

WEISS AND VAN SCOYK, LLP
ATTORNEYS AT LAW
YAMPA VALLEY BANK BUILDING
600 S. LINCOLN, SUITE 202
STEAMBOAT SPRINGS, COLORADO 80487

ROBERT G. WEISS
WARD L. VAN SCOYK
JASON M. YANOWITZ

TELEPHONE: (970) 879-6053
TELECOPIER: (970) 879-6058
bweiss@wvsc.com

November 7, 2018

Board of County Commissioners
County of Routt, Colorado
Steamboat Springs, Colorado

Re: Inclusion of Steamboat Springs Property into Steamboat Springs Area Fire Protection District ("Fire District")

Dear Commissioners:

Based on the information provided to me by the Fire District, more than 240 petitions requesting to be excluded from the plan to include the entirety of the City of Steamboat Springs (City") within the Fire District have been filed with the County. This firm represents several of the petitioning property owners, including Les Liman, Curt Weiss and Ty Lockhart and their affiliated companies, but not all of them. I attach a summary of the petitions and the petitions filed as provided to me by the Fire District.

It is my understanding that this matter has been scheduled for consideration by the County Commissioners at a hearing to be held on November 13, 2018 beginning at 2:30 p.m. I understand that the Fire District will be offered 15 minutes to make a presentation on the question of the exclusion and that the petitioners will be offered 15 minutes to respond. The Commissioners will also consider argument on the question of whether a service plan amendment to the Fire District service plan is required. On this question, 10 minutes will be offered to the Fire District and 10 minutes will be given to property owners to respond. Following these presentations, 40 minutes will be allocated to questions and deliberation.

C.R.S. §32-1-401(3) provides that the notice for proposed inclusion within a Title 32 special district must include "procedures for the filing of a petition for exclusion pursuant to Section 32-1-203(3.5)." C.R.S. §32-1-203(3.5)(a) gives the Board of County Commissioners authority to exclude property from inclusion within a special district. The burden of proving that the exclusion of a property is not in the best interest of the Fire District is on the Fire District. Exclusion may be based on a petition filed by a property owner or on motion of the County Commissioners themselves without a petition since the statute says "the board of county commissioners should not be limited in its action with respect to exclusion of a territory based upon a request." It is clear that the Board of County Commissioners has broad authority to exclude a property from the proposed inclusion and the Board of County Commissioners may determine that all of the property proposed for inclusion may be excluded.

Accordingly, on the basis of the foregoing, I respectfully request that the Board of County Commissioners exclude all of the property within the City of Steamboat Springs from the proposed inclusion, including properties owned by the petitioners that I represent, for the following reasons:

1. This matter was first formally introduced to the City Council in the draft pre-inclusion agreement presented at a work session on May 22, 2018. City Council discussed this matter at meetings on June 12, 2018, July 17, 2018, August 28, 2018 and September 4, 2018 when the pre-inclusion agreement was approved. The total time in discussing this plan looks to be about 4 or 5 hours. Other options which did not involve transfer of the fire and ambulance services to the Fire District and inclusion of the entire City within the Fire District and the imposition of a 9 mill property tax levy within the City were not discussed in any substantial manner. No public comment was received before the pre-inclusion agreement was approved. Based on the archived materials on the City website for these meetings and the video, no options for increasing funding to the fire and ambulance services or the construction of a new fire station were discussed other than the current plan for the City to exit fire and ambulance business, transfer the assets to the Fire District, and facilitate the imposition of a 9 mill property tax raising approximately \$6 million within the City.
2. Prior to signing of the pre-inclusion agreement and deciding to proceed with this inclusion plan, there has been strikingly little public involvement in the development of this plan. In addition to the total lack of public comment in the hearings leading up to the pre-inclusion agreement, there have been relatively few articles on the subject in the *Steamboat Pilot and Today*. No committees or open houses explaining the plan and the options have been held, and no clear effort has been made to develop a community consensus in support of this plan. For the most part, the plan was developed under the radar and the pre-inclusion agreement signed with the only material outstanding item being agreement between the Fire District and the City regarding offset against the \$1.8 million sales tax revenue the City expected to save if the pre-inclusion agreement is implemented and the City included within the Fire District. This is a substantial departure from the City's normal efforts to engage the public in order to reach consensus before taking significant actions.
3. If the takeover of the fire and ambulance services by the Fire District moves ahead, there will be substantial financial implications to the community and its citizens. Property taxes within the City will increase approximately 18% across the board. For a residential property owner with a home valued at \$800,000, this will be an annual increase of \$518.00 in property taxes. For a home valued at \$1 million, this will be an annual increase of \$648.00 in property taxes. What will be the impact on rents and home prices throughout the City? Because of the *Gallagher* amendment, the impact on commercial and vacant properties will be more than four times the impact on residential properties. For a \$1 million commercial property, the property tax increase will be \$2,610.00 annually. These tax increases will almost certainly be passed through to commercial tenants and their customers. What impact will these tax increases have on the cost of living in the community? What impact will it have on the competitive posture of local businesses who are already competing with the giant retailers such as Costco and internet sellers such as Amazon? The implications of this tax increase and the options available should be the subject of a robust community discussion before a plan is placed before the voters.

