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File No. 5023477.1

August 15, 2016

VIA ELECTRONIC MAIL
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Bob Slentz
Castle Rock Town Attorney
100 Wilcox Street
Castle Rock, CO 80104

Re: Miller's Landing Business Improvement District ("BID")

Dear Bob,

As you know, we represent the petitioners for the above BID, Citadel Development who are also the developers ("Developers") of the proposed Miller's Landing mixed use development, located on approximately 65 acres near the Plum Creek and I-25 Interchange ("the Property"). The Developers propose to clean up the former Town landfill, construct various local and regional public improvements, and construct a vibrant mix of retail, restaurant, hotel, office and light industrial uses ("the Project").

The overall Project is on track for the Town Council and Castle Rock Urban Renewal Authority ("CRURA") to consider a rezoning to the Interchange Overlay Zone District ("IOZ"), and, ultimately, for consideration of a public finance package that will allow for financing of the extraordinary public improvements associated with the Project, including cleanup of the Town landfill. However, these public hearings will not be scheduled for some time, most likely in late 2016 or early 2017.

As you also know, the Developers propose to form a business improvement district ("BID"), in order to create a vehicle for both financing and constructing these public improvements and landfill cleanup, and to serve as an ongoing organizing entity for promotion, marketing and business retention for the Project.

Timing Issues

In order to facilitate the Project and keep it on schedule, the Developers propose to place the question of BID formation, as well as authorization to incur debt, and impose a mill levy, on the November 8, 2016 ballot. Because of the limitations placed upon such elections by the Taxpayer's Bill of Rights ("TABOR"), if this does not occur, the next available opportunity to place these questions before the voters for authorization will not arise until November 7, 2017. This date will be too late to be helpful in locking in tenants, commencing construction on schedule, and otherwise proceeding with the Project in a timely fashion. As such, it is imperative for Project success that the financing vehicle for the Project be considered by the voters at the November 8, 2016 election.

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For this reason, the Developers have asked that the Town Council consider the formation of the Miller's Landing BID, as well as authorization of the election questions for bonding authority and mill levy authority, in September of 2016, in order that these questions may be finalized and placed on the ballot for the November 8, 2016 election – even though the town Council will not consider the other Project approvals (zoning, site plan, and public finance agreement) until sometime after that. That being the case, the petitioners have not presented an Operating Plan with the petition. Rather, they only ask for the Town to authorize the organization of the BID, the appointment of the first Board of Directors, and the conduct of the November election (including the authorization of debt and a mill levy).

Considering the BID formation and taxing authority ahead of approval of the other Project components may be somewhat unusual in the Town's practice, but it is common throughout Colorado, mostly because of the unique deadlines created by the interaction of TABOR with the election calendar.

In order to provide further comfort to the Town Council that the BID will not inappropriately burden the Property or future tenants of the Property, it is further understood that the public finance agreement, if approved, will contain conditions precedent to the BID's ability to issue debt backed by any Town approved public financing, such as approval of the proposed rezoning; approval of a site plan for the Project; and approval of a public finance package. In this way, the Town can be sure that the BID will not incur debt or impose a mill levy unless and until the Project – or a future, different Project – is approved and is a reality. Finally, in order to further limit the BID's actions until a Project has been approved, the petitioners suggest that the approving ordinance state that the BID not be allowed to submit an operating plan before some milestone is passed, such as the approval by the Town Council of a site plan for the Project.

We understand that the Town may have additional questions about the BID, and its appropriateness for the proposed Project. This letter is intended to provide further information to address such questions.

BID's for "Greenfield" Development

We understand that questions have arisen regarding the use of a BID for "greenfield" development. First, it should be noted that the Property is not a **greenfield**; it is a **brownfield**, as that term is legally defined in federal and state law, because of the Town landfill which constitutes a major deterrent to redevelopment.

While it is true that the BID statute may be more well known for its use in situations where development and businesses already exist, there is no prohibition in statute or elsewhere on the use of a BID in other situations. The BID Statute provides that, to organize a BID in a new area, the Town's governing body need only declare, after notice and a hearing, that the area is a location intended for new business or commercial development, not that it is currently developed commercial. The second sentence of C.R.S. Section 31-25-1203(10), is conclusive on this point.

Our office has created several "greenfield" BIDs throughout Colorado, including in Colorado Springs, Longmont, and Aurora, and is currently processing new ones in Aurora and the Town of Erie.

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Governance Issues

Additionally, there are distinct governance advantages to both the Town and the petitioners in the use of a BID as compared to a Title 32 metropolitan district, with which the Town may be more familiar. Some of these are summarized below.

1. The Council appoints the BID board of directors and can remove them for cause. With a metropolitan district, the Town has no control over the board composition.
2. The BID must annually submit to the Town an "Operating Plan" before issuing bonds, levying taxes, or providing any improvements and services, and the Town may approve or disapprove the plan in each instance. By contrast, with the limited exception of the location and extent process, and outside of any limitations imposed through the initial service plan approval, the Town has little or no control over what a metropolitan district does.
3. The BID may not exercise the power of eminent domain. A metropolitan district does have such power by statute (if approved in the service plan). Indeed, a metropolitan district actually has the authority to condemn property owned by the Town.
4. The BID has superior authority to provide a broad variety of improvements and services supporting "any" public purpose, as opposed to the limited scope of a metropolitan district's authority, which is limited to those public improvements and services expressly enumerated in statute. In particular, relative to the Project, this includes the ability to promote and market the businesses and area within the BID. Because the success of this Project in terms of job creation will depend heavily on the ability of the Developers, working in concert with the Castle Rock Economic Development Corporation ("EDC") to attract new businesses to the Project, these powers are particularly important in this instance.
5. A metropolitan district serving a purely commercial area with no residents (and thus no resident electorate) faces significant challenges in the issuance of tax exempt debt. As result of recent rulings by the Internal Revenue Service ("IRS") and proposed regulations, such a district faces a significant risk that it will be found not to constitute a valid "political subdivision" of the State for federal tax purposes, and thus would not be qualified to issue tax exempt bonds. This would eliminate one of the principal benefits of public financing for public improvements. In a BID, each of the commercial owners can designate individuals to serve as qualified voters to act on their behalf, thus eliminating the basis for the IRS' objections. Further the Town's ability to appoint the board and control the BID's annual functions also limits the ability of the IRS to object to the BID as not being a legitimate political subdivision.

Dissolution

We believe that formation of the BID will be an asset to the Property, regardless of whether the Project is ultimately approved by the Town Council. The owners of the Property have agreed that the BID will facilitate development of the Property, even if the Project is ultimately not approved and the owners have to market the Property to other purchasers; for this reason the owners have agreed to the BID formation even though the Developers have not yet closed on the purchase of the Property.

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However, we understand that the Town may have concerns about leaving the BID in place if the Project is not approved. The BID Statute does provide tools that can be used in such a situation. For example, C.R.S. Section 31-25-1209(4) describes the appointment of the BID's board, and states that the appointment can be conditional and may include provisions requiring the dissolution of the board after a specified length of time. This allows the board to be dissolved if, as an example, a site plan is not approved by the Town Board by a certain date. In that event the Town becomes the Board of the BID and would control the rest of the BID's existence, including the authority to dissolve the BID.

We hope that the above assuages some of the concerns that have been expressed about the use of a BID to facilitate the Project, and consideration of the BID at this stage in the Project's approval. If the Town has additional questions or concerns, please do not hesitate to contact us.

Thank you.

Best regards,

Matthew R. Dalton

MRD/mrd

cc: Shawn Temple
Carolynne White

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