El Paso County, CO, District Court Court address: **270 South Tejon** **Colorado Springs, CO 80901-2980** Phone Number: **(719) 452-5000**	DATE FILED: December 19, 2023 2:22 PM CASE NUMBER: 2004CV3802
In the Matter of: FLYING HORSE METROPOLITAN DISTRICT NO. 1, et al.	Court Use Only **Case Number:** 04CV3802 **Division 3, Courtroom S380**
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	

I. INTRODUCTION

This action was initiated in 2004 for the formation of Flying Horse Metropolitan District No. 1 (District 1) No. 2 (District 2), and No. 3 (District 3). These three Districts are Metropolitan Districts organized under Title 32 of the Colorado Revised Statutes. The Districts were formed in connection with the development of the Flying Horse Community (the "Project") which is a high-end mixed used community located in the north part of Colorado Springs, Colorado. Pulpit Rock Investments, LLC ("Pulpit Rock") acquired approximately 1,500 acres for the Project in 1999, when the land was vacant and undeveloped. In cooperation with its affiliate, Classic Development – Flying Horse. LLC ("Classic,") and together with Pulpit Rock, the ("Developer") Pulpit Rock implemented the vision for the Project, including seeking and obtaining entitlements from the City of Colorado Springs, Colorado ("City").

On April 29th, 2023, a Motion for Entry of an Order of Exclusion was filed. The motion stemmed from a Petition for Exclusion submitted by Pulpit Rock, the owner of the property that may be developed as a project known as "Downtown Flying Horse." The Court granted the Motion for Entry of an Order of Exclusion on May 2nd, 2023.

On May 26th, 2023. District 3 filed a Motion to Revoke the May 2nd, 2023, Order of Exclusion. District 3 alleges that new matters of fact or law had arisen that were extrinsic to the Order granting the Order of Exclusion and sought relief under C.R.C.P. 60(b)(5). The Motion to Revoke was briefed. The Court conducted a hearing on November 2nd, 3rd and 8th, 2023. The Court then ordered submissions of proposed Findings of Fact, Conclusions of Law and Orders by December 8th, 2023.

II. LEGAL STANDARD

C.R.C.P. 60(b)(5) states: "On motion and upon such terms as are just, the Court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons…any other reason justifying relief from the operation of the judgment."

The Colorado appellate courts have provided criteria to be used to determine whether relieving a party from a prior order is justified.

C.R.C.P. 60(b)(5), a trial court may set aside a judgment for "any other reason justifying relief from the operation of the judgment." Trial courts have discretion in determining whether to grant a C.R.C.P. 60(b) motion. **E.B. Jones Construction Co. v. Denver**, 717 P.2d 1009 (Colo. App. 1986).

C.R.C.P. 60(b) permits a trial court to reconsider and, if necessary, to change a prior ruling when a significant new matter of fact or law arises that is extrinsic to it because it was not previously presented to the court. **State Farm Mutual Automobile Insurance Co. v. McMillan,** 925 P.2d 785 (Colo. 1996).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Douglas Stimple, the principal of the Developer, testified about the history of the Districts and the Project. Mr. Stimple is a former attorney and has significant experience in real estate development. He was personally involved in the entire history of the Project, including the creation of the Districts. He served on the boards of all three districts until May of 2023, and is still a board member for District 1.

Stimple testified to the importance of metro district financing for public improvements for large master planned communities. Metro districts can issue debt to generate revenue to cover public improvement costs, which can then be paid off over time with revenues from property taxes paid by residents. Colorado metro districts have issued hundreds of millions of dollars of debt to finance improvements in this way. Consistent with this common practice, the Districts were formed to provide a critical public financing mechanism to finance the installation, operation and maintenance of public improvements that served the Project. The Project would not have otherwise been viable. In the early stages of the Project, Pulpit Rock petitioned the City for approval of a Consolidated Service Plan for the Districts (the "Service Plan"). The service plan was reviewed and approved at a public meeting. The Service Plan established the functions of the Districts and their obligations to each other. Per the terms of the Service Plan, District 1 is the "Service District," which is responsible for managing the design,

construction, operation and maintenance of public facilities and improvements that serve the Districts. Districts 2 and 3 were created as "Financing Districts," responsible for providing funding to support costs related to the services and improvements. As the overall assessed valuation of Districts 2 and 3 increased, they would issue bonds to generate revenue to pay for infrastructure and impose taxes to pay debt service on the bonds, and to generate revenue to pay the operations and maintenance expenses of all three Districts. This coordinated, multiple district structure was intended to ensure delivery of public services as efficiently as possible.

