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MEMO:

TO: Routt County Commissioners
FROM: Tom Sharp
DATE: November 5, 2018
RE: Proposal by Steamboat Springs Area Fire Protection District to include all property within the City of Steamboat Springs within such District

The Steamboat Springs Area Fire Protection District ("District") has proposed to include within its boundary all of the property within the City of Steamboat Springs. At a public hearing on such proposal on October 15, I appeared and made a brief public statement on behalf of myself, opposing the inclusion and urging that the 2015 Amended Service Plan of the District must be modified through the County Commissioners. The District board of directors subsequently requested that the County Commissioners determine whether or not the Amended Service Plan of the District requires modification pursuant to Colorado statutes. The Commissioners have set a public hearing for November 13 to hear argument on this matter.

The purpose of this Memo is to express my views on the issues surrounding modification of the Districts 2015 Amended Service Plan. I speak only for myself, and am not representing any person or entity in this regard. I own almost an acre of commercial land on Lincoln Avenue in the City, and would be greatly impacted by an increase of 6 to 9 mills on my commercial property.

I am currently in Hawaii for the month of November, a practice which my wife and I have enjoyed for about 10 years. Therefore, I request your indulgence to allow me to provide these comments in writing by this Memo, in lieu of physical presence on November 13. I hope to be able to "call in" by telephone on that day and time to participate orally in the hearing, but am not sure that procedure will be accomplished.

I have read the 2015 amended Service Plan of the District ("SP"). The original Service Plan was adopted in 1981 and the 2015 SP is a complete replacement of the original Service Plan. I have also read the County Commissioners' letter in 2015 agreeing that such SP is not a material amendment of its 1981 Service Plan and therefore did not require the multiple public hearings.

I believe the proposal in the recent IGA between the City and the District for the District to annex and include all of the property within the City is a material modification of its 2015 SP.

I urge that the Commissioners find and conclude that the Fire District's proposal must be held to be a material modification of its 2015 SP, and must be held to be presently inadequate as to financial plan and detail, and must be followed with further submissions of such a formal modification by the District to the County with attendant opportunities for public hearings, followed by the judicial filing by the District for an order to hold an inclusion election within the City, all for the following reasons:

1. The applicable provisions of the Special District Control Act for any modification of a Service Plan are set forth in CRS 32-1-207(2)(a), as follows:

> "(2) (a) After the organization of a special district pursuant to the provisions of this part 2 and part 3 of this article, material modifications of the service plan as originally approved may be made by the governing body of such special district only by petition to and approval by the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 **in substantially the same manner as is provided for the approval of an original service plan**; but the processing fee for such modification procedure shall not exceed two hundred fifty dollars. Such approval of modifications shall be required only with regard to **changes of a basic or essential nature**, including but not limited to the following: **Any addition to the types of services provided by the special district**; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area. Approval for modification shall not be required for changes necessary only for the execution of the original service plan or for changes in the boundary of the special district; except that **the inclusion of property that is located in a county or municipality with no other territory within the special district may constitute a material modification of the service plan or the statement of purposes of the special district as set forth in section 32-1-208. In the event that a special district changes its boundaries to include territory located in a county or municipality with no other territory within the special district, the special district shall notify the board of county commissioners of such county or the governing body of the municipality of such inclusion. The board of county commissioners or the governing body of the municipality may review such inclusion and, if it determines that the inclusion constitutes a material modification, may require the governing body of such special district to file a modification of its service plan in accordance with the provisions of this subsection (2)."**

2. I have highlighted above language in the statutory Special District Control Act as a basis for the two reasons I believe the County Commissioners should conclude that the proposal by the Fire District constitutes a material modification of its SP, and therefore must order the District to prepare and file a full modification of its SP, followed by the opportunities for public hearings before the County Planning Commission and County Commissioners, prior to the District filing for a Court Order to hold an inclusion election.

3. The first reason is this: The Fire District has never been an entity directly engaged in fire protection, fire suppression, or fire response, anytime during its existence. It has always, from its creation, contracted with the City of Steamboat Springs to engage in such services. The Fire District originally only engaged, as a government, in ambulance and rescue services. Eventually, in 2002, those services became contracted to the City of Steamboat Springs, so that it is currently only a "financing" district that provides its revenues to the City's department, "Steamboat Springs Fire Rescue," From Page 4 of "A Strategic Plan by Steamboat Springs Fire Rescue October 2018" (available on the internet):

> "Prior to 2002, Fire Service was provided by the City of Steamboat Springs (City) with volunteer firefighters, a full-time Fire Chief and Fire Marshal plus the administrative support of the City. EMS/Ambulance Service was provided by the Steamboat Springs Area Fire Protection District (District) with two full time paramedics and part-time EMS providers plus a full-time EMS Chief and a part-time Administrator/CFO. Currently, emergency services (fire and EMS) are provided by Steamboat Springs Fire Rescue (SSFR), **which is a department of the City;** SSFR provides service to both the City and District through an intergovernmental agreement (IGA),which was developed between the City and the District in 2002."

