SPECIAL MEETING OF THE TOWN BOARD
Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, March 3, 2020 5:30 p.m.

The Town Board may take action on any of the following agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.

I. REGULAR MEETING CALLED TO ORDER – Mayor William Karspeck

II. PLEDGE OF ALLEGIANCE – Mayor William Karspeck

III. ROLL CALL – Mayor William Karspeck

IV. SCHEDULED ITEMS

1. Metro District Study Session (Chris Kirk)

VII. EXECUTIVE SESSION
Pursuant to C.R.S. § 24-6-402 (f)(1) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body of any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees. And the following is provided for informational purposes: Town Administrator Annual Evaluation

V. ADJOURN

__________________________________
Town Clerk or Deputy Town Clerk

__________________________________
William Karspeck, Mayor
TOWN ADMINISTRATOR
CHRISTOPHER KIRK

TOWN BOARD OF TRUSTEES INFORMATION SHEET

MEETING DATE: March 3, 2020

ITEM: METRO DISTRICT STUDY SESSION

COMMENTS:

During 2019 the Town Board met several times to consider the Town’s metro district formation policies. These discussions included input from the development community, legal counsel for the Town, and others. Following those discussions, Alan Pogue, of Icenogle, Seaver, and Pogue, drafted a simple policy statement to serve as general guidelines for the Town Board to follow in the review and possible approval of new and amended Metro District service plans. Included with this policy is a draft Agreement Regarding District Disclosures that outlines how districts provide notice to prospective buyers about the existence of the district, the district’s mill levies, an estimate of property taxes, and other information about the district. Both the draft policy and the draft agreement referenced are attached with this memo.

In parallel with this policy process, there has been a lot of press coverage regarding metro districts statewide. Much of that coverage has raised questions and concerns with metro districts, their formation, and their ongoing operations. As a result, many of the communities in our region have been considering their own metro district policies and with that in mind, staff believes it would be of value to return to a high-level conversation about the original purposes of metro districts and the legislation that enabled them, as well as how they have evolved over time. Town Attorney, Erin Smith, and Charles Norton, of Norton and Smith, will be in attendance at the meeting to share some of this background with the hope that it will provide better understanding and context as we move forward with the Town’s own metro district formation policies.
Title 32 Metropolitan Districts Policy

This policy applies to the formation of metropolitan districts pursuant to Title 32, Article I, Colorado Revised Statutes (C.R.S.), as well as to amendments to service plans previously approved. The Town of Berthoud (the “Town”) considers the formation of metropolitan districts pursuant to the statutory provisions of Title 32 of the Colorado Revised Statutes, in conjunction with the following guidelines.

Policy Statement

This policy is intended as a guide only and adherence to this policy in no way guarantees approval of a proposed new or amended service plan. The Board of Trustees of the Town (the “Board of Trustees”) retains the discretion to reject, approve or conditionally approve service plans in accordance with state law. Nothing in this policy is intended to limit the discretion of the Board of Trustees regarding the approval, terms, conditions and limitations of all service plans.

Service Plan

(a) Applicants for a Title 32 metropolitan district (hereinafter “District”) must complete and submit a service plan to the Board of Trustees in accordance with Section 32-1-202 (2), C.R.S., and any other requirements of state law.

(b) All applicants shall include maximum mill levy caps for both debt service and operations and maintenance within the proposed District’s service plan, subject to adjustment as set forth below.

(c) The service plan shall include a limitation on the proposed District’s power to provide services related to fire protection, the elimination and control of mosquitos and the establishment and maintenance of television relay and translator facilities unless said services are provided pursuant to an intergovernmental agreement with the Town.

Review Fees

The Town will charge review fees commensurate with the actual cost of processing and reviewing new and amended service plans. All applicants are required to reimburse the Town for the costs and expenses incurred by the Town for legal, financial, and all other consultants engaged by the Town in its sole discretion. At the time of submission of a new and/or amended Service Plan, the applicant must remit a deposit in an amount of $15,000 (the “Deposit”). Checks shall be made payable to the Town and sent to the Town Clerk. The costs and expenses incurred by the Town will be deducted from the Deposit and, to the extent the amount of costs and expenses exceed the Deposit, will be invoiced to the applicant and payable to the Town within thirty (30) days after
notification. No Town review of a new or amended service plan will commence until the Deposit is paid.