As required in the Service Plan, the Districts entered into an Intergovernmental Agreement in 2004 (as amended, the "IGA,"). Under the IGA, District 1 constructs, owns, operates, and maintains the public improvements benefitting the Districts, and Districts 2 and 3 contribute bond and/or tax revenue to pay the costs. Districts 2 and 3 are required to transfer tax revenues pledged to District 1 without delay, including revenues related to Operations and Maintenance ("O&M"). Districts 2 and 3 do not own real property or operate or maintain public improvements. All services are provided by District 1, including coordinated administrative services, avoiding duplication of services for each of the Districts.

When the Service Plan and the IGA were approved in 2004, there were no residents in the Project. Thus, as is common in the real estate development context in Colorado, and as expressly contemplated by the Special District Act, individuals qualified to be "eligible electors" through entry into purchase contracts. Such individuals were then qualified to vote in the organizational election for the Districts, and to serve as members of the boards of directors for the Districts. The eligible electors of the Districts unanimously approved the formation of the Districts, as well as various tax and debt questions under TABOR, in an election held for the Districts on November 2, 2004. This kind of unanimous approval by developer-affiliated eligible electors is a common practice for metropolitan districts in Colorado formed for real estate developments.

Since 2004, several million dollars of public improvements that serve the Project were installed. The Project now contains thousands of residences, commercial uses, parks, trails, open spaces and other community amenities, including an athletic club, a golf course and a clubhouse.

Based on the evidence, the Court finds that the Districts did not generate sufficient tax revenue in the years immediately following formation to cover the installation and maintenance of public improvements. As the Project progressed and valuations increased, District 2 and District 3 issued bonds to repay the costs of the public improvements. Per the testimony of Stimple, the bond revenues could not pay O&M costs. Until approximately 2019, the developer had to advance sums to cover the O&M

costs so as to ensure that the public improvements for the Project were maintained. According to the service plan, the Districts agreed to repay the advances, plus interest.

Residents began moving into the Project within the boundaries of Districts 2 and 3 in or around 2005. For years after that, there were residents or property owners who were qualified as "eligible electors" who could have served on the boards of directors of Districts 2 and 3, but no such eligible electors ran for any of the boards until the May 2022 elections for Districts 2 and 3, when a resident, Dan Mulloy, was elected to the District 2 board, and two residents, Dan Reifschneider and Jim Patchen, were elected to the District 3 board.

From the time of his election in May 2022, there were significant tensions between Mulloy and the other board members of District 2. Mulloy challenged reimbursements to the Developer and despite being provided a significant amount of information by the Districts' attorney and accounting consultants, was not satisfied with the answers he received. He persisted in objections to the reimbursement of certain items, such as entryway improvements.

Mulloy testified at the Hearing. He acknowledged that he has no experience in real estate development. Mulloy rejected the notion that he was anti-developer. The Court finds that Mulloy was not credible. He was evasive on the issues when answering questions. His hostility toward the Developer was clear based on the totality of the evidence and testimony.

Leading up to the May 2023 elections, additional residents began to run for the District 2 and 3 boards. Their animosity toward the Developer was also apparent, with campaign materials making false statements about the Developer, and running on a platform of limiting additional debt. On March 6, 2023, a number of these candidates filed a self-represented petition seeking to remove allegedly ineligible electors associated with the Developer. On March 9, 2023, the same group filed a motion for preliminary injunction or stay. The Court denied the motion for preliminary injunction or stay on March 10, 2023, and the pro se parties later dismissed their filings.

The Court finds that, as of May 2023, most of the Project was built out. The last significant remaining portion of the Project yet to be developed is an area referred to as Downtown Flying Horse, which is planned to be different from the rest of the Project. It will be a more dense, mixed-use development, with residential, office, hotel, retail and park uses, that will ultimately be valued at as much as one billion. The Developer has been working on planning for the Downtown Flying Horse development for three years, and has obtained zoning approval from the City. Building out Downtown Flying Horse will require significant public infrastructure and public improvements, including water and sewer infrastructure, a large detention pond, a large park and other amenities.

Stimple estimated installation costs at over $14 million, plus additional costs for “onsite” improvements like roads, curbs and gutters. Additionally, there will be significant ongoing expenses to operate and maintain the public improvements at a high level of quality given the caliber of the development.

