Special Districts

DIRECTOR ORIENTATION PRESENTATION

PRESENTED BY:
JENNIFER GRUBER TANAKA, ESQ.
LISA A. JOHNSON
DIVENA MORTIMEYER, CPA

WHAT ARE DISTRICTS?

Purpose

- Special districts can provide infrastructure and services to new and existing development that county and municipal governments are unable to provide
- Special districts can serve as a financing vehicle for property owners for the provision of public infrastructure to new and existing development
- Special districts possess powers and privileges of governmental entities that private developers and property owners do not otherwise possess

Types of Special Districts

- Metropolitan districts
- Water and sanitation districts
- Park and recreation districts
- School districts
- Fire protection districts
- Ambulance districts
- Health service districts
- Tunnel districts
- Single purpose districts

Advantages and Disadvantages of Districts

Advantages

- Publicly accountable (public meetings, records, etc.)
- Governmental Immunity
- Able to impose taxes (tax deductible)
- Able to finance public infrastructure over 40 years resulting in owners paying proportionate share of use

Disadvantages

- Required to comply with Colorado law for compliance matters which can be onerous and costly
- Often difficult to find interested people to serve on the Board of Directors

How is a District different from an HOA?

HOA

- Nonprofit corporation
- Subject to laws governing corporations and the Colorado Common Interest Ownership Act ("CCIOA")
- Operates as a private corporation
- Can limit membership and use of facilities
- Typically responsible for covenant enforcement

DISTRICT

- Quasi-municipal corporation and political subdivision of the State
- Subject to Title 32 of the Colorado Revised Statutes, Open Meetings Laws, Budget Law, etc., and other laws governing public entities
- Operates as a form of local government
- Must keep facilities open to the public

ORGANIZATION OF DISTRICTS

How are districts organized?

- Governed by the Special District Act, §§ 32-1-101, *et seq*., C.R.S.
- Service Plan
  - Governing document for district
    - Similar to a city charter or constitution
    - Districts created prior to the Special District Act were created through a Petition or Statement of Purpose
  - Sets forth the powers, authorizations and prohibitions as agreed to by the petitioners for the district and the governing body of jurisdiction
  - Submitted to governing body of jurisdiction (i.e. board of county commissioners ("BOCC"), city council or town trustees) for approval (§ 32-1-202, C.R.S.)
    - Governing body approves, conditionally approves or disapproves the service plan at a public hearing (§ 32-1-203, C.R.S.)

How are districts organized?(cont.)

District Court

- After BOCC approval, a petition is filed with the District Court for the county in which the district is located asking the Court to call an election
  - The election asks the eligible electors within the district whether they want the district organized, what taxes and debt they want to approve and any other questions or issues appropriate for that development
- Court conducts hearing on evidence to ensure requirements met
- Court orders the election

Election

- Electors vote to organize the district and approve taxes and debt
- Original board of directors elected
- Simple majority wins

Order and Decree

- If election passes, Court issues Order and Decree organizing district
- Serves as organizing document i.e. articles of incorporation

Greatrock North Water and Sanitation District

- Service Plan approved by the Adams County BOCC on March 9, 1998
- Voters approved organization, directors, taxes and debt at May 5, 1998 election
- Adams County District Court ordered the District organized on May 14, 1998
- Order and decree recorded in the Adams County Clerk and Recorder's office on May 27, 1998
  - This is the official organization date of the District

Powers, Limitations and Requirements

Powers

- Water and storm drainage
- No sanitary sewer powers

Limitations & Requirements

- 45 day notice to BOCC prior to any inclusions becoming effective
- Debt and mill levy limitations (to be discussed with financial presentation)

WHAT POWERS DO DISTRICTS HAVE?

Powers

- Publicly accountable
  - Must hold open meetings with due notice to members of the public
  - Must maintain minutes of all meetings and other records for public inspection
  - Must hold elections for the governing board of directors
  - Must adopt annual budgets
  - Must submit to annual financial audits
- Power of eminent domain (condemnation)
- Governmental immunity for district and directors acting within the scope of their duty
- Power to levy taxes and assess fees, rates, tolls, charges and penalties
- Other powers outlined in § 32-1-1001, C.R.S.