Under the proposal now specified in the recent IGA between the District and the City, the City would exit being the entity responsible for fire protection, fire suppression, and fire control, and such fire services would be provided by the District which would be the entity controlling and funding "Steamboat Springs Fire Rescue." Many great employees within and vendors to "Steamboat Springs Fire Rescue" may well believe that this is a "seamless" and "insignificant" and "non-material" change, but it is not. The Fire District proposes to become the acting, supervising, and financing governmental body for all of the fire protection, fire suppression, and fire control services not only within its historic boundaries, but within the entire City boundary with its approximately 13,000 residents (2017 estimate). The City Council intends to "back out" of being the entity acting, supervising, and financing such fire protection/suppression. This is a "wholesale hand-off" of the critical fire protection/suppression governmental service to 20,000+ residents and property owners in a several-hundred mile area in and around Steamboat Springs representing about 80% of the assessed value of Routt County. If that isn't a MATERIAL modification of its original and its 2015 modified SP, I can't imagine what it would take to become "material." I believe the District is proposing "new services" in the form of being the entity providing and supervising fire protection, fire control, and fire suppression within not only its historic boundaries but now also within the entire City. It is "an addition to the type of service provided by the District" as contemplated in the above-quoted Special District Control Act Section CARS 32-1-207(2)(a).

This changeover is not "seamless" and "insignificant" and "non-material." It shows up in the questions how governance supervision of fire/rescue in the Steamboat area will shift from a more politically-responsive City Council to a less politically-

responsive 5-member currently unelected special district board. It shows up in questions about future bonding of future fire/rescue assets, particularly the proposed new Fire Station which would have to be financed entirely differently if done by the City through its "department" Steamboat Springs Fires Rescue than if done by the District. The District cannot charge sales taxes. It can only charge a property tax mill levy. It shows up on questions as to who has authority to hire/fire the Fire Chief–which passes from the City Council to the Fire District board. It shows up in the "reverberation" of the City Council getting to "free up" at least $1.8M of annual sales tax revenues it has historically spent within its department (Steamboat Springs Fire Rescue) and which it would now be freed from having to contribute to fire/rescue services.

So, reason number one is that the Fire District, which has never actually been in the direct business of fire suppression and fire protection, takes it on fully and completely. That is material. That was not advised or discussed, with all its ramifications, in the 2015 SP.

4. The second reason is that the special district control act specifically provides that if the special district proposes "to include territory located in a county or municipality with no other territory within the special district, . . . [t]he board of county commissioners . . . **may** review such inclusion and, if it determines that the inclusion constitutes a material modification, **may** require the governing body of such special district to file a modification of its service plan in accordance with the provisions of this subsection (2)."

The 2015 SP does not propose the annexation/inclusion of all City property. Section IV-1 on Page 6 simply recites the current statutes for Special Districts regarding inclusions and exclusions of lands from its boundaries. It is a recitation of statutory authority. It is not, by any stretch, a statement of intent of action or services. At the bottom of Page 5 of the 2015 SP, the second paragraph of Section IV says: "The Board may expand, reduce, or eliminate all or any portion of any **extra-jurisdictional service area** at any time in its sole discretion." That, also, is simply a statement that the Board can add to the acreage for which it provides protection under its City IGA, as "extra-jurisdictional" or "outside its boundaries" area. It is not even a hint of annexation of the entire City.

The purposes of this statutory language is to say that if a special district proposes to expand its boundary by encroaching into a municipality which has not theretofore had any of its lands within the district, such an encroachment has potential governmental jurisdictional conflict potential and the entity responsible for the original service plan approval–the County Commissioners–should have the right and ability to "weigh in" on the proposal to protect the interests of the municipality's residents.

That "step in" by the County Commissioners is especially applicable and essential here, given the historic "TABOR election" vote of the Fire District. A number of years ago, in 2008, the Fire District placed a ballot issue of a TABOR mill levy cap of 9 mills on the ballot, and among its thousands of residents (none of whom were City residents),

only about 542 voted, and the TABOR issue passed by exactly 20 votes. Now, by annexing all of the City lands, the prior TABOR approval would allow the Fire District to impose up to 9 mills on all City property without a TABOR election of City electors, which would allow an increase in annual property tax revenues to the District of approximately 6 million dollars, which almost certainly is the largest tax increase in dollar amount in Routt County history. It would allow a massive tax increase on City property, without the aid and requirements of disclosures and public input required under a TABOR ballot issue for City residents and commercial property owners. This is especially important since the District proposal is to have its inclusion election in May of 2019, traditionally a time of low special district voting turnout and a time many people in the ski business are away on well-deserved spring vacations.

5. Every Service Plan of a special district must contain, in accordance with the Special District Control Act, per CRS 32-1-202(2)(b), the following:

> "(b) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan."