The Court finds that as of May 2023, the Downtown Flying Horse property was located within the boundaries of Districts 2 or District 3.It was clear to the Developer that the May 2023 election would result in new board majorities for District 2 and 3 that would be hostile to the Developer and resistant to the kind of continued cooperation between the Developer and the Districts that had existed from the start of the Project that allowed it to thrive. If Districts 2 and 3 were unwilling to provide the vital financing mechanism for Downtown Flying Horse that the rest of the Project had, viability of this part of the Project was at risk, including the Developer’s ability to get buy-in from its capital partner. The Developer saw the benefit of moving the Downtown Flying Horse property into District 1, since the control of the board for District 1 was not going to change after the May 2023 election. If the property were in District 1, there was the potential to issue additional bonds to fund public infrastructure. Although the IGA requires Districts 2 and 3 to pay District 1 all of their O&M tax revenues, the Developer was anticipating that the new District 2 and 3 boards would resist doing so.

Districts 2 and 3 have now resisted paying all of the O&M tax revenues, causing District 1 to file suit to enforce the IGA in the case known as ***Flying Horse Metropolitan District No. 1 v. Flying Horse Metropolitan District No. 2. And Flying Horse Metropolitan District No. 3*** pending before the Court as case No. 2023CV31550 (the “IGA Litigation). Districts 2 and 3 have filed counterclaims seeking to invalidate the IGA.

Modifying the Districts’ boundaries was discussed at length during a joint board meeting of the Districts on March 14, 2023. The boards discussed that, if the property were excluded from the boundaries of Districts 2 and 3, it would remain subject to taxation by Districts 2 and 3 until their existing bonds had been repaid in full. While those properties do not generate much in tax revenue now, in their undeveloped state, if the Downtown Flying Horse development is completed, the assessed valuation would increase substantially, resulting in much faster repayment of the District 2 and 3 bonds than if the development did not occur. Including the property into District 1 would also allow for District 1 to ultimately have residents, and to transition control of the District 1 board from the Developer to those residents in the future. At the March 14, 2023, meeting, the boards voted unanimously, to move forward with the inclusion/exclusion process, authorizing the Districts’ legal counsel to publish notice of that action, pursuant to C.R.S. § 32-1-207(3), which was done on March 17, 2023. On April 12, 2023, Pulpit Rock, as owner of the property, submitted petitions to the Districts to change the boundaries of the Districts. This included petitions to exclude property from District 2, to

exclude additional property from District 3, and to include all of that property into District 1, ("Petition" and collectively, the "Petitions"). Included at the back of each of the Petitions is proof of published notice, advising that a public hearing would be held on the Petitions on April 28, 2023, and that "all interested persons" should appear at the public hearing "and show cause in writing, if any they have, why such petition should not be granted. The failure of any person in the existing District to file a written objection shall be taken as an assent on his part to the exclusion of the area described in this notice.

The boards of all three Districts held public hearings on Petitions on April 28, 2023. Conflict of interest disclosures were filed with the Colorado Secretary of State's office.

Districts 2 and 3 assert that conflicts of interest exist for Stimple because Stimple is one-third owner of Pulpit Rock, the owner of Downtown Flying Horse. Allegedly, Stimple would benefit financially from all financial benefits received by Pulpit Rock and Downtown Flying Horse. Because of the alleged conflict, Districts 2 and 3 argue that Stimple should have refrained from voting on the Motion to Exclude. The Court is not persuaded.

The Court finds compliance with the disclosure requirement. Prior to the April 28, 2023, meeting, materials were prepared and made available, including draft resolutions outlining the statutory criteria for approving the Petitions. Additionally, the Districts' accountant provided a letter on the financial impact of approving the Petitions, concluding that the excluded property would remain liable for District 2 and 3's debt service mill levies, so there would be no impact on servicing the Districts' existing debt. It also referenced that the IGA requires Districts 2 and 3 to transfer O&M mill levy revenues to District 1, so there would be no operational impact for the overall Project by having the property in District 1. During the hearing, members of the public asked questions and provided comments. Several members of the public apparently made verbal objections to the exclusion of property from District 2 and/or District 3, but the Hearing testimony did not reveal the substance of the objections. No written objections were submitted relating to the exclusion of property from District 3.

