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-ggf2/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))

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**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))

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**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 Metra. 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


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