**Gallagher Adjustment**

In the event that the method of calculating assessed valuation is changed after the date that a service plan is approved, the applicable mill levy may be increased or decreased to reflect such changes, such increases or decreases to be determined by the District in good faith, so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes.

**Disclosure Requirements**

The proposed service plan shall require that the developer(s) of the property comprising the District provide written notice to prospective purchasers of property within the District disclosing the existence of the District, the District’s proposed maximum mill levy and an estimate of property taxes, as well as the District’s authority to impose and collect rates, fees, tolls and charges as applicable. The proposed service plan shall require that the developer(s) of the property comprising the District execute an “Agreement Regarding District Disclosures” in the form attached hereto as Exhibit A, which Agreement shall further include the required form of the disclosure to be sent to prospective purchasers of property within the District.
EXHIBIT A

Form of Agreement Regarding District Disclosures
AGREEMENT REGARDING DISTRICT DISCLOSURES  
(XXXXXX METROPOLITAN DISTRICT)

THIS AGREEMENT REGARDING DISTRICT DISCLOSURES (this “Agreement”) is executed as of the ___ day of __________, 20__, by and between the TOWN OF BERTHOUD, COLORADO, (the “Town”), and ____________________ (the “Property Owner”).

Recitals

A. The Property Owner owns certain real property located within the Town’s boundaries, which property will be developed for residential uses (the “Property”). The Property is more particularly described on Exhibit A.

B. The Property comprises all of the property in XXXX Metropolitan District (the “District”), as defined and provided for in the Service Plan for XXXX Metropolitan Districts (the “Service Plan”), and may include additional property located within the “Future Inclusion Area” described in the Service Plan.

C. As a condition to its approval of the Service Plan, the Town requires that the Property Owner, for itself and its successors and assigns, agree to provide certain disclosures regarding the District to prospective purchasers (“Lot Purchasers,” as further defined herein) of an individual lot with a completed dwelling unit thereon or an individual residential condominium or townhome (each, a “Lot”) within the Property from the Property Owner.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows.

Agreement

1. Disclosure Requirement. At the time any Lot Purchaser enters into a reservation agreement with the Property Owner for a Lot within the Property, or if such Lot Purchaser does not enter into a reservation agreement, then prior to the time such Lot Purchaser enters into a written contract with the Property Owner for the purchase of a Lot within the Property, the Property Owner will provide to the Lot Purchaser a copy of a General Disclosure and Common Questions Regarding XXXX Metropolitan District, which shall include the Estimate of Property Taxes with and without the District’s proposed maximum mill levy, in the form attached hereto as Exhibit B (the “Disclosure”). The Property Owner shall retain a copy of the Disclosure signed by all Lot Purchasers for its records. The Property Owner shall include the Estimate of Property Taxes attached as Exhibit B to the Disclosure, in all printed pricing schedules and related cost materials provided to prospective purchasers for the Property.

2. Amendments to Disclosure. The Property Owner shall not amend the Disclosure without the prior written approval by the Town Attorney of such amendments, except that the Property Owner may (a) correct minor typographical or clerical errors, and (b) periodically
update the assessment ratios, mill levies, and similar information contained in the Disclosure without the prior written approval of the Town Attorney.

3. **Town’s Remedies.** In the event that the Property Owner fails to comply with the requirements of this Agreement, the Town shall be entitled to seek specific performance thereof, and if the Town prevails, it shall be entitled to recover from the Property Owner all of its costs and expenses incurred in connection therewith, including reasonable attorneys’ fees and costs.

4. **Lot Purchasers’ Remedies.** In the event that a Lot Purchaser does not receive a copy of the Disclosure prior to the time such Lot Purchaser enters into a written contract with the Property Owner for the purchase of a Lot within the Property, such Lot Purchaser shall be entitled to terminate such contract and receive a full refund of its deposits thereunder at any time prior to the earlier of: (a) fifteen (15) days after a copy of the Disclosure is provided to such Lot Purchaser; or (b) the closing of Lot Purchaser’s acquisition of the Lot from Property Owner.

