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April 19, 2019

Via U. S. Mail

Carl F. Schueler, AICP
Comprehensive Planning Manager
City of Colorado Springs
30 South Nevada Avenue, Suite 105
Colorado Springs, CO 80903

RE: Creekwalk Marketplace Business Improvement District – Petition for Exclusion of Property.

Dear Mr. Schueler:

This office represents the Creekwalk Marketplace Business Improvement District (“District”). We are in receipt of the petition for exclusion of property dated April 17, 2019 as filed with your office by a Jeff A. Massey. I apologize in advance for the length of this correspondence; however, it is warranted given the nature and impact of the exclusion request.

As you may expect, the District is surprised by the filing of this petition for exclusion and even more so by the purported reasons for the request to exclude the property from the District. City staff is aware that there is on-going litigation regarding several of these matters between the District and Mr. Massey’s client and the timing and content of this filing is a clear attempt to influence that litigation.

The District submits the following in response and for the record:

Background: The representative for the Petitioners, Michael Roslin contacted the District to inquire about the benefits of including within the District on August 16, 2017 and a response was provided to Mr. Roslin by the District Board on August 31, 2017 regarding the requirements and process of inclusion, identifying the District’s legal counsel and stating that upon Mr. Roslin’s approval, legal counsel for the District would prepare the required documentation for formal submittal to the District and provide same for Mr. Roslin’s review.

DN 3404292.1

Mr. Roslin attended a meeting of the Board of Directors of the District on September 13, 2017 at which the District's counsel was present on behalf of the District Board. At that board meeting, the treasurer of the board provided an update regarding District taxes and financials and Mr. Roslin participated in a lengthy discussion with the Board regarding the inclusion of property, reimbursements for public improvements, benefits to the property and related matters. Mr. Roslin and the District agreed to move forward subject to satisfactory completion of a reimbursement agreement between Mr. Roslin's entities and the District [9/13/17 District meeting minutes].

Following the board meeting, the District provided Mr. Roslin with the form of inclusion documents for his review with the understanding that the District would assist in filing same with the City, as the District had done on behalf of prior petitioners. On September 28, 2017, the District Board sent a draft reimbursement agreement to Mr. Roslin. On September 29, 2017, Mr. Roslin requested that a copy of the District's Operating Plan be provided to himself and Jeff Massey and provided comments on the agreement from Jeff Massey, Petitioner's legal counsel (as identified and confirmed in multiple correspondence and definitively on Oct. 5, 2017) in regard to the draft reimbursement agreement. In response, the District Board stated that the District's legal counsel would contact Mr. Roslin's legal counsel, Jeff Massey to discuss the comments to the agreement.

Mr. Roslin returned the executed inclusion documents, dated October 12, 2017 to the District for filing with the City. Between September 28, 2017 and October 12, 2017 the District, Mr. Roslin and Mr. Massey exchanged numerous telephone calls and correspondence regarding the inclusion and associated reimbursement agreement culminating in the reimbursement agreement being executed and returned to the District on October 12, 2017. The District filed the inclusion documents with the City on October 18, 2017. After City council hearings on the inclusion petitions at which Mr. Roslin was present and had no comment, the inclusion petition was finally approved on February 27, 2018.

Subsequent to the inclusion, the District has filed an action to enforce the terms of the reimbursement agreement between one of the Petitioner entities represented by Mr. Roslin and Mr. Massey, which case is on-going.

Mr. Massey asserts the following points in support of the request for exclusion:

- 1) the Petitioners (Mr. Massey's clients) were represented by counsel for the District and were unaware of District counsel's loyalty to the District;
- 2) Petitioners were not informed that their properties would be assessed a 51 mill levy; and

3) the Petitioner properties would not receive a cognizable and proportional benefit from the District.

Issue (1). It is well documented and very clear that in regard to the matter before council, Mr. Roslin and Mr. Massey were aware of who legal counsel for the District was and per his own correspondence on numerous occasions, Mr. Roslin identified Mr. Massey as his attorney in this matter and was represented by, and included Mr. Massey throughout the inclusion process including telephone calls with, and multiple correspondence including and from Mr. Massey regarding the inclusions and associated reimbursement agreement.

Issue (2). Mr. Roslin and Mr. Massey, upon their written request were provided with a copy of the District's 2017 Operating Plan and budget on September 28, 2017, prior to their execution and submittal of the inclusion petitions to the District. Section 6(3) of the 2017 Operating Plan states, "...the District taxing ability shall be constrained to mill levy limitations of up to 50 mills for debt service and up to 10 mills for general operations and administrative expenses due to the on-going operations and maintenance to be undertaken by the District within its boundaries...." The budget attached to the Operating Plan clearly reflects property tax revenue to be realized by the District. There were extensive discussions with Mr. Roslin regarding the District taxes and mill levy both at the September 13, 2017 District board meeting which Mr. Roslin participated in and discussions regarding the reimbursement agreement associated with the inclusion. In addition, the District's mill levy was certified and of record prior to the public hearing on the inclusion, giving Mr. Roslin and Mr. Massey ample opportunity to object to or withdraw the inclusion petition at the public hearing at which Mr. Roslin was present; they did not object.

