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## Financing entities for infill projects

In the current economic climate, some developers are focusing on smaller infill projects to keep busy. The challenge presented by these projects, however, is infill projects may be more expensive to construct on a per-acre basis than a large tract of land. Municipalities, understanding this issue, have become more receptive to the creation and use of statutory districts to ensure the economic viability of smaller developments. These districts permit financing of public infrastructure over the life of the improvements by the issuance of tax-exempt municipal bonds. The bonds are repaid by taxes levied upon the property owners who use and benefit from the improvements financed by these instruments.

The purpose of this article is to describe the formation, revenue raising, taxing and operating authority of metropolitan districts in accordance with Title 32 of the Colorado Revised Statutes and municipal general improvement districts controlled by Title 31 of the Colorado Revised Statutes. Title 30 of the Colorado Revised Statutes contains a very similar structure to that of Title 31 for creation of public improvement districts located in unincorporated areas of counties. Other forms of improvement districts and urban renewal options exist as well, but they are beyond the scope of this article. Additional requirements for the formation of districts may be found in municipal codes. Home rule municipalities also may have charter provisions that vary from state law.

■ **Metropolitan districts.** Metropolitan districts are quasimunicipal corporations and political subdivisions of the state. They may be formed in counties or municipalities and generally are created in the same manner. They operate as fairly autonomous units of local government, governed by their own elected board of directors, and possess statutory taxing and spending authority. With municipalities becoming reluctant to take ownership and maintenance responsibilities for parks, open space, storm drainage and, in some instances, streets, a metropolitan district is an excellent option to finance and address the long-term obligations of ownership and maintenance of these improvements, in particular, in place of burdening a homeowners' association with these obligations.

Metropolitan districts may exist in perpetuity, are authorized to impose fees and property taxes and to issue various forms of municipal, tax-exempt bonds. As political subdivisions of the state, metropolitan districts enjoy governmental immunity, which also may lower the cost of general liability insurance for ownership and operations of public improvements.

Metropolitan districts are formed in accordance with Title 32 of the Colorado Revised Statutes and must provide two or more of the following services: street improvements, water, storm drainage and/or sanitary sewer, park and recreation, fire protection (which may include payment of impact fees or incurring costs related to the acquisition of a site and construction of a fire station), mosquito control, safety protection, solid waste disposal (under very limited circumstances), television relay and translation and transportation.

The length of the process and cost to form a metropolitan district can vary substantially both by jurisdiction as well as complexity of the project. There are three procedural steps to forming a metropolitan district: service plan approval by the municipality, a district court statutory proceeding, and an organizational/TABOR election for the electors of the proposed district.

The process is initiated by submitting



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a service plan to the governing body of the municipality having jurisdiction over the formation of the proposed district. The service plan includes a description of the proposed public services, a financial plan of how the proposed services are to be funded, engineering and architectural surveys, maps, and other relevant information concerning the proposed district. The service plan approval process generally includes an initial staff review, a planning commission public hearing and recommendation, and final approval, disapproval or conditional approval by the board of trustees or city council. The approval or disapproval is issued after a public hearing.

After approval of the service plan by the governing body of a municipality, a petition for the organization of the district and the authorizing resolution are filed in the appropriate district court. The petition must be signed by at least 30 percent or 200 of the taxpaying electors of the proposed district, whichever number is smaller. Because infill projects often are owned by a single entity, five individuals are "qualified" as eligible taxpaying electors of the proposed district for the purpose of signing the petition, voting in the organizational/TABOR election, and serving as the initial board of directors. A court hearing is held to verify that the petition complies with all statutory requirements and also to request the court to call an organization/TABOR election. A TABOR election only can be held, however, in November or in May of even numbered years. If a majority of the eligible electors of the district vote in favor of the district's organization and the court finds the election was held in conformance with the Uniform Election Code, the court will order the district organized.

Once the district is organized, it is permitted to raise revenues to undertake the actions described in the service plan. Revenue raising authority of metropolitan districts includes: 1) imposing fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the district; 2) levying ad valorem taxes upon all taxable property within the district; 3) issuing general obligation tax-exempt bonds; and 4) issuing tax-exempt revenue bonds payable from sources other than property taxes. With the ability to utilize tax-exempt bonds issued by a district to fund a portion of the cost of development, a developer may be able to afford to proceed with an infill project which otherwise might not be pursued due to cost issues.

■ **General improvement districts.** GIDs are authorized to acquire, construct, install, operate or maintain any "public improvement" or provide any service so long as the municipality forming the district is authorized to perform such service or provide such improvement either under the municipality's home rule charter or state law. Benefits of forming a GID over a metropolitan district include simplicity and cost both in the formation process and ongoing administration expenses.

A GID can be a useful tool when the development requires a limited number of improvements or upgrades, such as storm drainage or street improvements. A downside for developers may be potential lack of control once the GID is formed. This is because the governing body of the municipality in which the GID is located comprises the ex officio board of directors

of the GID. Under certain circumstances, the municipality may permit an advisory board to manage the operations of the GID, subject to annual review and budget approval.

The process of forming a GID is initiated by filing a petition in the office of the clerk of the municipality. The petition must be signed by 30 percent or 200 of the electors of the district, whichever is smaller. An elector is a person who is qualified to register to vote in Colorado, and who has been a resident of the area to be included in the GID for 30 days, or who owns taxable property within the proposed GID, or is an individual who has been designated to vote on behalf of a property owner. The petition must include a general description of the services or public improvements to be acquired, installed and/or maintained by the GID, along with either the estimated annual cost of providing services or the estimated cost of the proposed improvements. The governing body of the municipality holds a duly noticed public hearing on the petition, unless the petition is signed by 100 percent of the electors of the GID and contains a request for a waiver of a hearing.

The governing body of the municipality must find the petition to be in compliance with the statutory requirements and also must determine formation of the GID is in the best interest of the project/subdivision and the municipality. If both these conditions are satisfied, the governing body will order that the question of organization, TABOR debt and taxing authorization be placed on the municipality's next TABOR election ballot.

GIDs have the statutory authority to issue tax-exempt special assessment bonds, which is not an option for a metropolitan district. Similar to metropolitan districts, however, GIDs are authorized to impose ad valorem taxes against all taxable property within the district. They also have the power to impose fees, tolls and charges for services or use of facilities. In addition, GIDs have the power to issue tax-exempt general obligation bonds and revenue bonds. As demonstrated by the discussion of the advantages of metropolitan districts, the ability to issue tax-exempt bonds for development may be the difference between a project going forward or continuing to languish on the drawing table.

■ **Conclusion.** In order for infill projects to be economically viable and competitive in the marketplace, developers and municipalities are using metropolitan and general improvement districts as a means of financing necessary infrastructure improvements or substantial upgrades to existing infrastructure. There are many options within a metropolitan district or general improvement district to structure financing, installation and long-term operations and maintenance plans to meet the needs of specific development projects and the municipalities in which they are located.

In recognition of the essential role these districts have begun to play, some municipalities even have designated personnel to assist with district formation and oversight. Standard forms and procedures also have been adopted in an effort to streamline the district formation process and operations procedures.

Utilization of a financing district should be considered and discussed with the municipality early on in the development process. This will permit the municipality as well as the developer to maximize the potential opportunities for financing, owning and/or operating and maintaining public facilities and services.▲