The Court finds that Mulloy's April 4, 2023, email to the Districts' legal counsel, was not a written objection within the meaning of Colorado law. As an initial matter, the statute speaks in terms of failure of any person in the existing special district to file a written objection. C.R.S. § 32-1-501(2). Mulloy testified that he is an eligible elector only in District 2, and not in District 3. Accordingly, Mulloy's email is not from someone "in the existing special district" as it relates to District 3. The Court also finds that Mulloy's email did not show cause why the Petition to District 3 should not be granted. Mulloy simply asserted conflicts of interest for the Districts' counsel and accountants based on their work for all three Districts, and certain District 2 and 3 board members,

based on their status as board members of District 1 and their affiliation with the Developer, and requested recusal. However, the Districts were obligated to hold hearings on the Petitions once they were received. Conflicts of interest disclosures were filed, allowing the board members to vote notwithstanding their conflicts of interest, C.R.S. §§ 32-1-902(3)(b), which would be necessary to have a quorum.

Following the public hearing, the District 3 board voted unanimously to approve a resolution excluding property from District 3 (the "Exclusion Resolution"). District 3 board members Reifschneider and Patchen, both homeowners unaffiliated with the Developer, voted in favor of the exclusion. The District 2 board voted 4-1 to approve the exclusion from District 2, with Mulloy opposed. The District 1 board then voted unanimously to approve inclusion of the property into District 1. On April 29, 2023, counsel for the Districts filed motions for orders of exclusion for Districts 2 and 3 and inclusion for District 1 in this case. The Court granted those Motions on May 3, 2023, the Orders for which were then recorded in the real property records of El Paso County.

On May 2, 2023, new board members were elected to the boards of Districts 2 and 3. The new District 3 board members purported to call and hold a meeting on May 4, 2023, at a conference room at a Hampton Inn outside the District. Only the newly elected board members for District 3 attended, and at that meeting, they purported to fire District 3's existing legal counsel and manager. The Court finds that the meeting on May 2nd, 2023, was invalid. Meetings must be called by an existing board member, C.R.S. § 32-1-903(2)(a), with public notice posted on District 3's approved and designated website, at least 24 hours in advance, C.R.S. § 24- 6-402(2). That did not happen, and the meeting, and actions taken, were invalid.

On May 5, 2023, the new District 3 board members met again at the Hampton Inn without the other two District 3 board members. Charles Wolfersberger and Paul Rufien attended. Wolfersberger is the principal of Wolfersberger, LLC, a firm providing accounting and management services only to special districts where the majority of board members are homeowners not affiliated with real estate developers. The Court finds Wolfersberger's testimony at the Hearing was generally credible. He has experience working with metro districts, but he clearly has beliefs about what the law should be that are different from what the law is. He acknowledged that there are a number of significant reforms he believes that the legislature should adopt, and that the legislature has already expressly rejected, in some cases, despite Wolfersberger's legislative testimony. At the May 5 meeting, the new District 3 board members purported to hire Wolfersberger as manager and accountant, and Rufien as legal counsel. Like the May 4 meeting, this meeting was not validly called, noticed or conducted.

The District 3 board purported to hold another meeting on May 26, 2023, again at the Hampton Inn, and again leaving out board members Patchen and Reifschneider. However, Mulloy was present, as was another newly elected District 2 board member, Bill Graziano. Recognizing that the May 4 and May 5 meetings were not validly held or conducted, the District 3 board voted to ratify the actions taken at those meetings and voted again to engage Wolfersberger and Rufien. Notice of the Agenda was posted on Wolfersberger's new District 3 website, but he acknowledged that the new website was not the designated location for posting meeting notices until July 2023. The Court finds that the May 26 meeting was also invalid. Unlike the April 28 hearings on the Petitions, no notice of the May 26 meeting was published in any newspaper, and no notice compliant with C.R.S. § 32-1-501(2) was published anywhere. Gillet, a board member for District 3, testified that none of the District 3 board members thought it necessary to provide Pulpit Rock notice, so they did not. The Court finds Gillet's testimony was generally credible, though he acknowledged he was suspicious of the prior board. There were also many things he did not recall from the April 28 meeting or the May 26 meeting.