Powers Unique to Districts

- Three sovereign powers of governments: taxation, eminent domain (condemnation) and police power
- Special districts possess powers to tax and condemn

Taxation

- Collected by the County
  - Efficient and reliable method of revenue collection
  - Income tax deduction for most homeowners
- Specific Ownership Tax
  - Vehicle Registration Fees distributed to District according to its mill levy

Eminent Domain

- Taking of private property for a public use after payment of just compensation

ANNUAL COMPLIANCE REQUIREMENTS

General

- Colorado law requires governmental entities, including special districts, comply with numerous filings each year
  - Commonly referred to as Annual Compliance matters
- Annual filings required to be made with various state and local agencies
- Governmental entities also required to take certain actions throughout year and report such actions to various state and local agencies
- Division of Local Government, a division with the Department of Local Affairs, is an agency with which most filings are made, in addition to others
  - Commonly referred to as the DLG

Annual Filings and Actions

- Include, but not limited to:
  - Boundary Map
  - Contact Information for District
  - Designation of Posting Locations and Regular Meetings
  - Annual Report
  - Outstanding non-rated public securities
  - Audit or Audit exemption
  - Budget and Budget Message
  - Certification of Mill Levy
  - Transparency Notice
  - Disclosure Notice (newly required for 2014)
- Calendar of Annual Compliance Requirements and Deadlines

ELECTIONS

Types of Elections

Organizational Elections

- Original election at which the district is voted to be organized
- Held in November of any year of May of even-numbered years

Regular Elections

- Held on the first Tuesday after the first Monday in May in even-numbered years
- For election of directors or ballot questions or issues

Special Elections

- May be held on the first Tuesday after the first Monday in February, May, October or December, or on the first Tuesday in November of any year
- For ballot questions or issues, not directors unless special election called by court due to vacated board

Director Elections

- Conducted at Organizational or Regular Elections only
- Caveat: For vacated boards, court may order a special election

Taxpayer Bill of Rights (TABOR) Elections

- For submittal of debt or tax questions to voters
- Conducted at Organizational or Regular Elections or November special election only

Election Procedures

- Governed by Colorado Local Government Election Code, Uniform Election Code, Title 32 and TABOR
- Initiated by Court Order or Resolution adopted by the Board
  - Order or Resolution designates Designated Election Official (DEO) and addresses conduct of election
- Statutory and Constitutional deadlines established which must be met
- Director Elections may be cancelled if no more candidates than positions up for election
  - Cancelled by DEO resolution, notice and certification of results
- Organizational and TABOR elections cannot be cancelled
- Canvass Board certifies election results
  - Comprised of 1 Board member (whose name is not on the ball0t) and 1 eligible elector of the District
  - Must meet within 17 days of election
  - Issues Certification of Election Results and Abstract of Returns
    - Official results of election

Recent Changes in Election Laws

- HB 13-1303
  - Enacted in 2013
  - Permits same day voter registration
  - Requires mail ballot elections for all elections
  - Recognizes civil unions for voter qualifications
- Colorado Local Government Election Code (HB 14-1164)
  - Enacted in 2014
  - Defines new requirements for conduct of district elections
  - Most notable changes:
    - Allows polling place elections for local government elections
    - 30 day residency requirement for voting and being on board no longer in effect
    - Requires compliance for UOCAVA ballots (uniformed overseas voters)
    - New deadlines established throughout election

DUTIES OF DIRECTORS

How do you become an elected official?

- To qualify, must:
  - Be registered to vote in the State of Colorado; AND
    - Own (you, your spouse or civil union partner) real or taxable personal property within the District; or
    - Reside within the District; or
    - Have an option to purchase taxable property within the District, which contract obligates you to pay taxes
- Elected or appointed to Board
- Representative Board
- Take an Oath to faithfully perform the duties
- Duty to act in the best interests of the District and its constituency

Elected v. Appointed Directors and Term Limitations

Elected or Appointed

- Directors elected at Organizational or Regular Elections only
  - Caveat: special election may be called by court due to vacated board
- Directors appointed to fill a vacancy must run in election to complete the rest of the term at the next regular election

Term Limits

- Directors are limited to two consecutive, four-year terms of office
- May be waived by voters
- Limits waived at 1998 election

