LAKEWOOD CITY COUNCIL
DEVELOPMENT DIALOGUE AD HOC COMMITTEE
MEETING
July 23, 2020

MINUTES

Call to Order
Chairman Skilling called the meeting to order at 6:00 p.m.

Roll Call
Members present: Council members David Skilling, Charley Able, Mike Bieda, Dana Gutwein and Jacob LaBure

Absent: None

Others present: Council member Ramey Johnson, Director of Planning Travis Parker, Director of Public Works Jay Hutchison, and Business Specialist Laura Pemberton

Metro Districts
1. Panel discussion featuring:
   ▪ Tom George, Spencer Fane
   ▪ Megan Schrader, Denver Post
   ▪ John Henderson, Attorney
   ▪ Kyle Thomas, D.A. Davidson

Director of Planning Travis Parker introduced the four present panelists. He mentioned that Denise Gammon of Gammon Real Estate, a listed panelist on the agenda, cannot attend tonight’s meeting.

Megan Schrader stated that she first became familiar with the development process when her father developed 40 acres of land in their hometown of Grand Junction. Her father took out the loan and any potential risks for that development. She became familiar with Metro Districts during the development of the Gaylord Hotel in Aurora. She was concerned with the projects layering of tax districts. She then wrote a column discussing Metropolitan Districts and future consequences, such as cost, that result from their use. She clarified that her opinions tonight do not necessarily reflect the Denver Post’s views. She then stated that the Denver Post Editorial Board has developed some items that can alleviate potential consequences of Metro Districts. These items include: disclosure of all Metropolitan District taxes on MLS listings, elimination of the ability to charge and impose fees, eliminate the risk of self-dealing by having elected officials on boards and not representatives from the developer, and eliminate loopholes so those who have a conflict of interest cannot vote on that matter.

John Henderson stated that Metro Districts create problems that communities should address. The first question is whether the community wants Metro Districts and the second question is whether the proponents of Metro Districts have proven that they are beneficial to the community. This first question
needs to be answered before the community addresses ordinances or reforms. The City of Longmont voted to prohibit Metro Districts. Metro Districts break from the traditional costs for land. This includes the cost of the lot, the cost of the infrastructure, and the cost for the developer. It costs $30,000 for a lot’s infrastructure and the millions in costs of Metro Districts are for paying for this $30,000. Metro Districts are the least efficient and most expensive way to do this. Metro Districts are bad from both an economic perspective and a local government perspective. They are bad for local governments because Metro Districts eliminates resident’s ability to vote on items, such as taxes and future debt. Metro Districts take away the residents right to vote in order to make development convenient and less risky for the developer. Solterra is an example of Metro District abuse of power in Lakewood.

Tom George stated that his firm represents Metro Districts in Colorado. He stated that he has represented Cardel and wanted to clarify they he is in not representing that client or any other clients tonight. He stated that Metro Districts have been around for more than 40 years and are more prevalent in certain parts of Colorado.

Kyle Thomas stated his firm is involved with financing and Metro District bonds. Housing prices have increased considerably in Colorado. Cities and counties now require more infrastructure and it is a challenge for communities to fund the necessary infrastructure. Metro Districts are a tool to close the gap in this funding shortfall by using taxes to support the cost of the new infrastructure in that community. In Colorado, the top twenty selling communities all have Metropolitan Districts. Metropolitan Districts provide about one third of the public infrastructure in a community. The developer can fund the remainder through their own capital or a loan. Typically, interest on this capital is in the 12% range where the interest on a Metro District is in the 5% range. For many projects a developer cannot get a loan for horizontal infrastructure. Typically, developers can get loans for vertical construction but not for horizontal construction. Service plans are authorized by the city. Service protection plans often have mill levy and time caps. There is a narrow limit on how taxes can be used in a service protection plan. He stated that improving transparency is a great goal. Metro Districts operate as local governments and comply with the same transparency and standards as other local governments. Metro Districts provide flexibility and efficient financing that build the most infrastructure for the developers.

**Committee Questions**

Council Member Able asked how do we ensure that Metro Districts follow standards? Solterra and Fossil Ridge’s districts failed to follow their service plans for the first years of their existence, and they did not submit their financial statements with the City of Lakewood or DOLA. How do we create legislation so changes to service plans are authorized by City Council? Currently, districts are making changes to service plans without oversight if it is not a significant change. The word significant is vague, so how do we ensure that service plans and financial reports remain under the standards that are approved by municipalities and all conditions of formation are followed?