5. **Covenant Running with the Land.** The Property Owner’s obligation under this Agreement shall be a covenant running with the land which shall bind subsequent owners of the Property. All references in this Agreement to “Property Owner” shall mean ____________ and any successor in title to all or any portion of the Property. If the Property Owner sells any portion of the Property without a completed dwelling unit, townhome or condominium on such portion to any party other than a Lot Purchaser, the Property Owner will require in its purchase and sale agreement that the purchaser acknowledge and agree to the requirements of and remedies provided for in this Agreement. Following the first sale of a Lot to a Lot Purchaser, such Lot shall cease to be subject to this Agreement. Upon the sale of the Property to a party other than a Lot Purchaser, so long as the selling Property Owner complies with the requirements of this Section 5, such selling Property Owner shall have no further obligations under this Agreement.

6. **Amendments to the Agreement.** Upon the inclusion of property into the District (“District Included Property”) or the exclusion of property from the District (“District Excluded Property”), the parties hereto shall amend this Agreement in writing to subject any District Included Property to the terms of this Agreement and/or to remove any District Excluded Property from this Agreement, and to include or exclude any property owner, as applicable.

7. **No Third Party Beneficiaries.** Except as provided in Section 4, this Agreement is for the benefit of, and may only be enforced by, the parties hereto. Except as set forth in Section 4, no third party shall have any rights, or be entitled to any remedies, arising out of this Agreement or any breach hereof.

8. **Recitals.** The Recitals set forth at the beginning of this Agreement are hereby incorporated in and made a part of this Agreement.

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

10. **Facsimile Signatures; Counterparts.** The facsimile signature of any party on this Agreement shall be deemed an original for all purposes. This Agreement may be executed in counterparts, each of which shall be deemed a duplicate original.
11. **Recording.** This Agreement, and any amendment entered into pursuant to Paragraph 6 hereto, shall be recorded in the ________ County Clerk and Recorder’s Office at the Property Owner’s expense.

*THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK*
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day, month and year first above written.

TOWN:

TOWN OF BERTHOUD,

By: __________________________
    Town Manager

ATTEST:

By: __________________________
    Town Clerk

APPROVED AS TO FORM:

By: __________________________
    Town Attorney

STATE OF COLORADO )
) ss:
COUNTY OF )

The foregoing instrument was acknowledged before me this _____ day of ____________, 20__, by __________________________ as Town Manager of the Town of Berthoud.

Witness my hand and official seal.

My commission expires: ____________________.

__________________________________________
Notary Public
STATE OF COLORADO

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of ________________, 20__, by _________________________ as Town Clerk of the Town of Berthoud.

Witness my hand and official seal.

My commission expires: _________________.

__________________________
Notary Public
PROPERTY OWNER:

By: ____________________________

STATE OF COLORADO

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by ________________ as ____________________ of ____________________.

Witness my hand and official seal.

My commission expires: ________________

______________________________
Notary Public
Exhibit A

To Agreement Regarding District Disclosures

Legal Description of the Property
Exhibit B

To Agreement Regarding District Disclosures

Form of Disclosure
GENERAL DISCLOSURE AND COMMON QUESTIONS REGARDING XXXXXX METROPOLITAN DISTRICT

1. **What does the District do?**

   XXXXXX Metropolitan District (the “District”) was organized on ______________, 20__, pursuant to a Service Plan, approved by Resolution No. ______ of the Board of Trustees of the Town of Berthoud, Colorado, on ______________, 20__ (the “Service Plan”) for purposes of constructing, operating and maintaining certain public improvements within the boundaries of the District. The District is a governmental entity governed by an elected board of directors made up of property owners and property taxpayers within the District’s boundaries.

   The District’s boundaries are set forth in Exhibit 1 attached hereto. It is conceivable that additional boundary adjustments may be made within the District. Any such boundary adjustment is subject to prior approval by the owners of the property to be annexed and must be considered at a public hearing of the District’s board of directors.