Staggered Terms

- Director terms of office are staggered to prevent the simultaneous expiration of all seats on the Board
- When organized, 2 positions serve until the next regular election, 3 positions serve until the second regular election

Fiduciary Duties of Directors

- Public officials considered to hold a “public trust” and considered to be a fiduciary to the people within the District
- At all times must act in best interests of the District and its constituency and not for personal or third-party gain or financial enrichment
- Two primary duties of fiduciary
  - Duty of Care
  - Duty of Loyalty
- Breaches prosecuted by the District Attorney

Conflicts of Interest

- A conflict of interest occurs when your private interests conflict with or cloud your view in relation to your public duties and actions
  - Most common conflicts are financial
- Disclosure of Conflicts of Interest
  - §32-1-902(3), C.R.S., requires a director to disqualify him/herself unless disclosures filed pursuant to §18-8-308, C.R.S.
  - Required to abstain from taking official action on matter unless participation is necessary to establish a quorum or to enable Board to act
- Code of Ethics
  - §§ 24-18-101, *et seq.*, C.R.S.

Miscellaneous

- Compensation
  - Title 32 permits directors to be paid $100 for each meeting, capped at $1,600 per year
- Positions
  - Board required to designate a Chairperson, Treasurer and Secretary
  - Other positions discretionary but typically include Assistant Secretaries for ability to sign documents
- Board Member Manual
  - Provided by Special District Association (“SDA”)

PUBLIC MEETINGS

Public (Open) Meetings

- Districts are subject to the Colorado Public (Open) Meetings Law (a/k/a the Sunshine Law)
- A "meeting" is a gathering of a quorum or three or more directors to discuss and conduct District business
  - Requires posting of notices, agenda, minutes, conflict disclosures
  - Includes telephone conversations, emails and in person meetings
- Meetings are required to be open to the public
- District required to have a minimum of 1 meeting per year to adopt budget and address annual matters

Notices of Meetings

Regular Meetings

- Date, time and location designated at first meeting of year
- Required to be posted at 3 locations within the District's boundaries and at the County Clerk and Recorder's office at least 72 hours prior to meeting

Special Meetings

- May be called by any director upon notice to other directors
- Required to be posted at 3 locations within the District's boundaries and at the County Clerk and Recorder's office at least 72 hours prior to meeting

Agenda

- District required to post agenda at 1 location within District boundaries at least 24 hours prior to any meeting

Minutes of Meetings

- Public entities required by Sunshine Law to maintain minutes of each meeting
- Not intended to be verbatim but should represent matters discussed and decisions made
  - Each Board has its own preferences regarding the level of detail for minutes
  - Attachments to minutes not required but often used in lieu of restating the contents of the resolution or report
- Considered for approval by Board at next meeting
  - Legal counsel drafts minutes and circulates to staff for review
  - Draft minutes circulated to Board in meeting packet for review
  - Board members should read draft minutes in advance and advise of any revisions or changes
- Official document of District representing actions taken
  - Used as legal document to “prove” actions

Public Meeting v. Public Forum

- Public (open) meetings does <u>not</u> mean the meeting is a public forum or platform
- Public are provided opportunities to speak during the meeting
  - Public commentary period (if designated by the Board)
    - Designate time on agenda for public commentary
    - Limit comments to x minutes per person
    - Limit comments to matters not otherwise on the agenda
    - Board not required to respond but can take under advisement
  - Public hearings (budgets, inclusions, exclusions)
    - Public afforded ability to speak by law

Preparation for Meetings

- Develop a plan for preparing for meetings
  - Organized agenda is key!
  - Enclosures (informational and requiring action)
  - Staff reports
- Provide meeting packets to directors in advance of meeting
- Directors should review material prior to meeting and come prepared for discussion
  - Don’t be afraid to ask questions or for additional information prior to meeting from staff!

Conduct of Meetings

- Discuss how to conduct business and meetings
- Consider adopting, formally or informally, rules of order such as Robert's Rules of Order
  - Provides common procedures for deliberation and debate
  - Provides a structured environment while encouraging discussion
- Appoint a person to lead the meetings (i.e. President, Legal Counsel, Manager)
- Stay on Track!!

