

Developer/Stakeholder Discussion

Note: This is not a verbatim transcript but a summary of points/comments made by those in attendance

- Allow for 'gallagherization' of mill levy (for mill levy amounts to increase over set caps commensurate with changes in the assessment rate)
 - Other items (debt imposition term) only affect *how much* can be financed (i.e. principal size)
 - Inability to adjust brings into question is the debt that can even be sold in the first place – creates huge risk/uncertainties in the investment market
 - Commerce City would be the only major market in the state that would have this uncertainty
- How does the reimbursement provision interact with the debt limit and mill levy cap? I.e. what is the purpose of this particular stipulation. Developer reimbursement allows for the developer to put in the infrastructure rather than the district bidding it out, which is a much more efficient process and allows for faster work and cost savings
- Maximum imposition term – 40 years is typical. The shorter the term will have a direct effect on the amount of infrastructure financed. Shorter terms (e.g. 20, 25, 30 years) lessens the buffer and can result in a 10-20% reduction in the amount of infrastructure financed
- Subordinate debt allows for the most proceeds to finance the most infrastructure – it is the most efficient structure to generate proceeds that fund infrastructure
 - Subordinate debt is just one facet of that equation, but it does deliver greater efficiency
 - Not allowing subordinate debt reduces the amount that can be financed and can raise home prices up front – this could be an unintended consequence

[Note – these written comments were submitted to Staff for inclusion in the developer comments]

Amendment 1 to replace Section VI (D) (4):

Description of what this language will do: If assessment ratios are reduced in the future, as they have the past two legislative sessions, revenue to pay for infrastructure will drop. The uncertainty in the value of a future property tax revenue stream makes it nearly impossible to sell metro district debt to the bond market. We believe the following language will provide for the protections that the city is seeking without the unintended consequences. The language allows a district to adjust its mill levy to account for changes in the assessment ratio. With the current language, if the legislature reduces the assessment ratio, a district will receive less revenue. However, with this language that allows for an adjustment, the district can increase its mill levy so that it receives the same revenues it otherwise would have had the legislature not reduced the assessment ratio. **Furthermore, adjusting the mill levy doesn't increase a homeowner's tax liability because their assessment rate was reduced.**

Amendment Language:

The Maximum Debt Mill Levy for Debt shall be fifty (50) mills; provided that if, on or after January 1, 2022, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2022, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Amendment 2 add Section VI (J):

Description of what this language will do: Subordinate debt is often required to fund the infrastructure needed to get a project off the ground. Restricting this tool will lead to higher costs to the residents as other, even higher interest rate capital fills the gap. This language provides an alternative which will provide the desired protections to the homeowner by requiring debt that is privately placed (ie to a developer or a bank and not in the public market) to have an external financial advisor (aka a municipal advisor) who reviews the transaction to certify that it is reasonable and within comparable market rates. A municipal advisor is a fiduciary to the district (not the bank or the developer) and is highly regulated by the Securities and Exchange Commission (SEC).

Amendment Language:

Privately Placed Debt Limitation.

Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

Amendment 3 to replace Section VI (B) (2):

Description of what this language will do: The following language strengthens the protections to the homeowner in Amendment 2 by placing guardrails on that debt to ensure that the bonds are issued at or below market values. This keeps the subordinate bond market in play but ensures that perceived abuses of runaway interest rates do not occur.

Amendment Language:

Developer Debt shall be subordinate to other debt of a District and shall be included in the Total Debt Issuance Limitation set forth in Section V.A.9. above. Developer Debt shall expire and be forgiven by no later than 35 years after the initial date of the Developer Debt, unless refunded through the issuance of Bonds to an unrelated third party or otherwise provided pursuant to an intergovernmental agreement with the Town. The interest rate on Developer Debt shall not exceed the Municipal Market Data (MMD) "AAA" General Obligation Yield Curve, 30-Year constant maturity, published by Refinitiv a www.tm3.com, plus 400 basis points.