Wolfersberger and Gillet both testified that the District 3 board's action on the exclusion at the May 26 meeting was not a public hearing. Instead, in their view, the new board was simply reevaluating the decision made by the prior District 3 board at the April 28 meeting, at which meeting the public had been given its opportunity to provide information on the exclusion. The May 26 meeting was also not a proceeding to include the previously excluded property back into District 3, which is addressed in C.R.S. § 32-1-401, despite the fact that the exclusion was already final. The only new information provided at the May 26 meeting was an analysis from Mr. Wolfersberger on potential lost O&M tax revenue as a result of the exclusion, which assumed that development of the Downtown Flying Horse property was already complete. Wolfersberger conceded that his analysis was not based on what was actually planned for development on the Downtown Flying Horse property, nor did it take into account the costs and risks to get that development completed. He also assumed that there would be no increase in O&M costs based on the need to maintain additional improvements in Downtown Flying Horse. Finally, he conceded that the IGA requires that all O&M work be completed by District 1, and that the IGA requires District 3 to transfer its O&M tax revenues to District 1 to do so. Ultimately, based on no other new information, the three new District 3 board members voted to approve a resolution to revoke the exclusion (the "Revocation Resolution").

The Court finds that some of the findings in the Revocation Resolution were not supported. The new District 3 board concluded exclusion was not in the best interest of the property itself, and that there was no development plan indicating a need for anything more than limited O&M services. Gillet admitted they had no specific information on these issues. Stimple addressed these issues, with actual knowledge as

representative of the property owner. There is a development plan, O&M expenses likely will be significant, and he testified that exclusion was in the best interest of the property.

Patchen, a retired police officer and resident of District 3 with no affiliation with the Developer was elected to the District 3 board in May 2022. The Court finds that his testimony at the Hearing was credible. He and Dan Reifschneider, who also had no affiliation with the Developer, voted to approve the Petitions at the April 28 meeting. He confirmed the adversarial direction Mulloy, and others were taking, which was, in his view, not about advancing the community, but rather was about going after the Developer. Neither Patchen nor Reifschneider attended District 3's May 4, May 5 or May 26 meeting, and Patchen testified that Christopher Tschan, another new District 3 board member, told him that they had three members on their side, so they did not need Patchen. Patchen felt uncomfortable about the new board members' conduct, and ultimately resigned from the District 3 board in June of 2023.

Notably, though the Downtown Flying Horse property is comprised of land excluded from both Districts 2 and 3, the new District 2 board did not take any action to attempt to revoke the exclusion of property from District 2.

The applicable statute governing exclusion of property is C.R.S. § 32-1-501. It requires that appeal of a petition for exclusion that is denied or a resolution that is finally adopted be made to the El Paso County Board of County Commissioners (the "BOCC") within 30 days after the decision, C.R.S. § 32-1-501(5)(b), with a subsequent appeal right to the District Court. No appeal to the BOCC was ever filed, so the right to appeal to the District Court from the BOCC's decision was lost. ***Thomas v. Fed. Deposit Ins. Corp***., 255 P.3d 1073 (Colo. 2011). District 3's failure to pursue its statutory appeal remedy deprives the Court of Subject matter jurisdiction. ***Colo. Stormwater Council v. Water Quality Control Div. of the Colo. Dep't of Pub. Health & Env't***, 529 P.3d 134 (Colo. App. 2023).

District 3 has argued that the appeal process set forth in C.R.S. § 32-1-501(5)(b) only applies to approvals of exclusions of property in the limited case of fire protection districts under C.R.S. § 32-1-501(1.5). The statute is not specific on that issue, referring to appeal of a resolution that is finally adopted. The Court finds that the Exclusion Resolution was a resolution, and that it was finally adopted by the District 3 board on April 28, 2023.

There is also a statutory bar based on the Districts' publishing notice of intent to adjust their boundaries on March 17, 2023. Pursuant to C.R.S. § 32-1-207(3)(b), "[n]o action may be brought to enjoin . . . any proposed activity of the special district unless such action is commenced within forty-five days after the special district has published

notice of its intention to undertake such activity." No challenge was filed by May 1, 2023, so any effort to assert the boundary adjustments constitute a material modification to the Service Plan is time-barred.

The Court also find that no written objections were submitted, so that all interested parties are deemed to have consented. The applicable statute provides specifically that the failure of any person in the existing Special District to file a written objection shall be taken as an assent to the exclusion. C.R.S. 32-1-501(2). The Court finds no written objection was provided from anyone, including the email of Mulloy who was not in the applicable Special District.