Executive Sessions

- Purposes (§§24-6-402(4), C.R.S.)
  - Purchase, acquisition, lease, transfer, sale of property interest
  - Conference with attorney; receipt of legal advice
  - Matters required to be kept confidential by state/federal laws, rules or regulations
  - Details of security arrangements or investigations
  - Matters subject to negotiation; developing strategy
  - Personnel matters (unless employee wants open)
  - Consideration of documents protected by mandatory nondisclosure under CORA

Executive Sessions (cont.)

- Can be controversial due to appearance of lack of transparency to public
  - Explain process, procedures, purposes and requirements to public so they understand
  - Limit discussions to only those subject to Executive Session privileges
  - No action can be taken in Executive Session; only direction!
- Note Executive Session on agenda and place at end of meeting if possible
- Conversations confidential and privileged
  - Board decision to waive; not individual director(s)
  - Confidentiality survives position on Board

DISTRICT CONSULTANTS

District Consultants

- Special District Management Services, Inc.
  - District Manager: Lisa A. Johnson
  - Accountant: Divena Mortimeyer, CPA
- White Bear Ankele Tanaka & Waldron
  - General Counsel: Jennifer Gruber Tanaka, Esq.
- TST Inc. of Denver
  - District Engineer: Bradley A. Simons, P.E.
- Ramey Environmental Consultants, Inc.
  - Operator in Responsible Charge ("ORC"): Jeff Rabas
- Schilling & Co.
  - District Auditor: Dawn Schilling, CPA
- Petrok & Fendell, P.C.
  - District Water Counsel: Matthew S. Poznanovic, Esq.
- Bishop-Brogden Associates
  - District Water Engineer: Christopher J. Sanchez, P.E.

AGREEMENTS AND PUBLIC BIDDING REQUIREMENTS

Why do we need agreements?

- Protects the District from potential liabilities
- Sets forth scope of project and contract price to establish expectations
- Includes required provisions for those working with a governmental entity
  - Employment eligibility
  - Worker's Compensation (requires notarized signature)
- Requires contractor or consultant to maintain proper and sufficient insurance
- Requires contractor to warranty work performed
- Required to be fully executed and insurance certifications required prior to commencement of work

Service Agreements

- Form independent contractor agreement prepared for use with service contracts
  - Legal counsel prepares agreements
  - Confirms contractor registered to do business in the State of Colorado
  - District Manager obtains scope of work and fee schedule
  - District Manager circulates for execution and receives certificates of insurance per agreement
- Advisable to obtain several bids for the work to be performed to ensure pricing is competitive
  - Not legally required but Board policy

Construction and Capital Project Agreements

- Includes additional requirements for contractor for warranty of work
- If project over $60,000, required to publicly bid the project
- Payment and performance bonds required for projects over $100,000
- Construction contracts required to have appropriations statement included
- 5% of total contract amount required to be withheld as retainage until final payment made after full satisfaction determined and notice of final payment published

DISTRICT ASSETS AND MAINTENANCE RESPONSIBILITIES

What obligations does the District have for property maintenance?

- Obligated to maintain property which it owns or which it has agreed to maintain through separate agreement
- Constitutionally prohibited from maintaining private property
  - State Constitution prohibits the expenditure of public funds to improve private property to benefit a private individual
- Owns parcels throughout the three subdivisions and is required to maintain those
- Has easements for other District improvements i.e. water lines, water tanks and evaporation ponds
  - Brad Simons created a map showing District properties throughout the District and means of conveyance i.e. deeds for property ownership and easements

What improvements does the District maintain?

- Water infrastructure i.e. water lines, pumps, wells, storage tanks, treatment facilities, RO plant, evaporation ponds, etc.
- Landscape improvements on tank sites
- Buildings on tank sites

Water Rights

- Matt Poznanovic, the District's water counsel, and Chris Sanchez, the District's Water Engineer, will provide an orientation to the District's water rights on a separate date

FINANCIAL PURPOSES, FINANCING POWERS AND LIMITATIONS, AUTHORIZATIONS AND COMMON TERMS

Financial Purposes

- Special districts are organized to finance the construction, acquisition, operation and maintenance of public improvements
- Enabled to finance these actions through imposition and collection of taxes, fees, rates, tolls, penalties and charges
- Districts are required to budget and appropriate funds in order to pay the costs of construction, acquisition, operation and maintenance
  - Must have a revenue source in order to make these commitments