   Pursuant to the Service Plan, the District is authorized to construct, operate, and maintain a sanitary sewer system, storm drainage, potable water system, non-potable irrigation system, street system and traffic safety, and parks and recreation improvements for the benefit of the property owners of the District. The District may dedicate certain public improvements to the Town of Berthoud (the “Town”). The operations and maintenance of public improvements dedicated to the Town shall rest with the Town. Public improvements not dedicated to the Town shall be owned, operated, and maintained by the District. The District has authority to impose property taxes and other fees, rates, tolls, penalties, or charges to fund the construction and operations and maintenance for all improvements identified in the Service Plan. At some point in the future, the District may impose fees and/or rates; all District fees and rates may be adopted and/or amended from time to time by the District’s board of directors at their discretion, as permitted by law.

   Certain services may be provided within the District by one or more property owner associations organized as Colorado non-profit organizations comprised of all property owners in the District. Currently, no property owners association has been established within the boundaries of the District. If a property owners association is established, property owners will be subject to fees and assessments payable to the association which will be separate from and in addition to any fees or assessments payable to the District.

2. **How much property tax will the District collect to construct improvements and pay for operations?**

   The District has authority to impose property taxes for the construction, operation, and maintenance of the improvements identified in the Service Plan. The District may issue bonds to provide for the costs of capital improvements within its boundaries. In order to meet the debt service requirements for bonds and to pay operations and maintenance costs associated with the provision of services, the District will impose a mill levy under the Service Plan. The mill levy authorized for the District under the Service Plan may not exceed ___ mills for the payment of
debt obligations and related expenses, may not exceed ___ mills for the payment of operations and maintenance obligations and related expenses, and may not exceed a total of ___ mills for the payment of debt obligations and operations and maintenance expenses combined, which may be adjusted upward or downward over time as permitted in the Service Plan. In addition, various voter limitations exist which affect the taxing powers of the District, including maximum annual taxing limitations and expenditure limitations. The TABOR Amendment, Article X, Section 20 of the Colorado Constitution, also provides for various legal limitations which may restrict the taxing and spending authority of the District.

3. **What are the advantages of metropolitan districts providing public improvements in lieu of cities, towns, or counties?**

Many areas in Colorado utilize special districts to finance public improvements. As cities, towns, and counties often do not provide water and wastewater systems, roads, or recreation facilities in new communities, special districts have been organized to build these facilities. Special districts, and the financial powers they utilize, may also permit earlier construction of recreation facilities and other amenities for the benefit of the community when compared with developments not within special districts. Where special districts are utilized, the costs of improvements within the community are generally spread over 20 to 30 years and are paid from mill levies. Special districts are governed by property owners within the community who are better able to address issues of concern to the community than could a larger city or county.

4. **How can I be assured that the District will not issue too many bonds and create unreasonably high mill levies?**

All bonds issued by the District will be governed by the controls adopted by the Colorado legislature governing the process by which bonds are issued by special districts. In addition, the organization and operation of the District are governed by the terms of the Service Plan, which limits the mill levy that may be assessed by the District for the payment of debt obligations and related expenses to ___ mills, the mill levy that may be assessed by the District for payment of operations and maintenance obligations and related expenses to ___ mills, and the total mill levy that may be assessed by the District for debt obligations and operations and maintenance combined to ___ mills, subject to adjustments to account for changes in state law with respect to the assessment of property for taxation purposes, the ratio for determining assessed valuation, or other similar matters. The adjustment allows for tax revenues to be realized by the District in an equivalent amount as would have been realized by the District based on a levy of ___ mills absent any change in the manner of the assessment of property for taxation purposes, the ratio for determining assessed valuation, or other similar matters.

The mill levy limits will remain in place unless and until the Service Plan is amended to permit a change in this limit for the District. This limit, as well as others existing under Colorado law and various voter approvals, are believed to be adequate to control the tax levies within the District. As noted above, however, many of the limits of the Service Plan and existing voter limits may be amended from time to time.

Market constraints on property sales by the developer also require that the mill levy within the District be comparable to mill levies in competing development areas in order to
further the community as an attractive place for individuals to purchase residential property. Therefore, in the initial stages of the development, it is in the District’s and the project developer’s best interest to maintain a mill levy in the District comparable to the total property taxes in other similar communities so that the property taxes paid for the amenities and services in the District are a good value.

