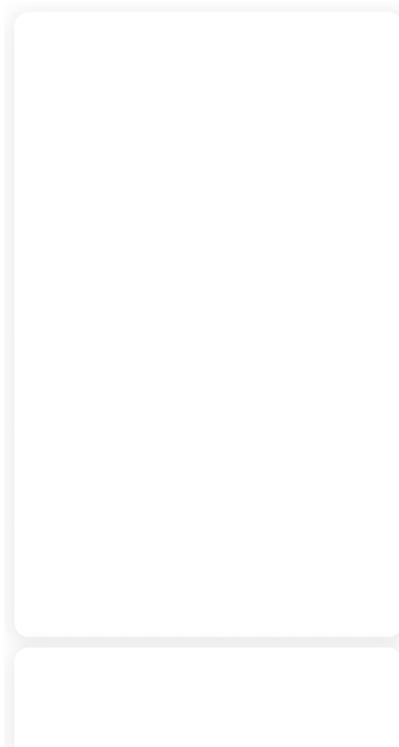
### Learn more

To find information about individual metro districts, including budget documents, director and election information, and service plans, go to the [Colorado Department of Local Affairs website](#).

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## Should property taxes fund residential development? Fort Collins leaders have doubts

**Jacy Marmaduke**, Fort Collins Coloradoan Published 6:00 a.m. MT Jan. 14, 2020

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Macy's sits near the Cycle Apartments within the Foothills Mall metro district in Fort Collins, Colo. on Friday, Jan. 10, 2020. (Photo: Bethany Baker / The Coloradoan)

Fort Collins leaders are seeking more stringent standards for a development-financing tool that can saddle homeowners with thousands of dollars in additional property taxes.

While residential metro districts have become near-ubiquitous in some parts of Colorado, several [Fort Collins City Council members are wary of the development tool](#) ([/story/news/2019/10/02/fort-collins-oks-property-tax-funds-northfield-including-affordable-housing/3836114002/](#)). At a Jan. 7 work session on residential metro districts, council members agreed that Fort Collins' approach to reviewing proposed metro districts needs a revamp but said they need more information before charting a path forward.

A metro district is a special taxing district that developers often create to drum up funding for new development. Through a residential metro district, developers can sell bonds to finance public infrastructure work like road construction, earthwork and sewer lines in the early stages of a development. They repay the debt over time using future homeowners' property taxes. The taxes apply only to homeowners within the district's boundaries.

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Proponents of metro districts argue large-scale residential development is virtually impossible without the leg up that metro districts can provide. Opponents argue metro districts unfairly burden homeowners with the consequences of developers' financial gambles. A [recent Denver Post investigation](https://www.denverpost.com/2019/12/05/metro-districts-debt-democracy-colorado-housing-development/) (<https://www.denverpost.com/2019/12/05/metro-districts-debt-democracy-colorado-housing-development/>) of Colorado metro districts found that metro districts, left unchecked, can spiral into financial insolvency as district leaders wrack up runaway debt. (Fort Collins responded to the investigation with a [memo detailing its safeguards against some of the problems cited in the investigation](http://citydocs.fcgov.com/?cmd=convert&vid=218&docid=3420634&dt=READ+BEFORE+PACKET). (<http://citydocs.fcgov.com/?cmd=convert&vid=218&docid=3420634&dt=READ+BEFORE+PACKET>))

**442-home Northfield site:** [City Council reconsiders, approves property tax funds](#) (/story/news/2019/10/02/fort-collins-oks-property-tax-funds-northfield-including-affordable-housing/3836114002/)

The city's current policy is to evaluate proposed metro districts based on the public benefits they offer and how they affect the city's "triple bottom line" — economic health, environmental impact and social sustainability impact. The policy requires that metro districts provide "extraordinary public benefits" that the city or another public entity couldn't practically provide. Some examples of public benefits according to the city's existing policy:

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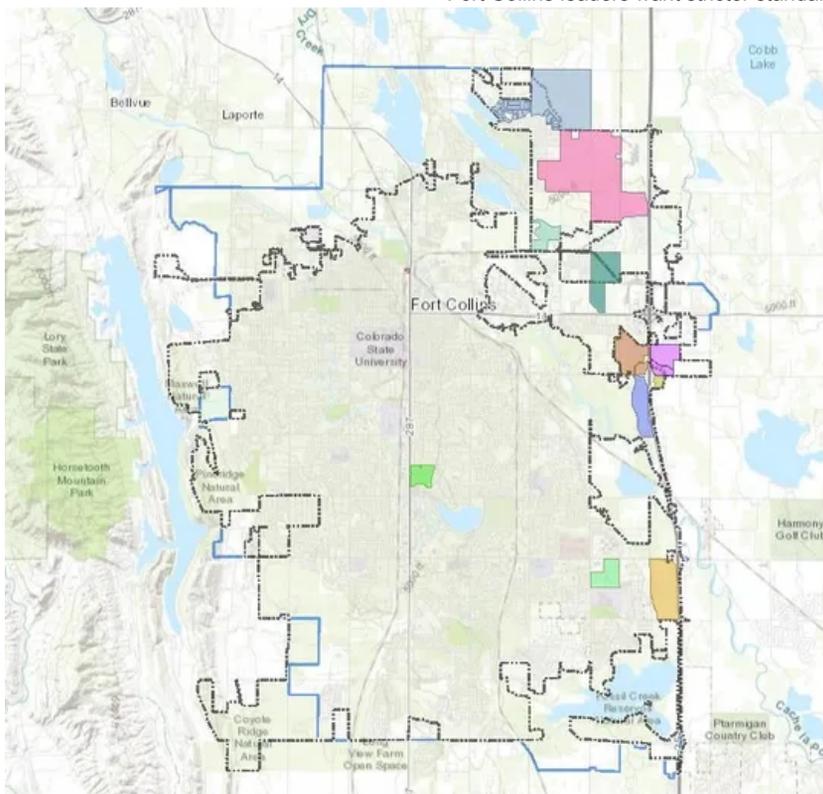
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- Districtwide renewable energy or nonpotable water systems
- Buffered bike lanes and enhanced pedestrian crossings
- Significant stormwater improvements
- Publicly accessible parking structures
- Development of major arterial roads
- Smaller lot size or increased multifamily development
- Neighborhood parks that go beyond code requirements

Fort Collins limits the amount of debt metro districts can take on and caps the amount of property tax that districts can collect annually per household — typically 50 mills, or \$50 for every \$1,000 of a home's assessed value. A home assessed at \$300,000 with a 50-mill metro district tax would run up \$1,073 in metro district taxes, using the current residential assessment rate. Developers say that amount would otherwise be reflected in a home's price or HOA fees if the same home wasn't in a metro district.



This map shows where the 11 metropolitan taxing districts are located in Fort Collins. Each district is marked by a color block. (Photo: City of Fort Collins)

Fort Collins has relatively few residential metro districts because the city's policy previously allowed them only for commercial development, but council has approved five residential metro districts since revising its policy in fall 2018. Fort Collins has about a dozen metro districts that make up about 1.4% of the city's area. In Windsor and Timnath, for comparison, metro districts make up 42% and 50% of the towns' respective areas.

Because Fort Collins only recently started allowing residential metro districts, none of the approved districts have started construction. Only two districts — Foothills Mall (primarily commercial) and Harmony Technology Park (commercial) — have been completed.

**DIG DEEPER:** [Map of Fort Collins metro districts \(https://gisweb.fcgov.com/HTML5Viewer/Index.html?viewer=metrodistricts&layerTheme=&scale=72223.819286&basemap=&center=-11689495.626391832%2C4951418.708998836&layers=\)](https://gisweb.fcgov.com/HTML5Viewer/Index.html?viewer=metrodistricts&layerTheme=&scale=72223.819286&basemap=&center=-11689495.626391832%2C4951418.708998836&layers=)

## How do you define 'extraordinary benefits'?

Council has approved only one metro district since new members were sworn in — Northfield metro district, which it initially rejected but narrowly approved on rehearing. Council members who voted against the Northfield metro district said they didn't think the promised benefits were "extraordinary" enough to warrant the cost to homeowners, and they took issue with the potential for predatory practices by metro district operators.

Fort Collins staff worked with Urban Lab, a Colorado State University-based think tank, to devise five broad options for a new metro district policy:

1. Establish minimum requirements for districts.
2. Create a "scorecard" for districts with weighted "good," "better" and "best" rankings for each benefit the district provides to the community.
3. Create a menu of options for districts with point values awarded to various benefits. District proposals would need to meet a minimum score to move forward.
4. Design a performance-guided approach to evaluate each district based on how well it achieves its specific goals.
5. Revert to the previous city policy and stop approving residential metro districts.

Several council members said none of the options seems like the right fit for Fort Collins.

Council member Julie Pignataro said the prospect of "scoring" districts could short-change both council members looking to honor their priorities and developers seeking clarity and consistency in the review process.

Council member Ross Cunniff, a longtime critic of metro districts, said Fort Collins should back away from residential metro districts altogether but allow the possibility of creating one if special circumstances arise.