Financial Powers and Limitations

- Districts' financial powers are derived from and limited by several sources:
  - Statutes
  - Service Plan (or Petition)
  - Electorate
- Financial abilities are also controlled, limited and impacted by constitutional amendments:
  - Taxpayer Bill of Rights (TABOR)
  - 5.5% Statutory Limitation
  - Debt Issuance Limitations
  - Gallagher Amendment

Statutory Powers

Title 32 grants special districts the powers to:

- Levy and collect property taxes
- Fix and increase or decrease fees, rates, tolls, penalties and charges
- Issue general obligation bonds
- Issue revenue bonds
- Through a Special Improvement District, issue special assessment bonds
- Create subdistricts for charging different taxes for services, programs and facilities
- Refund or refinance bonds

Statutory Limitations—5.5% Limitation

- 5.5% Limitation
  - Statutory limitation on revenues generated by governments year by year
  - Prohibits a government from generating revenues in excess of 5.5% of those generated in the previous year
  - Can be extremely limiting on governments by not permitting them to “keep up” with the rate of inflation or benefit from growth and increases in market
  - Applicable to General (a/k/a Operations) Fund; not Debt or Capital Funds
  - Can be waived by voters
    - District is NOT subject to limitation

Statutory Limitations—Debt Issuance

- Prohibited from issuing debt in excess of $2 Million or 50% of debt/AV ratio unless debt which is:
  - Rated in one of the four highest investment grade ratings
  - Construct improvement ordered by a federal or state agency to bring the district into compliance
  - Secured by a letter of credit or other credit enhancement
  - Issued to financial institutions or institutional investors
- Not prohibited from issuing debt that is repayable from a limited mill levy (not to exceed 50 mills) or from refunding or restructuring existing debt if issued pursuant to statute

Service Plan Powers and Limitations

- Debt Limitation—None
- Term Limitation—None
- Maximum Interest Rate—18%
- Maximum Underwriter Discount—5%
- Mill Levy Cap—50.000 mills, Gallagherized
  - Subject to “roll off” at 50% debt/AV ratio
  - For debt only, not operations

Electoral Authorizations

- Voters are required by TABOR to approve taxes and debt and waive any constitutional or statutory limitations
- Elections for these actions take place at organizational or regular elections
- Elections cannot be cancelled
- Additional notice requirements for these elections i.e. TABOR notice

District Electoral Authorization

- 1998 TABOR Election
  - Voters de-Bruced the District (removed the limitations set forth in TABOR)
  - Approved general obligation debt for the District
    - $16,100,000 water debt
    - $500,000 storm drainage debt
    - $1,100,000 non-potable water debt
    - $500,000 non-potable water storm drainage debt
- 2008 TABOR Election
  - Voters approved an increase in the District's O&M mill levy to $300,000 in 2008 and as generated by 35 mills in each year thereafter

TABOR

- Article X, Section 20 of the Colorado Constitution is the Taxpayers' Bill of Rights (TABOR)
- Effective in 1992 on all governmental entities
- Requires voter approval prior to the imposition of taxes and incurrence of debt
- Requires voter approval to collection, spend and retain revenues
- Voting out of TABOR limitations referred to as "de-Brucing"
  - Doug Bruce was proponent of initiative
- Once debt authorizations are used, additional voter approval required
- Cannot exceed tax authorizations without additional voter authorization

Gallagher Adjustment

- Constitutional provision allowing for the rate of assessment of residential property to change in order to ensure that commercial property within the State comprises 55% of property valued and taxed and residential comprises 45%
- Prior to 2003, the rate at which residential property was assessed was 9.15%
- Since, residential property assessed at 7.96%
- Gallagher Adjustment (a/k/a Gallagherized) permits jurisdictions to change the mill levy so that the revenues generated are the same as prior to the adjustment
  - Revenue neutral amendment
  - Governments are made whole and able to make payments on previous commitments i.e. bonds after adjustment
  - Property owner pays same amount as prior year, but mill levy number itself may be higher