5. **Who bears the risk that the community may not fully develop?**

   Bondholders will be providing funding to the District for the District’s construction of public improvements authorized by the Service Plan. These initial bonds for the District will be supported, in part, by the developer of the project. Property taxes paid by property owners on residential property will help pay the costs of all bonds issued by the District. This results in the risk of development being shared in part by bondholders and the developer. The property owners also share risk relative to the bonds which are currently limited as noted above in paragraph 4. As previously stated, it is within the District’s discretion to impose other fees to help pay for public improvements.

6. **What will my tax bill look like?**

   In determining the tax liability due to for residential property, the County Assessor’s Office first determines the actual value of the residential property based upon market approach to appraisal. Up to five years of market activity are analyzed. The actual value of the residential property is then multiplied by the assessment rate, which is set every odd numbered year by the state legislature, to determine the assessed valuation of the residential property. The current assessment rate on residential property is 7.15%. The mill levy is then multiplied by the assessed valuation of the residential property, resulting in the assessment for the residential property. For example, residential property with an actual value of $450,000 would have an assessed value of $32,175 ($450,000 x 7.15%). One mill (0.001) applied to that valuation for assessment produces $32.18 of taxes ($32,175 x 0.001).

   It is anticipated that the tax bill for your property will show mill levies for the Town, According to information available from the Larimer/Weld County Assessor, the total overlapping mill levy imposed upon the property within the boundaries of the District, but without any District mill levy, is currently ________ mills for tax year 20__ for collection in the year 20__. Therefore, without the District, the annual tax bill levied on a residential property with an actual value of $450,000 would be approximately ________ (______ x ______).

   The maximum mill levy the District is permitted to levy is _____ mills (0.___), and the portion of the annual tax bill levied by the District on a residential property with an actual value of $450,000 would be approximately $________ (______ x ______). Your tax bill for your property will also include mill levies from other taxing entities that overlap with the District’s boundaries, making the total annual tax bill levied on the residential property approximately $______ ($_____ + $______).

   **Exhibit 2** attached hereto sets forth the approximate mill levies that are currently levied against the property within the District and outlines the annual tax bills levied both with and
without the District. Colorado taxing entities certify their mill levies on an annual basis, so the most accurate manner of ascertaining the specific taxing entities and current mill levies imposed on any property is by contacting the Larimer/Weld County Assessor’s office directly.

7. **Where can I get additional information regarding the District?**

   This document is not intended to address all issues associated with special districts generally or with XXXXXX Metropolitan District specifically. The Service Plan for the District contains a full description of the District’s purpose and functions. Prospective purchasers of property within the District are encouraged to read this document to be fully informed. A copy of the District’s Service Plan is available in the Berthoud Town Clerk’s Office. For additional information about the District, prospective purchasers may also contact the District’s attorney’s office ___________________________. The District’s board meetings are open to the public, at which time you can raise questions regarding any matter related to the activities of the District.

   Dated this ___ day of ______, 20___.

   By: ________________________________
   President, Board of Directors
   XXXXX Metropolitan District

   Purchaser’s Signature Acknowledging Receipt: _____________________
EXHIBIT 1
TO GENERAL DISCLOSURE AND COMMON QUESTIONS

LEGAL DESCRIPTION OF
XXXX METROPOLITAN DISTRICT
EXHIBIT 2
TO GENERAL DISCLOSURE AND COMMON QUESTIONS

ESTIMATE OF PROPERTY TAXES

Annual Tax Levied on Residential Property With $450,000 Actual Value Without the District

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<tr>
<th>Taxing Entity</th>
<th>Mill Levies (2018**)</th>
<th>Annual tax levied</th>
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Annual Tax Levied on Residential Property With $450,000 Actual Value With the District (Assuming Maximum District Mill Levy)

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<tr>
<th>Taxing Entity</th>
<th>Mill Levies (2018**)</th>
<th>Annual tax levied</th>
</tr>
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</table>

** This estimate of Overlapping Mill Levies is based upon the property taxes levied on property within the District imposed in 2018 for collection in 2019, and is intended only to provide approximations of the total overlapping mill levies within the District. The stated mill levies are subject to change and you should contact the Larimer/Weld County Assessor’s office to obtain the most accurate and up to date information.