RODEY | Law

Memorandum

TO: Paul Andrus, Community Development Director

FROM: Justin Horwitz and Jenica Jacobi

SUBJECT: Mirador PID

DATE: October 24, 2018

SUBJECT:

Consideration by the Los Alamos County Council (the "Council") of the Formation Resolution for the Mirador Public Improvement District and approval of the PID Infrastructure Development and Acquisition Agreement.

SYNOPSIS:

The purpose of the Formation Resolution is to approve the Application and Petition (the "Application") of Site A-19-A-1 Acquisition Group, LLC (the "Petitioner") for formation of the Mirador Public Improvement District (the "District") pursuant to the Public Improvement District Act, NMSA 1978, §§ 5-11-1 to -27 (2001, as amended) (the "Act") and order that the District be formed, without an election of landowners or resident qualified electors, as a political subdivision of the state, separate and apart from County.

The District would be formed to fund a portion of the administrative and formation costs of the District and the acquisition of certain eligible local and off-site public infrastructure improvements (collectively the "Public Improvements"). The Public Improvements would benefit the real property within the District and be suitable for conveyance to the County upon completion.

The District would not use or otherwise rely upon County revenues to pay for Public Improvements or satisfy debt of the District. Rather, the District would utilize the proceeds of a special levy assessed on real property within the boundaries of the District. The special levy is imposed as a benefit assessment, which is in addition to all existing County taxes and charges. No property owners, residents or businesses located outside the District would be required to pay a special levy. The County, however, would be responsible for operational and maintenance costs of public infrastructure dedicated to the County.

ATTACHMENT B

The Application and the Formation Resolution, as well as the Act, constrain the ability of the District to incur debt. Most notably, if formed, the District would not be permitted to issue debt or otherwise fund Public Improvements without further authorization from board of directors for the District (the "District Board"). The District Board may be comprised of the members of the Council, or may be comprised of various County employees and representatives of the Petitioner appointed by the Council.

BACKGROUND AND ANALYSIS:

Delivery of the Application:

On September 5, 2018, the Petitioner delivered to the County the Application for formation of the District.

Based on the September 5th submission date, the Act requires the Council to take action on the Application on or before December 4, 2018, which is the 90th day following submission of the Application by the Petitioner. Without legislative action, the Application is deemed to have been accepted by the Council as a matter of law.

Impact of PID:

The PID is a financing mechanism for public infrastructure. The Mirador project has earthwork costs significantly higher than typical subdivisions and higher than initially estimated for this project. The PID anticipates a reimbursement to the Petitioner of approximately $4M after eligible public improvements are completed and approved by the County. This pending reimbursement changes the Petitioner's financing picture:

- The Petitioner and subsequent builders will not be required to place the $4M and associated holding costs into the base prices of homes, because it is being reimbursed through the PID;
- Petitioner will have better borrowing capacity, and its risk associated with project development is reduced;
- Petitioner is able to develop the infrastructure in larger phases and more quickly;
- Petitioner is able to maintain a faster market absorption (approximately twice as fast, subject to market conditions) because (i) base home prices are lower, increasing the market of potential buyers; (ii) the reimbursement is an incentive to complete the project; (iii) the special levy imposed by the PID is applicable to the Petitioner as well and encourages faster diversification of ownership; and
- The reimbursement and accelerated absorption provide capital to undertake the multifamily and commercial aspects of the project that might otherwise be financially challenging.

Application Details:

The Application provides, among other things, the following documents and information as required by the Act:

- A petition signed by the Petitioner, which is the owner of one hundred percent of the real property by assessed valuation proposed for inclusion within the boundaries of the District (collectively the "Land");
- A legal description of the Land and a current title report for the Land;
- An MAI appraisal for the Land;
- Identification of all persons or entities with an ownership interest in the Land and evidence that there are no resident qualified electors located on the Land;
- A General Plan, Feasibility Study, and Master Rate and Method of Apportionment of Special Levy, all prepared in compliance with the Act;
- Forms of Special Levy Disclosure prepared in compliance with the Act;
- A description of the Petitioner's professional experience and evidence demonstrating its financial capacity to undertake the development of the Public Improvements prepared in compliance with the Act;
- Information regarding how the District meets existing County development objectives prepared in compliance with the Act;
- A form of Formation Resolution; and
- A form of PID Infrastructure Development and Acquisition Agreement.

The Application requests that the Council form the District and establish certain general financing parameters and limitations related to the District. The District Board will impose a Special Levy on Land in the District and may issue District Bonds secured the Special Levy in accordance with the requirements set forth in the Formation Resolution.