BUDGETS

Legal Requirements

- The Local Government Budget Law of Colorado requires every local government to adopt a budget each year for the ensuing year
  - Expenditures cannot exceed revenues
  - Cannot budget a deficit
- A draft budget is required to be presented to the Board by October 15
- The Board is required to adopt the budget and certify the mill levy with the Board of County Commissioners by December 15
  - If the mill levy is not certified or certified late, the Assessor will impose 90% of the mill levy for the following year
- The adopted budget and budget message are required to be filed with the DLG by January 30 of the following year
- Presents a complete financial plan for each fund

Budget Requirements

- Budgets required to include the following:
  - Proposed expenditures for each fund
  - Anticipated revenue and sources
  - Estimated Beginning and Ending Fund Balances
  - Three Years' comparable data including:
    - Prior fiscal year's actual figures
    - Estimated figures through the end of the current fiscal year
    - Proposed/adopted figures for budget year
- TABOR requires that local governments include an emergency reserve in the operating fund in the amount of 3% of the annual appropriations
  - 3% of operations expenditures only, not debt service or capital projects
  - "Emergency" not defined by TABOR; however, TABOR provides it is not a deficit in the general fund

FINANCIAL DOCUMENTS AND FUNDS

Financial Reports

- The District's Accountant prepares several reports for review and approval or acceptance by the Board

- Reports include:
  - Unaudited Financial Statements
  - Check Register
  - Cash Position Schedule
  - Long-Range Projection

Unaudited Financial Statements & Funds

- The District's Accountant prepares unaudited financial statements on a monthly basis
- Statements conform to generally accepted accounting principles ("GAAP") and report the activity in specific governmental funds
- The District has 3 funds:
  - **General Fund**
    - General operating fund of the District
    - Used to account for all of the financial resources except those required to be accounted for in other funds
  - **Debt Service Fund**
    - Used to account for all financial resources that are restricted, committed or assigned to expenditures for principal, interest and other debt related costs
  - **Capital Projects Fund**
    - Used to account for all financial resources that are restricted, committed or assigned to expenditures for capital outlays, including the acquisition or construction of capital facilities or other assets

Check Register

- The District's Check Register, also referred to as a "Claims List", is a summary of all checks written within a specified period
- The list includes the following information:
  - General ledger account number
  - Check number
  - Invoice number
  - Date of invoice
  - Date of check
  - Individual check totals
  - Date of check register
  - Grand total

Cash Position Schedule

- Shows actual cash on hand as of the date specified
- Details the activity in each bank account in the most recent reporting period including the beginning balance, interim activity, and ending balances
- Shows the balances for the following accounts:
  - Checking Account
  - Investment Accounts
    - FirstBank (lockbox)
    - ColoTrust – Plus
    - ColoTrust – Bond Fund
    - ColoTrust – Project Fund

Long-Range Projection

- Shows projected cash on hand for 2010-2035
- Intended to show available funds on hand during years in which debt service payments increase
- Includes estimated operations and capital reserves
- Allows Board to monitor available funds to make educated decisions when adjusting mill levy and/or fees
- Tool used during budget workshop to aid in budget process

AUDITS

Statutory Requirements

- Local Government Audit Law of Colorado requires every local government in the State to undergo an annual financial audit conducted by an independent certified public accountant
- State Auditor required to examine these audit reports to determine compliance with the accounting standards
- For local governments with revenue and expenditures less than $500,000, the audit law specifies that they may receive an exemption from audit by completing the application for exemption from audit form, which must be approved by the State Auditor
  - Bond documents may require the conduct of an audit despite revenues being under this threshold
- District required to conduct an audit each year

PROPERTY TAXES

How are property taxes calculated?