Council member Ken Summers wondered whether council could achieve its goals simply by reducing the city's cap on district mill levies, which would essentially limit how much property tax burden the developer could place on homeowners.

Council member Susan Gutowsky wondered why developers can't finance their projects using loans, which used to be common practice.

"This seems to be the new way of building developments, and I'm just not quite sure why we can't do it the way we used to," she said.

Economic health director Josh Birks shared his hypothesis: As Colorado's population grew and the housing bubble collapsed in the mid-2000s, lenders became reluctant to loan developers the full amount needed to finance a big development.

"A tool like this enables them to move forward with a project," he said, summarizing what he's heard from developers. "... they find it more financially viable to use this tool along with borrowing."

Another potential advantage of metro districts is their ability to incentivize developers to include more affordable units in their projects and pursue environmentally sustainable design.

But Cunniff said the metro districts aren't a reasonable way to achieve those goals.

**Fort Collins affordable housing:** [Plan would bring new affordable apartments to Old Town \(/story/money/2019/12/12/dda-housing-catalyst-team-up-build-low-income-housing-downtown/4386043002/\)](#)

"We're taxing a small number of people to achieve, hopefully, some ends, and if those ends are mostly community goals and not end-user benefits, then that's unfair," he said. "For something that 175,000 residents of Fort Collins want to accomplish, we're going to tax 1,000 people in this metro district."

Fairness is at the heart of the metro district debate. In Colorado, the Taxpayers' Bill of Rights requires that all new taxes receive voter approval. But because metro districts are created before any homes are built, the "voter approval" is essentially a formality approved by the developer or landowner.

Proponents of metro districts point out that no one is obligated to buy a home in a metro district, but some homeowners told the Denver Post that the legally required disclosure is easily lost in the shuffle of paperwork.

Mayor Wade Troxell said Fort Collins' metro district policy includes a litany of safeguards to prevent the horror stories detailed in the Denver Post series. The city caps debt and the total mill levy, requires enhanced disclosure to prospective home buyers, has systems in place to encourage homeowner participation in metro district boards, and places a 40-year time limit on repaying metro district debt, among other things.

Still, Troxell said council needs to define a clearer vision of exactly how metro districts should benefit the community. He added the policy should be flexible because every development is different and every council has different priorities.

"I think this should be a tool to do exceptional things," he said. "... ultimately, we need to agree on metrics to measure 'exceptional.'"

Pignataro said council needs to be cautious about approving metro districts while members sort out the new policy, especially considering none of the recently approved metro districts in Fort Collins has started construction. Without case studies to assess, it's hard to tell if the existing policy is working, she said.

**16 years after Ranch opening:** [Larimer County envisions an even bigger future for it \(/story/news/2019/12/23/loveland-larimer-county-major-renovations-the-ranch-events-complex/2673601001/\)](#)

"If we keep granting metro district status, it's going to be years before we know if we're doing the right thing or not, and that's a little bit scary," she said.

*Jacy Marmaduke covers government accountability for the Coloradoan. Follow her on Twitter @jacymarmaduke. Support stories like this one with a digital subscription to the Coloradoan ([https://offers.coloradoan.com/specialoffer?gps-source=CPNEWS&utm\\_medium=onsite&utm\\_source=news&utm\\_campaign=NEWSROOM&utm\\_content=JACYMARMADUKE](https://offers.coloradoan.com/specialoffer?gps-source=CPNEWS&utm_medium=onsite&utm_source=news&utm_campaign=NEWSROOM&utm_content=JACYMARMADUKE)).*

## How common are metro districts in Colorado?

- **Fort Collins:** 11 metro districts making up 1.4% of municipal land area
- **Loveland:** 26 metro districts making up 13% of municipal land area
- **Greeley:** 3 metro districts making up 2% of municipal land area
- **Johnstown:** 18 metro districts making up 22% of municipal land area
- **Timnath:** 18 metro districts making up 50% of municipal land area
- **Windsor:** 52 metro districts making up 42% of municipal land area

- **Boulder:** No metro districts
- **Aurora:** 205 metro districts making up 27% of municipal land area
- **Denver:** 45 metro districts making up 10% of municipal land area
- **Littleton:** 6 metro districts making up 8% of municipal land area
- **Longmont:** 3 metro districts making up 1% of municipal land area

*Note: The Fort Collins count excludes the recently approved Northfield Metro District and the Harmony Technology Park district, which is entirely commercial.*

**Source:** Fort Collins staff, Coloradoan research

Read or Share this story: <https://www.coloradoan.com/story/news/2020/01/14/fort-collins-leaders-strict-standards-metro-district-development/2826902001/>

**97th CML Annual Conference**  
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**Metropolitan District Regulation & Oversight**  
 Friday June 21, 2019  
 Kim Emil, Assistant City Attorney, Windsor, CO  
 Doug Marek, City Attorney, Greeley, CO  
 Robert Sheesley, City Attorney, Commerce City, CO



Contents of this presentation reflects the view of the presenter, not of CML.