Jon Henderson answered that ordinances are priority cities and state legislation provided guidelines for municipalities. When municipalities approve legislation, they can conditionally approve the Metro District application. There is no limit on that time period. He proposed that every application is conditionally approved, and no application is approved unless it is conditional. The application is
conditional until the Metro District is 100% resident run and no agents of the developer are on the board. This creates the opportunity to hold districts accountable with monitoring and reporting requirements. Currently, there is not a check and balance on how developers spend money. Since, it is conditional developers can lose their privileges if they do not comply.

Tom George responded that legally conditional approval would not work. There are multiple steps in creating a district. First the service plan goes to the municipality, and the City Council must approve that service plan. Then the service plan goes to the court and a petition is filed with the district court of Colorado. After that, there is an election. Under Colorado statute, elections cannot be challenged after a certain amount of time. Also, the developer would have already entered the bond market. The notion that there is a condition on this approval that instantly revokes the election, the court approval and decree, and undo a bond transaction will not work. This would make it impossible for the district to function. A more reasonable approach is to be as clear as possible in the service plans and in the language of the requirements. There are avenues of recourse in the Colorado statute. Concerned citizens can file an injunction in court stating that the district has not followed the service plan and departed in a material manner from the service plan. The residents can stop the district if the service plan is clear, but the terms are not followed.

Megan Schrader responded that she is concerned about potential loopholes in service plans. A service plan may address one issue, but other issues seem to appear in its place. She would argue that the best way to ensure these districts use their money appropriately and are good stewards of taxpayer money; is to have City Council members serve as members of the board until residents can serve on the board. It is a slippery slope to trust developers with tax payer money. It is important to have elected representatives who are good stewards of tax payer money serving on the district’s boards.

John Henderson responded that the statues states there can be conditional approval. If the Metro District does not comply then the City can revoke the district’s power.

Council Member Able asked about methods to ensure transparency of Metro District costs for new homebuyers?

Kyle Thomas answered that it is a great idea to notify new homeowners that they are purchasing their home in a Metro District. This can be down with MLS or an informational piece at the model home in the Metro District. A lot of homeowners do not know how to calculate their taxes. Homeowners should be educated on the taxes and cost of amenities to properly inform their homebuying decision. He stated that it is often challenging to find people who want to serve on a Metro District board. There are many districts who have developers serving on the board because no one else will run. He is unsure if it is efficient to have City Council members serve on the roughly 30 Metro Districts in Lakewood.

John Henderson responded that the financial information for homeowners can easily be condensed and not a lot of detail is needed to disclose to homeowners the amount and duration of tax payments. This information can be disclosed during the three contact points of the homebuying process. In his personal experience residents were turned away when they appeared at board elections for Metro Districts. There is a distinction between what is stated in the service plans and what happens in practice. The
developers campaign for their own representatives, and they make it difficult for residents to serve on
boards. The City needs to provide oversight and protect future residents.

Megan Schrader responded that a simple way to give power back to residents is to only approve one
district at a time per development. This provides transparency and control for residents.

Council Member Bieda stated that it has been suggested to not allow Metro Districts. Why are we not
first discussing prohibiting special districts? Also, is it fair to assume that local governments have the
expertise and resources to effectively oversee special districts? Accounting and legal expertise is needed
to oversee the Metro Districts. Is it realistic to assume the City of Lakewood can oversee Metro
Districts? What are the benefits for the City to allow Metro Districts?

John Henderson responded that the development industry needs to prove the necessity of special
districts before the districts are funded. When the City of Longmont decided not to allow Metro
Districts, the City determined that they did not the resources, time, and money to properly oversee
Metro Districts. It is the City’s responsibility to provide checks and balances for Metro Districts. The
developers are now asking taxpayers to subsidize development.

Kyle Thomas responded that previous issues with Metro Districts have been addressed with the current
statutes. Also, no homeowner who purchases a home is at risk of losing their house if their Metropolitan
District bonds go into default. No bank would give you a mortgage if that was the case. He responded
that the downside of having one district for a development is they are often built in filings and
infrastructure is not developed at one time. The district boundaries are meant to coincide with the
filings that are going to be constructed. It is a more efficient tool to issue bonds as the development
progresses instead of one large bond upfront. It is a common tool used across Colorado and developers
want to know the bond capacity of properties. There are projects that would not happen in the absence
of bond funding.

Tom George responded that there have been abuses of Metro Districts. Yet, this is not the case for all
developers and Metro Districts. There are approximately 4,000 Metro Districts across the state and most
function perfectly fine. The committee should not disregard a development tool due to a few bad
examples. There are two reasons to have a Metro District in a development. One is enhanced
improvements and services. One example is transit-oriented development that wants to pay for parking
infrastructures. Affordable housing is a serious issue and developers can use Metro Districts as a tool to
build affordable housing.

Megan Schrader responded that she questions the need for these districts. The developer can do a “but-
for analysis” for projects proving why they need districts and cannot pay for the development without
the Metro District. The developers must provide numbers to prove the value and need for projects that
include special districts.