- Property is valued by the County Assessor as of January 1st
  - Residential valued market approach
- Existing residential property revalued in odd years
- Next revaluation will be conducted on 1/1/15 for tax collection in 2016
- Residential property is assessed at 7.96%
- Commercial & other assessed at 29%
- Property tax revenue equals assessed value times mill levy divided by 1,000

District's Property Taxes

Total Assessed Value for the District as of January 1, 2013 =

$10,900,660

District Mill Levy =

46,840

Property tax revenue for collection in 2014 = $510,587

District Taxes on Average Home

- For a home that has an actual value of $300,000 (as determined by the County Assessor), the District's taxes are calculated as follows:

Actual value ($300,000) x Residential Assessment Rate (7.96%) = Assessed Valuation ($23,880)

Assessed Valuation ($23,880) x Mill Levy (46.840) / 1,000 = Annual Taxes Paid to District ($1,118.54)

Specific Ownership Taxes (SOTs)

- SOT is a personal property tax based on the original taxable value of a vehicle
- Collected by the County Clerk when you register your vehicle with the County
- SOTs collected from ALL vehicle registrations in the County are distributed to all taxing entities within the County
  - including the County and school districts
  - based on each government's mill levy and assessed valuation in proportion to all mill levies and assessed values in the County

Specific Ownership Taxes (SOTs) (cont.)

- The tax rates on vehicles are as follows:
  - Year 1 2.10%
  - Year 2 1.50%
  - Year 3 1.20%
  - Year 4 0.90%
  - Year 5 to Year 9 0.45%
  - Year 10 and later $3.00
- The amount of SOTs the District receives is dependent on the mill levy set by the District in relation to the mill levies set by other districts in the County as well as new vehicle sales

FEES, RATES, TOLLS, PENALTIES AND CHARGES

Statutory Authority

- Section 32-1-1001(1)(j), C.R.S., authorizes the Board to impose and to increase or decrease fees, rates, tolls, penalties and charges
- Imposed for services or facilities provided by the District
  - Has to be rationally related to service or facility
- Upon imposition, constitutes perpetual lien upon the property
  - Lien is a property lien, not a personal lien
  - Runs with the property to new owner if not paid
  - Paper lien not required but routinely done as additional means of notice
- Permitted to foreclose upon the lien in the same manner as prescribed for mechanics' liens
- Liens have priority over all other liens except tax liens
  - Priority over deeds of trust even if deed of trust was first in time

DEBT AND FINANCIAL OBLIGATIONS

General Obligation Bonds in General

- General obligation bonds are bonds issued by governments which are backed by the full faith and credit pledge of the entity
  - Tax revenues are repayment source
- Bonds may be taxable or tax-exempt
  - Typically tax-exempt when issued by a government
    - Bondholder does not pay income taxes on the interest earned on the bonds to either the State or Federal governments
- Bonds may be limited or unlimited
  - Unlimited = mill levy is required to go as high as it needs in order to make annual payments
    - Typically lower interest rate because repayment guaranteed in full each year
  - Limited = mill levy is "capped" at a limited amount
    - Bondholder takes risk that the revenues generated from the mill levy may not be sufficient to make payment
    - Unpaid amounts added to end of term of bonds
    - Interest rate typically slightly higher due to greater risk

Other Bonds

- Districts are permitted to issue other types of bonds:
  - Revenue Bonds
    - Pledged revenue is revenue derived from fees, rates, tolls, penalties and charges
    - Typically seen with water and sanitation districts
    - Issued by enterprises, which are exempt from TABOR
    - Do not require TABOR authorization to issue
  - Special Assessment Bonds
    - District may create a special improvement district (SID) to finance a particular and identified improvement
    - SID issues special assessment bonds
    - Pledged revenue is assessment imposed on each property in amount of benefit derived by that property
    - Collected by Assessor with taxes
    - May be prepaid by property owner

District's Bond Issuances

- The District issued bonds in 1998, 2002, 2007 and 2010 to finance public infrastructure within the community
- Bonds were refunded in 2007 and 2010 to take advantage of lower interest rates and lower the overall payments of the District
  - Refunding is similar to refinancing one's mortgage
  - Typically call protection in place for 10 years (meaning bonds cannot be refunded within the first 10 years)
    - Can advance refund bonds where the first 10 years of payments are escrowed after which the refinanced terms take place
  - Current bonds are tax-exempt, limited mill levy, insured and rated

1998 Bonds

- Issued: September 1, 1998
- Par Amount: $1,275,000 Limited Tax Series 1998
- Term: 20 years (2017)
- Interest rate: 8%

2002 Bonds

- Issued: May 7, 2002
- Par Amount: $2,000,000 Limited Tax Series 2002
- Subordinate to 1998 Bonds
- Term: 15 years (2017)
- Interest rate: 8%