Mr. Roslin and Mr. Massey were provided with information regarding, and can reasonably be presumed to have been aware of, the mill levy of the District. Likewise, Mr. Roslin is a sophisticated developer, commercial real estate broker and manager of commercial real estate for nearly 25 years* and as such, presumed to be fully knowledgeable in regard to property tax due diligence.

**source: Front Range Commercial, LLC website*

Issue 3. The improvements to be provided to Petitioner's properties were identified and discussed at length prior to the inclusion and specifically noted in correspondence dated August 31, 2017 with Mr. Roslin. Mr. Roslin and his counsel were made fully aware of the types of physical improvements and intangible benefits the properties would receive. On

multiple occasions prior to the initial meeting between Mr. Roslin and the District and during the negotiation of the reimbursement agreement and correspondence thereafter, Mr. Roslin and Mr. Massey were made aware of the extent of the public improvements the District could provide for the Petitioner properties. These discussion included the District issuing bonds for streetscape improvements, electrical undergrounding in front of the properties and internal public infrastructure improvements. The District also provided that it would consider any other statutorily eligible improvements as requested by Petitioners. Mr. Roslin, nor any representative of the Petitioners have made such request of the District to date. The cost of the proposed public improvements related to the Petitioner's properties, as discussed between Mr. Roslin and the District is in excess of \$300,000. This does not include costs of bond issuance, interest and District administration costs. There are also significant intangible benefits to the Petitioner's properties related to the District's actions and public improvements in the South Nevada corridor that should significantly increase the value of the Petitioner's property.

Per Section 31-25-1220(1) and (2), C.R.S., the exclusion of property from the District *"...shall not impair or affect its organization or its rights in or to property or any of its rights or privileges whatsoever,[emphasis added]* nor shall it affect or impair or discharge any contract, obligation, lien which the District might be liable or chargeable had any such change of boundaries not been made." Likewise sub-section (2) re-emphasizes, "[i]f the change of boundaries does not adversely affect the district..." the petition could be granted. Approval of the petition for exclusion would in fact adversely affect the District by impairing and under-cutting the ability of the District to realize revenues and provide public improvements within the District and the South Nevada corridor. Likewise, approval of the petition for exclusion would have significant negative impact and impair the ability of the District to discharge its existing obligations and duties to provide public improvements. Adverse effect is the statutory standard for grant or denial of a petition for exclusion and the District hereby affirmatively states that granting of the exclusion will in fact have an adverse affect on the District. The District would be harmed in its stated purposes, in its efforts to provide public improvements for property within its boundaries (including Petitioner's), in relation to its current bond issuance and in its efforts to provide benefits to the entire South Nevada corridor. Of note, Petitioner's citation to Section 31-25-1220(3), C.R.S. is erroneous in that said section requires proportionality of the mill levy specifically for outstanding indebtedness of a district and does not in any way imply or require proportionality of benefit.

In summary, the District has and will continue to deal with the Petitioners in good-faith to provide public improvements and benefits to the Petitioner properties. The District has ample documentation establishing that the inclusion of the Petitioner's property was discussed at length, negotiated with Petitioner's representative and counsel and now Petitioner wants to

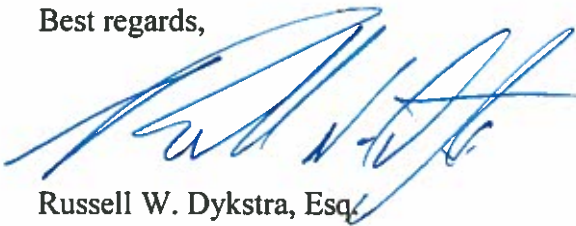
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receive the benefits provided by the District without contributing to same as agreed. The District is disappointed that Petitioners have chosen to use this method to bring litigation matters into the City Council forum. It appears that the request for inclusion was intentionally timed to coincide and interfere with the District's pending request for approval of its bond issuance in order to further a pending legal action (the petitions for exclusion were executed on March 21, 2019 but not filed with the City until April 17, 2019, less than a week prior to City Council action on the bond request).

The District respectfully requests that City staff recommend denial of the petition for exclusion based on the clear statutory standard and that City Council deny the petition for exclusion on the basis that it will have a significant adverse affect on the District. The District appreciates the opportunity to work with staff and City Council on revitalizing the South Nevada corridor and will continue to honor its commitment to that purpose.

Best regards,

A handwritten signature in blue ink, appearing to read "Russell W. Dykstra", is written over the typed name below.

Russell W. Dykstra, Esq.

Cc: Jeff Greene
Peter Wysocki
District Board of Directors