The 2015 SP of the District does not provide a "financial plan" in the nature as now proposed by the District and City Council. There is no clarity as to the extent of financial provision from the City of the former $1.8M annual sales tax revenues. The parties may not even be in agreement yet as to how the City will contribute to the new Fire Station, and there is not agreement as to whether the Fire Station will be financed with a bond issue or "out of cash." No schedule of debt for the future is proposed, though some have suggested that at least the new Fire Station must be paid by debt. It behooves the County Commissioners to require the District to produce a material modification of its 2015 SP that includes a full "financial plan" of the District as a new entity exclusively providing fire/rescue services over the succeeding years, including how the City will participate or contribute, whether debt will be undertaken and, if so, how much and how it will be paid, what mill levies will actually be imposed pursuant to a 5-year capital improvement plan, and other financial requirements.

6. I believe the Colorado Special District Control Act provisions quoted above in this Memo, and the prior practices of the County, necessitate that the modification to the 2015 SP be presented to and approved by resolution of the County Commissioners after public hearing, and such approving resolution be filed with and accompany the petition by the District to the District Court to order the desired inclusion election. In other words, I believe the approval of the modification by the Commissioners is a pre-requisite of the

District to its application for a Court ordered election. I believe it is not proper for the County to permit or require the District to file its complete modification and conduct a County hearing after the inclusion election already has taken place. It is clear from CRS Section 32-1-205(2) that when a special district is being proposed to be created, it is mandatory that the resolution of approval by the County of the Service Plan must be filed with the Court and "no petition for the organization of a special district shall be considered by any court in this state without the resolution of approval and the service plan required by this part 2." Since that is the required procedure for initial approval of a service plan and district, the above language in the first sentence of CRS Section 32-1-207(2)(a) which reads ". . . **in substantially the same manner as is provided for the approval of an original service plan** . . ." must require the County resolution of approval of a modification to the service plan BEFORE the inclusion election, not after it.

I might add that I was the special district attorney for two water and sanitation districts in Routt County that proposed modifications to their service plans years ago in connection with a proposal to convert such districts to Metropolitan District to add additional permitted powers. I represented the Tree Haus Water and Sanitation District when it successfully converted to a Metropolitan District and added powers over streets/roads and mosquito control. I represented the Mt. Werner Water and Sanitation District when it unsuccessfully sought to convert to a Metropolitan District to add powers over recreation. In both cases, the special districts were exercising that option under CRS Section 32-1-1006(2)(a) which reads:

> "(2)(a) A special district organized for water or sanitation or for water and sanitation purposes, upon the filing of a resolution of the [special district] board with the court and after an election held pursuant to paragraph (b) of this subsection (2), may become a water and sanitation or metropolitan district, respectively, possessing all the rights, powers, and authority of such a district . . . .
>
> (b)(I) After a hearing on the resolution, the court shall direct that the question of conversion of the special district be submitted to the eligible electors of the special district and shall appoint the secretary as the designated election official responsible for the calling and conducting of the election according to the provisions of articles 1 to 13.5 of title 1, C.R.S.
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> (II) If a majority of the votes cast at the election are in favor of conversion and the court determines the election was held in accordance with articles 1 to 13.5 of title 1, C.R.S., the court shall enter an order including any conditions so prescribed and converting the special district."

Nothing in that statutory procedure talks about the Special District Control Act, just as the inclusion statutes of CRS Section 32-1-401 et seq. do not include Control Act provisions. But the Routt County Commissioners in both instances, and in the review of the Steamboat II Water and Sanitation District conversion to a Metropolitan District to take on streets/road functions many years ago, required the special districts to go through filing of modifications to service plans and holding of hearings before not only the commissioners but also the planning commission, BEFORE filing of any district court pleading seeking an election. Indeed, history

will show that the proposal by the Mt. Werner District to convert to a metropolitan district and take on recreation powers was curtailed and stopped dead in its tracks by an adverse 2-1 vote of the County Commissioners to its proposed service plan modification.

Therefore, it has been the practice of the County in at least 3 prior instances that, where a special district under its jurisdiction proposes a change to the type of service it provides, such district is required to prepare and present a modification of its service plan to the County Commissioners for approval or denial prior to submission of the court proceedings by which an election is ordered. Here, the same logic and practice should prevail since, as argued above, the Steamboat Springs Area Fire Protection District is, in reality, proposing a material and significant change to the type of service it provides–going from a passive financing district only to the new sole provider of fire suppression and fire control services in and around Steamboat Springs.

I urge the County Commissioners to exercise its permitted supervisory authority under the Special District Control Act to require the Fire District to produce and deliver to the County a complete modification of its 2015 SP, with a financial plan section and material attached, and provide the public with opportunity to review and comment on such proposal in public hearings before the County planning commission and the Commissioners, and require that such modification first be approved by the County Commissioners by resolution PRIOR to the entry of a court order on petition of the District for an inclusion election.

I have sent a copy of this Memo to the attorney of record for the Steamboat Springs Area Fire Protection District, and to the County Attorney.

Tom Sharp