2007 Bonds

- Issued: June 27, 2007
- Par Amount: $4,420,000 General Obligation Refunding and Improvement Bonds, Series 2007
- Interest rate: variable rate 4.250% - 4.875%
- Term: 25 years (2033)
- Purpose:
  - To refund 1998 ($721,842) and 2002 ($575,605.50) bonds
  - To borrow additional $2,724,394.50 for capital projects, specifically including water looping system

2010 Bonds

- Issued: December 1, 2010
- Par Amount: $2,230,000 General Obligation Refunding and Improvement Bonds, Series 2010
- Interest rate: variable rate 2.25% - 5%
- Term: 20 years (2030)
- Refunded $1,295,255 of the 2007 Bonds
- Purpose of Issuance
  - To restructure 2007 issuance to avoid huge increase in mill levy for 2011-2014 due to non-receipt of system development fees
  - To borrow an additional $878,940.17 for capital projects

RELATIONSHIP AMONG DIRECTORS

You are Each Individuals

- Typical Board has 5 directors
  - 5 different personalities
  - 10 (or more!) different opinions
  - Each bring different strengths and skills to Board
  - Each adds value
- Mutual Respect
- Remain professional

Engage Parenting Tactics!

- Providing a united front is imperative
- Recognize differences, debate, discuss, etc.
  - In the end, make a decision that the Board stands behind
  - Agree to disagree
- Personal opinions v. official opinions
  - Distinguish between the two, particularly when discussing matters with the public
- Polarizing and attack comments reflect badly on individual directors and detract from actual issue
- Provide unified direction to consultants

What if a fellow director goes rogue?

- Vacancy (§32-1-905, C.R.S.)
  - Created when a director has three consecutive unexcused absences for regular meetings
- Recall (§32-1-906, C.R.S.)
  - Option after holding office for 6 months
  - Requires petition signed by lesser of 300 or 40% of eligible electors to be filed with court
  - Election conducted
- Censure
  - Board may adopt a resolution censuring (publicly admonishing the action of) the director

RELATIONSHIP WITH THE PUBLIC

Educate, educate, educate!

- Education is Key!
  - Public concerns often originate with lack of information about the issue
  - Educate your public on the issue and how you came to your decision
  - Consider informational handouts, website postings, mailings
- Ostrich approach does not work
  - Do not ignore controversial or difficult questions or topics
  - Respond timely, appropriately and professionally
- You will not be able to “convince” everyone of the validity of the Board action
  - Accept that not everyone will agree with the information or action
  - Determine how much time is reasonable in educating, etc.
  - Avoid the money pit with responses

Personal Attacks Against Directors

- You are the messenger
  - Upset people typically misdirect anger and you are the messenger!
- Comments can become very personal and hurtful
- First Amendment Rights of Public
  - As a public official, the threshold is extremely high in favor of the public for defamation claims
  - Clear and convincing evidence
  - Requires malice (knowledge of false statement of reckless disregard for the truth)

Responding to Public Comments

- Don't just listen to public comments and concerns, but hear them
- Maintain a high level of professionalism and respect
  - Remember—these are your neighbors!
  - Do not make personal attacks
  - Stick to the District issue
- You cannot control their reaction but can control how you react
- Do not engage in mud slinging
  - Detracts from the real issue at hand
  - Avoid knee-jerk reactions and responses

Unruly and Disruptive Public

- Open meetings are not platforms for disruptive and unruly members of the public
- Kindly ask to calm down, sit down or leave
- If citizen fails, you may involve law enforcement
- Citizens may be subject to criminal misdemeanor charges for:
  - Disruption of a public meeting
  - Harassment
  - Disorderly conduct
- If disruption is anticipated, alert law enforcement in advance of meeting and consider a presence during the meeting

Transparency

- Being transparent addresses most concerns and avoids perception of hidden agenda or secret government
- District website is perfect place to provide commonly requested documents such as:
  - Minutes
  - Agenda for upcoming meeting
  - Current budget
  - Most recent audit
  - Application policies and resolutions
- Colorado Open Records Act request policy
  - In place with corresponding form for people to complete for other desired documents
  - Not all documents public but most are

Questions?