John Henderson responded that the statute previously mentioned has loopholes. These loopholes are
demonstrated in Solterra and Candelas at Rocky Flats. It is misleading to state that the homeowners are
not at risk of using their homes. He stated that affordable housing only works through subsidies and
developers are not going to subsidize affordable houses because they want to make a profit.
Council Member Bieda asked Mr. Thomas about his statement that residents will never lose their house due to a special district tax. This may be true in principal, but the deed of trust will take precedent over the lean created by a special district.

Kyle Thomas responded that homeowners who pay their taxes are not at risk. If the district goes on default for their bonds the homeowners who pay their tax bills are not at risk. If the homeowners do not pay their taxes that is a different matter.

Council Member Bieda asked about the burden of Metro District taxes on new homeowners. Often the value of the homes initially drops due to these taxes, and the home’s value takes many years to recover.

Megan Schrader responded that homeowners are not aware of these taxes and are not factoring these taxes into their financial decisions. These taxes are contributing to higher home prices due to mill levies. Disclosure of mill levies on MLS should be provided for homeowners. She believes some homebuyers would be deterred if they were provided with all tax information when buying houses in Metro Districts.

Council Member Gutwein stated that the abuse of Metro Districts is well documented and believes there should be changes. She agrees with many of Megan’s recommendations. She is a proponent of affordable housing and transit-oriented development. There was a great development project this Council approved that included a Metro District. She noted there was an article in the Longmont Leader that revised their rule to allow residential Metro Districts and asked if this is true.

John Henderson answered that for one year in 2019 Longmont allowed Metro Districts but then reversed this decision.

Council Member Gutwein stated one challenge is homeowners not being aware of elections or involved in elections. She asked the panel about potential improvements to the Metro District election process.

Tom George stated that many districts do have issues finding people to serve on boards. One recommendation is to provide more notice to residents that elections are taking place. They should mail notice of the election to all residents and publish the election information on their website. Currently, their only requirement is posting the election information in a newspaper of general circulation in the Metro District’s county.

John Henderson answered that election information and resident’s right to serve on a board should be included in the home’s disclosure.

Council Member Gutwein asked if there are developments that would be impossible without a Metro District.

Kyle Thomas answered communities that provide amenities such as parks, play structures, pools, or a community structure use Metro Districts to pay for these amenities.
John Henderson answered that amenities should not be a reason for a Metro District. He believes that amenities should be provided with traditional financing mechanisms.

Council Member Gutwein asked Megan if she has other ideas to close loopholes or address additional concerns.

Megan Schrader answered the other improvement is transfer fees. Most homeowners are not aware of fees that are assessed when their home is sold. There were limits on transfer fees, but now districts seem to be calling transfer fees by different names. There is not a clear need for people to have a one percent fee when selling their house.

Public Comment

JD Lobue Jr. asked that understanding full disclosure might deter potential home owners from purchasing a home within a Metro District, can someone please explain why a metro/special district is more valuable to homeowners and not to builders?

Tom George answered that paying for long term maintenance for items such as stormwater maintenance benefits homeowners.

JD Lobue Jr. asked how can we balance developer risk with the abuses we have seen in special districts?

John Henderson answered this is what we are trying to address. He believes that every district he is aware of in the front range has demonstrated abuses. Metro Districts need to prove their value to residents.

Deborah Romero asked about housing prices skyrocketing in recent years, yet the costs of builders do not seem to have increased commensurately (labor and materials). Therefore, the difference would go toward profits. Why can’t that differential be applied toward infrastructure costs instead of it all going in the builder’s pockets?

Megan Schrader answered that we should ask developers what their true costs are to identify the transparent costs for these developments. If this is transparent, then we do not have to worry about homeowners getting inappropriately charged for infrastructure. Once we know the true cost of development then we can answer this question.

John Henderson answered that developers should prove that they cannot develop without the assistance of Metro Districts. Metro District money should be publicly disclosed.

Recommendations

Council Member Skilling concluded that there are two major themes the committee should focus on.

1. Disclosures
2. Resident control/transparency.
Council Member LaBure asked for comparisons of other local city and county Metro District policies.

Council Member Skilling stated that the June 11 Memo from the Director of Public Works, Jay Hutchison, and tonight’s discussion will provide a template for the committee’s recommendations and future discussion.

**Approval of Minutes**
- July 09, 2019
  - Consensus, 5 ayes

**Adjournment**
Chairman Skilling adjourned the meeting at 8:08 p.m.

**Set Meeting Dates/Times**
The committee will determine the next meeting date and time.

**Next Steps**
The committee will continue the Metro District discussion.