The Land is zoned for mixed use and the proposed project includes a mix of single family residential, multifamily residential, and commercial. The feasibility study has analyzed applicable benefits to the Land as a result of the Public Improvements on anticipated use or benefit to each type of development. The final amount of bond capacity and amount of reimbursement available to the Petitioner subject to determination by the District Board in compliance with the Act. However, certain other financial details, such as the maximum annual special levies, would be financial parameters not to be exceeded.

Notwithstanding this approach and the parameters authorization by the Council, no Public Improvements would be financed without further approvals and authorization from the District Board. Further, no special levy bonds will be issued until authorized by the District Board.

Petitioner:

The Petitioner reports that Site A-19-A-1 Acquisition Group, LLC is a family-owned New Mexico company formed for the purpose of this project. The Grady/Thornton family has been active in the New Mexico real estate market since 1976, when the family founded RayLee Homes. The family has participated in dozens of development projects, including multiple public improvement districts. Notably, the Saltillo and Volterra PID projects have been successfully completed, with bonds issued, and continue to function very smoothly.

The Land:

The Petitioner is the owner of all the Land, which is composed of approximately 47 acres and is located entirely within the corporate boundaries of the County. The Land is generally located along SR 4, across from the visitor's center.

The Council featured the Land in its 2016 update to the comprehensive plan, calling for a mixed use development. The proposed project is consistent with that plan, providing for a mixture of densities and diverse housing options as well as a commercial component, such as a restaurant or coffee shop, which would be a benefit not only to residents of the Land, but also the adjacent downtown area of White Rock.

Public Improvements:

The Public Improvements which may be financed, paid, and/or reimbursed by the District, include, but are not limited to, the construction and associated soft costs for certain infrastructure necessary for the District's development. The Public Improvements are described in the Application.

The infrastructure is anticipated to include, but is not limited to, off-site and on-site roadway, sanitary and storm sewer, water, and drainage improvements, curb and gutter, sidewalks and ramps, including landscaping. Soft costs may include, but are not limited to, the cost of planning, design, engineering, fees, permits, construction inspection and administration, permitting, staking, testing, gross receipts taxes, contingencies, and financing and/or carrying costs. The Public Improvements will be located in or on lands, easements, or rights of ways owned by the Petitioner/land owner, the County, or Participating Agencies, as described in the General Plan.

The estimated infrastructure cost for the Land is $18,600,096, of which $8,125,558 is Public Improvements. The County is contributing $2,000,000 toward this cost, which is comprised of $991,821 in costs eligible for reimbursement by the District and $1,008,179 in costs ineligible for reimbursement by the District. Public Improvements do not include grading costs of lots or improvements intended to be owned by an owners' association. These costs are estimates only, based upon the anticipated improvements and are expressed in calendar year 2018 dollars. The District is anticipated to finance a portion of the Public Improvement costs.

Description	Total Costs1	Gross PID Eligible Costs	County Contribution	Net PID Eligible Costs	Gross PID Ineligible Costs	County Contribution	Net PID Ineligible Costs
Water Improvements							
Hard Costs	$446,632	$446,632	($43,920)	$402,712	$0	$0	$0
Soft Costs @ 22%	$98,259	$98,259	($9,662)	$88,597	$0	$0	$0
NMGRT @ 7.3125%	$39,845	$39,845	($3,918)	$35,927	$0	$0	$0
Sub-Total: Water Improvements	**$584,736**	**$584,736**	**($57,500)**	**$527,236**	**$0**	**$0**	**$0**
Sanitary Sewer							
Hard Costs	$649,840	$649,840	($54,452)	$595,388	$0	$0	$0
Contingency	$142,965	$142,965	($11,979)	$130,985	$0	$0	$0
NMGRT @ 7.3125%	$57,974	$57,974	($4,858)	$53,116	$0	$0	$0
Sub-Total: Sanitary Sewer	**$850,779**	**$850,779**	**($71,289)**	**$779,489**	**$0**	**$0**	**$0**
Drainage							
Hard Costs	$363,919	$363,919	($72,820)	$291,099	$0	$0	$0
Contingency	$80,062	$80,062	($16,020)	$64,042	$0	$0	$0
NMGRT @ 7.3125%	$32,466	$32,466	($6,496)	$25,970	$0	$0	$0
Sub-Total: Drainage	**$476,448**	**$476,448**	**($95,337)**	**$381,110**	**$0**	**$0**	**$0**
Roads							
Hard Costs							
Paving	$1,761,413	$1,761,413	($158,198)	$1,603,215	$0	$0	$0
Sidewalk	$407,154	$407,154	($47,690)	$359,464	$0	$0	$0
Street Lights	$105,000	$105,000	($16,993)	$88,007	$0	$0	$0
Block and Retaining Walls	$144,300	$144,300	($40,869)	$103,431	$0	$0	$0
Soft Costs @ 22%	$531,931	$531,931	($58,025)	$473,906	$0	$0	$0
NMGRT @ 7.3125%	$215,704	$215,704	($23,530)	$192,174	$0	$0	$0
Sub-Total: Roads	**$3,165,502**	**$3,165,502**	**($345,304)**	**$2,820,198**	**$0**	**$0**	**$0**
General Conditions							