HOME BUILDERS
ASSOCIATION
of
METRO DENVER®

May 2, 2022

City of Commerce City
Mayor Benjamin Huseman
Members of City Council
7887 E. 60th Avenue
Commerce City, CO 80022

Dear Mayor and City Council:

I am writing to share our thoughts and concerns regarding Commerce City's proposed changes to metropolitan district regulations that are coming to City Council on Monday, May 2, 2022.

These comments are being provided on behalf of the Home Builders Association of Metro Denver. As the largest HBA in Colorado, the HBA of Metro Denver represents over 500 homebuilders, developers, remodelers, architects, mortgage lenders, title companies, subcontractors, suppliers and service providers in the eight metro-area counties we serve.

In Commerce City, the HBA of Metro Denver represents a diverse collection of developers and builders doing business in Commerce City.

We have done our best to try and stay current on all of the policies and code changes the City of Commerce City is enacting upon new development and home building. Given how specific the proposed regulations are to the home building industry and how closely the HBA of Metro Denver is working with the City on various issues, we are disappointed in the amount of time we were given to review the proposed regulations, as we only just received them last week on April 25th.

We have done our best to compile our comments, concerns and suggestions below and hope City staff, the Mayor and City Council will take them into account.

The biggest concern we have is the lack of what we previously called "Gallagher Adjustment." If the assessment ratios change in the future—which they most certainly will—this will have a huge negative impact on metropolitan district financing and raise the cost of capital for districts in Commerce City significantly. This will result in higher interest rates on debt in Commerce City to offset the additional risk that the assessment ratios will change.

If we could suggest Commerce City staff and the Mayor and Council focus on one item from all of the proposed changes, it would be the above issue. That being said, we also want to convey the following additional comments, which are also important and will have an impact on future development in Commerce City:

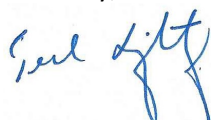
- 35-year limitation on debt service mill levy is shorter than we usually see and could result in less ability for public improvements to be constructed and higher interest rates.
- The concept of “extraordinary public benefits” is concerning not because we don’t agree about providing public benefits, but because it is a very subjective and amorphous standard that does not provide a good standard or set of criteria to follow.
- The prohibition against entering into any intergovernmental agreements/extra-territorial service agreements seems overly burdensome on the district’s ability to operate in accordance with its service plan. The result will be having to go back to the City for these items, which can result in service delays, additional costs in negotiating and getting the agreements approved (which ultimately will be paid by the homeowner).
- The total combined mill levy cap of 50 mills, with a limitation of 10 mills (of the total 50) being for operations and maintenance is really low.
- The prohibition on adjustments to the mill levy for changes in assessed valuation calculation will result in services being ratcheted down when such changes occur and less proceeds from debt that is issued.
- The annual oversight fee is something we have not seen before and left our members curious how this will be implemented and districts will be billed.
- Withholding building permits for a perceived material modification of a service plan seems pretty aggressive. This could be a challenge for home builders if they are building in a community that has an issue that is a result of the previous landowner or land developer, but preventing them from pulling a building permit.
- The limit to 80% of public infrastructure cost reimbursement and \$25,000 of organizational costs will present numerous financing challenges for developers in Commerce City.

The Home Builders Association supports smart regulations on metropolitan districts so this important tool for financing and building public infrastructure and amenities can continue. Again, without metropolitan districts, cities are not able to pay for infrastructure like streets, sidewalks and parks to serve new development. And based on recent housing figures and trajectory, our supply/demand issue with housing is not going to get better unless and until we can find ways to drive down the cost of housing (not up).

We hope Commerce City will consider these comments in any final amendments or regulation changes that are adopted.

Thank you for your time and consideration of this matter.

Sincerely,



Ted Leighty
Chief Executive Officer
Home Builders Association of Metro Denver

Cc: Roger Tinklenberg, City Manager
Jason Rogers, Deputy City Manager
Jim Tolbert, Community Development Director