4. The handoff of fire and ambulance service to the Fire District raises substantial governance issues. The Fire District mill levy of 9 mills (or close to that) would be third in amount below the school district at about 21 mills, the County at about 17.5 mills and raise annually a total of approximately \$8 million. This would be approximately a 650% increase in the property tax revenues of the Fire District. The Fire District is a Title 32 special district run by a five-member board. The current members were not elected by their constituents. As is frequently the case in special district elections, elections are routinely canceled and the incumbents or their appointed replacements deemed elected. Their board meetings are rarely attended by the public, and their proceedings are almost never reported in the media. The 9 mill property tax levy and property tax revenue will be a dedicated source of revenue available only for fire and ambulance services and no other purpose. The community will lose the ability to balance the needs of fire and ambulance against other community priorities, such as roads, water and sewer, parks or police protection. The decision is irreversible. There is no sunset. If the fire and ambulance services within the City are turned over to the Fire District, it will stay there indefinitely and will be outside the control of the City Council and the County.
5. This proposal involves a fundamental change in the way in which fire and ambulance services are delivered to the City of Steamboat Springs and the existing fire district. It deserves substantial community discussion and analysis and consideration of the options. It deserves a process designed to build consensus and reach the best decision, not a hotly contested election.
6. Since the notice of the proposed inclusion went out, there have been two hearings, one before the City Council and one before the Fire District, at which time members of the public raised a number of issues including the following:
 - (i) Is property tax the best source of financing the necessary capital and operating costs of the Fire District, or should other revenue sources or a mix of revenue sources be considered?
 - (ii) Is there a way to mitigate against the draconian effects of *Gallagher* on commercial owners?
 - (iii) Should fire and ambulance services in this community be run by a special district or the City Council, which is a much more publicly accountable entity?
 - (iv) Have the pros and cons of special district government as opposed to municipal control of fire and ambulances services been adequately considered?
 - (v) Should the \$1.8 million sales tax savings the City expects to enjoy based on transferring the fire and ambulance services to the Fire District be applied perpetually against the cost of fire and ambulance service to reduce the need for the mill levy by approximately 1/3, or should it be used for other City purposes?

(vi) Should the \$12 million estimated cost of the new fire station be paid in cash or bonded?

(vi) Is a massive increase in fire and ambulance expenditures really necessary to provide appropriate levels of service to the community?

(vii) Would it be possible to work a deal with UCHHealth or other private sector ambulance provider to reduce the cost of ambulance service and the need for such a substantial new tax revenue?

(viii) Is a May, 2019 single issue election during mud season appropriate?

(ix) Is it a viable option for the City to retain and continue to operate the fire department and EMS and seek authorization for a mill levy or other tax increase within the City?

These are just some of the questions that need to be thoroughly analyzed with the benefit of a comprehensive staff workup in a process in which the community is heavily engaged. In the context of this huge tax increase, these questions and thorough consideration of the options are just too important to be given short shrift.

7. It is sure to be argued that these questions will be discussed in advance of the May election on the question of inclusion and that that's the purpose of elections. This argument misses the point. Once the decision is made to proceed with the inclusion, there remains only the issue of whether to include the City within the Fire District or not to include the City within the Fire District. It becomes a binary choice: Yes or No. There will be no other options considered. This decision will be made in the context of a contested election. It should be expected that the parties will go to their corners and come out fighting. Before that happens, it would be better for the City, the Fire District and the County (in its supervisory capacity over the Fire District) to consider the options and develop those options in the context of the service plan amendment so that the community as a whole can engage in the process and the best solution reached which hopefully finds consensus within the community. If a tax increase of any kind (property, sales or other revenue source) is needed, the likelihood that it can pass muster with the electorate greatly increases if a consensus plan is developed. If this inclusion plan is defeated after a polarizing election, it is unlikely that those who have spent time, money and effort on the opposition side will enthusiastically embrace developing a consensus plan with those who forced the election on them. No one should count on a "12 plus 2" committee coming out of a defeated proposal, such as occurred years ago when voters rejected the ill-conceived plan to relocate the Steamboat High School.

For all of the above reasons, the Fire District cannot meet its burden to show that the exclusion of the City from the District is not in the best interest of the Fire District. At the present time the Commissioners should exclude all of the City property, require a service plan amendment process with the expectation that the parties will engage in a public process and develop a plan that can be supported by the bulk of the community and be successful at the polls to the extent it involves any tax increase. This would be the best process for the City, County, Fire District and Community. The Commissioners, who represent all of Routt County, including the City and the existing Fire

District can ensure this happens by excluding all of the property within the City from this proposal and requiring a service plan amendment before any inclusion plan moves to a vote.

Respectfully submitted,

WEISS AND VAN SCOYK, LLP

A large, stylized handwritten signature in black ink, appearing to read 'Robert G. Weiss', is written over the printed name and extends across the width of the page.

RGW/cm

cc: Erick Knaus, County Attorney
Steamboat Springs City Council
Dan Foote, City Attorney
Dino Ross, SSAFPD Attorney
Steamboat Springs Area Fire Protection District