### Metro District Oversight

- [“A kind of regulatory Wild West”](#)
- Common perceptions:
  - Confusion of service providers
  - Limited transparency
  - No control over debt, taxes, or decision-making
- What can or should municipalities do:
  - Under the Special District Act?
  - Through service plans?
  - Through local regulation?

### Metro District Basics

- Metro Districts are special districts (local governments) authorized by Special District Act
- Provide two or more services as provided in the “service plan”
- Formation requires local jurisdiction and court approval and an election by eligible electors
- 1,794 active Metro Districts ([per DOLA](#))

### Colorado Metro Districts



Source: <https://data.colorado.gov/Local-Aggregation/Metro-Districts-in-Colorado/knbf-gz/data> “Aggregated from thousands of local jurisdictions by the Colorado Department of Local Affairs Demography office. Many of the district boundaries were created from scanned drawings or digitized PDFs, and therefore no guarantee of accuracy can be made for the data.”

### Statutory Powers

- Levy and collect taxes and fees
- Issue debt
- Provide services and facilities
- Own and dispose of property
- Manage its business and affairs
- Eminent domain (for limited purposes)
- “All rights and powers necessary or incidental to or implied from the specific powers granted . . .”  
 CRS 32-1-1001, 1101 *et seq.*

### Development Metro District Services

- Street improvements, including drainage facilities, sidewalks, parking, lighting and landscaping
- Traffic safety improvements
- Covenant enforcement & design review\*
- Parks or recreational facilities or programs
- Security services\*  
 CRS 32-1-1004 (for a complete list)

## Metro District Transparency

- Annual reports (CRS 32-1-207(3)(c-d)):
  - Mandatory for 5 years and then annually at the municipality's option (CRS 32-1-207(3)(c-d))
- Annual notice to electors (CRS 32-1-809(1)):
  - Governance, meeting, and election information
  - Mill levy and tax revenue for the prior year
- Public disclosure document and map (CRS 32-1-104.8)
- Open Meetings Law & Open Records Act
  - Plus meeting notices posted in 3 public places in the district and the clerk & recorder's office (CRS 32-1-903(2))
- Colorado Local Government Audit Law
- Local Government Budget Law of Colorado

## Metro District Transparency?

- Meetings can be held far outside a district (CRS 32-1-903(1))
- Limited remedy for failure to file annual report, public disclosure, or notice to electors (CRS 32-1-104.8(2), 209)
- Annual notice to electors can be provided by posting to the [Special District Association website](#) (CRS 32-1-809(2)(d))

## Metro Districts: Municipal Role

- Mandated by the Act:
  - Decision on service plan (CRS 32-1-204.5)
  - Decision on material modifications (CRS 32-1-207(2)(a))
  - Filling vacancies (CRS 32-1-905(2.5))
- Permitted by the Act:
  - Opposition to inclusions, exclusions, consolidations
  - Requesting dissolution
  - Oversight and enforcement

## Municipal Review of Service Plan

- Must disapprove unless satisfactory evidence presented showing:
  - *Sufficient existing and projected need for organized service*
  - *Existing service is inadequate for present and projected needs*
  - *Proposed district is capable of providing economical and sufficient service*
  - *Area to be included has or will have financial ability to discharge the proposed indebtedness on a reasonable basis* (CRS 32-1-203(2), 204.5)
- May approve, disapprove, or conditionally approve
- Reviewed under an "arbitrary, capricious, or unreasonable standard" (CRS 32-1-206(1))

## Metro Districts: Notable Litigation

- *Plains Metro. Dist. v. Ken-Caryl Ranch Metro. Dist.* (service plan enforceable unless not practicable\*)
- *Todd Creek Village Metro. Dist. v. Valley Bank & Trust* (material modification not found)
- *Prospect 34, LLC v. Gunnison County* (mill levy cap enforceable)
- *Bill Barrett Corp. v. Sand Hills Metro. Dist.* (shift in location/purpose was material modification)