The Court also finds there is no procedure in the Special District Act for revocation of an exclusion of property from a district. ***South Fork Water & Sanitation Dist. v. Town of South Fork***, 252 P.3d 465, (Colo. 2011). Special Districts possess only those powers expressly conferred on them by the constitution or statute, as well as the incidental implied powers reasonably necessary to carry out the express powers. There is, however, a process for including property into a special district, C.R.S. § 32-1-401. Here, once the orders were recorded on May 3, 2023, they became effective, C.R.S. § 32-1-105, and it was necessary to follow the statutory inclusion process for the property to be included back into District 3. District 3 did not do so. District 3 also did not seek to invalidate the inclusion of the property into District 1, which was completed as an independent statutory process. Critically, any effort to put the property back into District 3 now, regardless of the procedure, would violate the Special District Act's prohibition on overlapping special districts. C.R.S. § 32-1-107.

On the merits, the Court finds that the prior District 3 board's approval of the Exclusion Resolution was justified, as the statutory criteria in C.R.S. § 32- 1-501(3) are satisfied. The Court notes that Motion to Revoke repeatedly refers to the prior District 3 board having multiple conflicts of interests, and the new board having a majority of unconflicted homeowner directors. This is important, because what happened here is that the new District 3 board simply made a different decision than the prior District 3 board on essentially the same facts. The new District 3 board now asks the Court to accept its decision based primarily on its assertion that it had a better claim to legitimacy than the prior District 3 board. However, District 3's "developer board" vs. "homeowner board" distinction is legally irrelevant. The law does not differentiate between developer-affiliated boards and resident boards. Under Colorado law, an "eligible elector" within the meaning of C.R.S. § 32-1-103(5) is an eligible elector. In fact, the legislature is expressly aware that developers qualify board members, C.R.S. §§ 32-1-902(3)(b) authorizes board members to vote on matters on which they have conflicts as long as the conflicts are disclosed. Wolfersberger acknowledged that metro districts with the same kind of "developer-qualified" and conflicted board members have issued hundreds of millions of dollars of debt throughout Colorado. The actions of the

prior District 3 board were valid actions of the board. In reaching that conclusion, the Court rejects the primary argument the new District 3 board made to justify application of C.R.C.P. 60(b). If a new board's disagreement with an old board's decision could be the basis for relief from judgment, it would undermine the finality of government actions and could lead to a proliferation of lengthy and costly hearings.

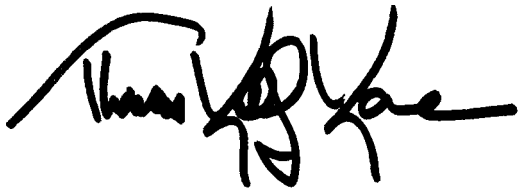
The Court finds that the statutory factors for exclusion of property have been satisfied. The Court finds that the exclusion was in the best interest of the property. The property is currently vacant land with a detailed plan to make Downtown Flying Horse a significant development using financial assistance from District 1 without interference from District 2 or District 3. The Court also finds that the exclusion will facilitate the Developer's completion of development of Downtown Flying Horse. In that context, the Court notes the purpose of the Districts: to provide a critical financing mechanism for public improvements. The hostility of the new District 2 and 3 boards toward the developer here is apparent. Mulloy is upset about past reimbursement of public improvement expenses that are clearly authorized under the Service Plan. In the IGA Litigation, Districts 2 and 3 are seeking to invalidate the IGA, and end the cooperative structure in place since 2004 under the Service Plan. The Court finds that facilitating the development of Downtown Flying Horse advances all relevant best interests under factors 3(a)(II) and (III), and addresses factors 3(b), (e), (f) and (h). Completing a billion-dollar development project will clearly support employment and economic conditions for the remainder of District 3, El Paso County, and the region. The property remains subject to District 3's debt service mill levy, C.R.S. § 32-1-503, so completing the development will drastically increase the tax base, accelerating repayment of District 3's existing indebtedness, with no additional service costs to District 3. Regarding factors (3)(c), (d), (g) and (h), the prior District 3 board appropriately took account of the terms of the Service Plan and the IGA. In that context, the loss of O&M revenues is irrelevant, as the Service Plan and IGA require that District 3 provides no services, and all O&M revenues must be paid to District 1. Thus, exclusion has no adverse impact on services or costs to be levied on the remaining property in District 3.

IV.ORDER

Based on the Findings of Fact and Conclusions of Law, the Motion to Revoke is DENIED.

Dated this 19th day of December, 2023.

BY THE COURT:



_____
THOMAS K. KANE
DISTRICT COURT JUDGE