

Colorado Springs Metropolitan District Conversion from Developer to Resident or Multiple Property Owner Controlled Boards

Prepared by Colorado Springs Comprehensive Planning Division, which is responsible for this content

Last updated: January 19, 2020

-Based in part on information and content provided by Blair Dickhoner, Esq., White, Bear, Ankle Tanaka and Waldon

Introduction

In Colorado and Colorado Springs, most Title 31 business improvement districts and Title 32 metropolitan districts are originally created, structured and organized by a single developer or affiliated development group, with the eligible electors and boards of directors limited to those developers and directly related parties. Particularly with residential metropolitan districts, there is an expectation of a transition over time to resident property owner control and responsibility, up to and including circumstances whereby the originating developer or developers are no longer associated in any capacity with the district.

In the simplest example, a developer who set up a small, residential metropolitan district builds the project out, no longer has any property interest in the project, and has been reimbursed for a share of costs from bond proceeds. Although the district may have remaining debt service obligations, as well as ongoing operational and administrative responsibilities, the originating developer(s) no longer has any formal association with the district with the possible exception of them technically being the beneficiaries of reimbursement agreements that have not otherwise been extinguished through the issuance of debt or by other means. Although these cases may exist in the City of Colorado Springs, City staff is not aware of a scenario where things have progressed entirely to this point¹. This is primarily due to the fact that the relatively more mature metropolitan districts in the City tend to be larger or are part of multiple district structures, such that the developer continues to have a role in an otherwise resident-controlled district because the districts are interrelated by intergovernmental agreements and they continue to govern one or more of the districts including the operating districts in some cases. There are several instances where the originally participating developer board members have been replaced entirely or in part by resident property owners.

¹ It is possible that the Lowell Metropolitan District (created in 2000) may no longer have any board members with original or future development. Similarly, the Colorado Centre Metropolitan District, which was uniquely created in the 1980's and whose only residents live in unincorporated areas, may now have a fully resident board and little or no formal relationships with originating or successor developers, other than a Court-imposed dual mill levy.

In a number of cases, resident electors are actively recruited to be participants on these boards. One example is the first residential metropolitan districts within the Oakwood/Banning Lewis Ranch multiple district structure (Banning Lewis Ranch Metropolitan District No. 2), which now has a board comprised of resident owners. However, as discussed below, in this case and most others involving multiple district structures, developer involvement continues because of intergovernmental agreement relationships between this district and the operating District (Banning Lewis Ranch Metropolitan District No. 1).

With the recent trend toward creation of small stand-alone residential metropolitan districts, it is likely that the City will see a number of more or less complete transitions from developer involvement within the next few years.

Business Improvement District Board Conversion

BIDs only tax and typically only include non-residential properties. Therefore, the elected board governance options are limited to structures involving related or unrelated business property owners. To the knowledge of City staff, only the board of the Greater Downtown BID is currently controlled by a board of property owners unrelated to either the original developers or a new project-wide ownership group. The option of transitioning some BID boards to being more diverse in reflecting the variable ownership interests within their boundaries, is a possibility, especially for BIDs with more active operations and maintenance roles and responsibilities.

Transition of Multiple District Metropolitan District Structures to Resident or End-User Owner Control

What is more complicated and has apparently not yet occurred in El Paso County is the scenario wherein the originating or successor developers have transitioned entirely out of control and responsibility for multiple district structures. Typically, these structures have been set up to allow for phased development of larger longer term projects. In these scenarios the individual “financing districts” may transition to resident or other downstream owner control, but the originating or successor developer maintains involvement in certain key functions because they continue to control seats on the operating district board. However, eventually, once the entire project is more or less built out, and key financing decisions have been put in place, the developer(s) would then be in position to transition out of control and responsibility.

There are a few ways to make this transition but all generally involve dissolving the developer control district since only developers can be qualified to serve on those

boards. In addition to that dissolution, one option is to consolidate the underlying districts only if they do not have disparate tax rates and depending on outstanding debt. Another option that has been successfully implemented is the creation of an authority. The authority is created via an intergovernmental agreement and takes the place of the developer control district. The authority then handles all ongoing matters, is run by the residents, and the underlying districts pay their debt and don't do much else.

Examples:

Tallyn's Reach – This is in Aurora and the operating district was dissolved with the others remaining behind. Districts No. 2 and 3 entered into an Authority Establishment Agreement whereby they agreed all of their O&M levy and fees would be passed through to the newly created Authority. The Authority then handles all ongoing operations and is comprised of five resident board members – two from each district and one at-large. Districts 2 and 3 pay their outstanding debt and have limited other functions.

Bradburn – This is in Westminster and in this case they dissolved the control district leaving one residential and one commercial district. This may be the eventual life cycle for Canyon Creek at Ivywild.

Brighton Crossing – This is in Brighton. Here they put in place an authority once one of the five districts became resident controlled. Each district gets to fill one seat. Currently, the developer has filled four seats and the resident board has one seat. The developer used one of their appointments for another resident so there are two residents on the authority board.

Another more complex structure that can be put in place up front is to have an operations district that overlays the entire development. There are still financing districts beneath and a small developer control district that will eventually be dissolved, but the overlay district allows residents to get involved with operations immediately with no need to create an authority on the back end. This structure has been put in place for some districts currently being organized in Adams County called Promontory Metropolitan District Nos. 1-5.