

Independence Special Districts/Incomplete Applications

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Re: Independence Special Districts/Incomplete Applications

This firm represents Jackie Tugwell and Shelly Rodie, as property owners within ¼ mile of the proposed Independence Subdivision and related proposed Special Districts. This letter shall serve as notice to the Board of County Commissioners that the Applicant's Special District pre- and final applications are incomplete and must be rejected for failure to comply with applicable County regulations.

The Special Districts that are the subject of this letter are:

1. Case # SR-17-0020 The Independence Water & Sanitation District;
2. Case # SR-17-0021 The Independence Overlay Metropolitan District;
3. Case # SR-17-0022 The Independence Metropolitan District No. 1;
4. Case # SR-17-0023 The Independence Metropolitan District No. 2;
5. Case # SR-17-0024 The Independence Metropolitan District No. 3;
6. Case # SR-17-0025 The Independence Metropolitan District No. 4.

Pursuant to Resolution 13-13, as recorded in the real property records of Elbert County SR-17-0021 (the "Resolution"), the County has adopted local regulations governing the approval of Special Districts. These regulations were incorporated into Part II, Section 26 of the Elbert County Zoning Regulations, effective April 24, 2013.

As detailed below, the Developer's pre-applications and final applications are incomplete in various areas. Pursuant to Section C(3) of the Resolution: "If/when either a pre- or final application is found to be incomplete, Community & Development Services shall inform the Applicant, return the Application, and restart the timeline clock only after a completed application has been received."

Pursuant to Section C. (2)(b)(i) of the Resolution, both the Pre-application and Final Application are required to include certain information specified in Appendices A and B of the Resolution. In this regard, the Developer's Pre-applications (and final applications) were incomplete in the following regards:

- Appendix A failed to include a list of all parties, individuals and entities providing funding and/or receiving revenue [Resolution, Appendix A, Section A(2)]
- Appendix A failed to include a list of all parties, individuals and entities that are part of the Special District delineating their roles and responsibilities. [Resolution, Appendix A, Section A(3)].
- Appendix A failed to include a report delineating the success of failure of related endeavors in which the same parties, individuals and entities have been associated, including bankruptcies or turn over of Special Districts to other entities for operation. [Resolution, Appendix A, Section A(4)].
- Appendix A of the Independence Water & Sanitation District failed to include an analysis regarding the cost and source of replacement water should the primary water source prove inadequate. [Resolution, Appendix A, Section E(2)].
- Appendix B (and referenced exhibits) apparently fails to provide for 50% funding in excess of the projected 10 year costs to provide for cost overruns. [Resolution, Appendix B, Section B(4)].

The apparent shortfall is exacerbated in light of the Developer's use of an overstated and illegal residential assessment ratio. See Anderson Analytics Review of Financing Plans prepared for Elbert County Community & Development Services, June 19, 2017 ("Anderson Review") at 7, attached to Addendum to June 16, 2017 Staff Report Document. The Anderson Review further stated that "the residential assessment ratio correction should be made to the Finance Plans (which lowers the amount of debt that can be supported)". Anderson Review at 8. The County apparently failed to direct the Developer to correct and resubmit the Financial Plan and Service Plans to correct the identified error. As a result, numerous financial conclusions and predictions within the various pre- and final applications are erroneous.

The Resolution clearly mandates that in the event a pre or final application is deemed to be incomplete, the County must return the application and shall restart the "timeline clock" once a completed application is received. Accordingly, based upon the omissions identified above, the Pre-Applications were incomplete and the BOCC is required to direct Community & Development Services to return the applications to the Developer and vacate the September 5, 2017 agenda items regarding Case Nos. SR- 17-0020, SR-17-0021, SR-17-0022, SR-17-0023, SR-17-0024, and SR-17-0025 (The Independence Water &

Sanitation District, The Independence Overlay Metropolitan District, and The Independence Metropolitan District Nos. 1-4, respectively).

The Board of County Commissioners is required to adhere to the unambiguous language of the Resolution, and a failure to do so would constitute an abuse of discretion by the Elbert County Board of County Commissioners. See *Friends of the Black Forest Preservation Plan Inc. v. Bd. of Cty. Comm'rs of El Paso County and Black Forest Mission, LLC*, 381 P.3d 396, 400 (Colo. App., 2016) ("A governmental body abuses its discretion if its decision is not reasonably supported by any competent evidence in the record or if the governmental body has misconstrued or misapplied applicable law.").

Please feel free to contact my office with any questions.