## Material Modifications

- "Changes of a basic and essential nature" to the service plan require municipal board approval (CRS 32-1-207(2)(a))
  - Does not include changes only to execute the original service plan or boundary changes
  - Material departure from service plan may be enjoined (CRS 32-1-207(3)(a))
- "So far as practicable" (*Plains; Prospect 34*)

### Metro Districts in Greeley: Past

- Past City Councils have been skeptical:
  - 1999 – Approved first two Metro Districts
  - 2006 – Issued Moratorium on new Districts
  - 2007 – Adopted Regulatory Ordinances
  - 2008 – Adopted Model Service Plan
  - 2014 – Declined to approve new Districts

### Tri-Pointe (Promontory) -- 1999

Residential & Commercial Metro Districts      State Farm Service Center  
 JBS USA Headquarters



### Greeley's Primary Concerns

- Metro District residents may oppose City or School District tax increases
- Metro Districts may have better amenities than in other parts of the City, resulting in perceptions of inequality
- Metro District residents, especially subsequent buyers, may be uninformed and blame City for additional taxes
- Within commercial Metro Districts, major economic engines may seek relief from perpetual additional tax burden

### Metro Districts in Greeley: Present

Current City Council is more receptive:

- 2018 adopted Amended Model Service Plan
- Approved six new Metro Districts
- Why the change of heart?
  - Pressure for new housing stock in NOCO
  - Competition from neighboring towns
  - All new Districts in West Greeley, close to Interstate 25

### Lake Bluff Metropolitan Districts

Declined approval in 2014.

Approved resubmittal 2018.



### City of Greeley Metro Districts



### What does Greeley regulate?

- Location and size of District
- Capital and infrastructure improvements
- Mill levy caps and interest rates
- Disclosure statements
- Referral notices to other Districts
- Fees and costs
- Use of eminent domain
- Competitive grants

### How does Greeley regulate?

- Require Metro Districts to file annual reports
- Require Council review and approval
- Sanction noncompliance with City ordinance or Special District Act
- Enforce contractual compliance with IGAs
  - Storm Water Facilities Construction & Maintenance
  - Dedication of land for public purpose
  - Collection and remittance of fees

### Metro Districts in Windsor

- 1995 - first Metro District (Water Valley)
- 2005 - 6 Districts
- 2005-2007 – developed Model Service Plan
- 2015 – Revised Model Service Plan
  - Relaxed earlier requirements
  - More developer friendly
- 2019 – 20 active Districts

### Windsor’s First Model Service Plan

- Relied on home rule authority
- Desired because of lack of consistent policy
- Recognized economic inducement to developers (residential or commercial)
- Allowed use for “Enhancements”
  - Debt was limited for Metro Districts for enhancements only
  - Definition:
    - Entry features, non-potable systems, parkways with medians, etc.
    - Definition of enhancements was vague, causing issue with bond counsel
    - Town later required non-potable systems

### Windsor’s Primary Concerns

- Homeowner awareness of mill levy
- Resistance to future tax increases proposed by Town, special districts, and schools
- Inconsistency between service plans
- Protection of residents from excessive developer cost-shifting
- Potential for district default

### Windsor’s Current Regulations

- Model Service Plan
- Mill levy cap of 39 total mills – (4) operations; (35) debt service (adjusted for Gallagher, approx. 42 mills now)
- Limits developer cost reimbursements & interest rates for developer obligations
- Minimizes development fees/assessments
- Fees and cost reimbursement for Town review
- Transparency requirements for meetings, elections, notices
- Prohibits use of eminent domain
- Favors formation for mixed use, commercial and industrial developments, higher priced subdivisions and amenity driven developments.

### Windsor: Current Trends

- Traditional developer financing
- Metro Districts serving HOA functions
  - Tax advantages for property owners have changed
- Metro District created water enterprise to deliver water to all the areas served within the metro district (Poudre Tech)
- Outsourcing legal, accounting, and financial functions

### Windsor: Oil & Gas

- Raindance will have 100+ producing wells
- Benefits:
  - Developing a \$10 million recreation center paid for by oil and gas revenues from ad valorem tax
  - 45-50 acres devoted to farm land and open space.
- Developer claimed services would not be possible without oil and gas development

### Municipal Oversight: Policy Questions

- Service plans and IGAs; regulations
 

Mill levy term & caps	Debt controls: max; fairness/interest rates
Expense limits	Enhanced public benefit
Minimum size/value	Early end user/resident control
Transparency	Sanctions/enforcement mechanisms
Reimbursement limits	Social policy
- Annual reports (potentially expanded)
- Annual fees & review fees
- Statutory remedies
- Litigation
  - Material departures from service plans/modifications
  - Breach of IGA terms
  - Application of municipal laws and standards