Description	Total Costs1	Gross PID Eligible Costs	County Contribution	Net PID Eligible Costs	Gross PID Ineligible Costs	County Contribution	Net PID Ineligible Costs
Hard Costs	$254,200	$0	$0	$0	$254,200	($71,995)	$182,205
Soft Costs @ 22%	$55,924	$0	$0	$0	$55,924	($15,839)	$40,085
NMGRT @ 7.3125%	$22,678	$0	$0	$0	$22,678	($6,423)	$16,255
Sub-Total: General Conditions	**$332,802**	**$0**	**$0**	**$0**	**$332,802**	**($94,256)**	**$238,545**
Block and Gabion Walls							
Hard Costs	$1,850,359	$0	$0	$0	$1,850,359	$0	$1,850,359
Soft Costs @ 22%	$407,079	$0	$0	$0	$407,079	$0	$407,079
NMGRT @ 7.3125%	$165,075	$0	$0	$0	$165,075	$0	$165,075
Sub-Total: Block and Gabion Walls	**$2,422,513**	**$0**	**$0**	**$0**	**$2,422,513**	**$0**	**$2,422,513**
Earthwork							
Hard Costs	$6,937,250	$1,041,169	($123,270)	$917,899	$5,896,081	($698,071)	$5,198,011
Soft Costs @ 22%	$1,526,195	$229,057	($27,119)	$201,938	$1,297,138	($153,576)	$1,143,562
NMGRT @ 7.3125%	$618,889	$92,885	($10,997)	$81,888	$526,004	($62,277)	$463,728
Sub-Total: Earthwork	**$9,082,334**	**$1,363,111**	**($161,386)**	**$1,201,724**	**$7,719,224**	**($913,923)**	**$6,805,301**
Demolition							
Hard Costs	$317,500	$317,500	($89,923)	$227,577	$0	$0	$0
Soft Costs @ 22%	$69,850	$69,850	($19,783)	$50,067	$0	$0	$0
NMGRT @ 7.3125%	$28,325	$28,325	($8,022)	$20,303	$0	$0	$0
Sub-Total: Demolition	**$415,675**	**$415,675**	**($117,728)**	**$297,947**	**$0**	**$0**	**$0**
Gas and Electric							
Hard Costs	$969,520	$969,520	($109,437)	$860,083	$0	$0	$0
Soft Costs @ 22%	$213,294	$213,294	($24,076)	$189,218	$0	$0	$0
NMGRT @ 7.3125%	$86,493	$86,493	($9,763)	$76,730	$0	$0	$0
Sub-Total: Gas and Electric	**$1,269,308**	**$1,269,308**	**($143,276)**	**$1,126,032**	**$0**	**$0**	**$0**
TOTAL: ALL INFRASTRUCTURE COSTS	**$18,600,096**	**$8,125,558**	**($991,821)**	**$7,133,737**	**$10,474,538**	**($1,008,179)**	**$9,466,359**

The District will not undertake any operational, maintenance and repair expenses, or otherwise provide enhanced services.

The Petitioner states that the formation of the District will allow for the planning and constructing of the Public Improvements as a coherent, phased project in accordance with existing County development approvals for the Land. This has the advantage of planning the Public Infrastructure as a whole, for maximum usefulness to future residents and compatibility with surrounding land uses. It also encourages and allows faster development, as the pending ability to issue bonds encourages bank financing and developer completion of the applicable Public Infrastructure. The Public Improvements would be built to the County's specifications and requirements, and ultimately will be dedicated and conveyed to the County.

Plan of Finance:

Unless funded from other sources, the Petitioner may advance all development costs which are estimated at $18,600,096 (2018 dollars). The portion of development costs attributable to Public Improvements is $8,125,558. The portion of those costs to be financed by the District, as reimbursements to the Petitioner, is estimated at $4,012,101 resulting in improvement costs in excess of PID reimbursements of $14,587,995. The County is contributing $2,000,000 toward this cost, which will consist of both PID eligible and PID ineligible work. Note that this excess of the Public Improvement costs over PID reimbursements does not include private financing and/or carrying costs that will be incurred prior to funding by the District. The Petitioner is expected to advance the costs of the development from cash-on-hand and/or loan proceeds.

The District would ultimately fund the costs of acquiring the Public Improvements in accordance with the Act. The funds would be derived from the (a) proceeds of one or more series of special levy bonds to be issued by the District and payable by the special levy and/or (b) directly from the special levy revenues of a District, through, among other alternatives, (i) direct payment to the Petitioner by a District or (ii) satisfaction of one or more reimbursement obligations of a District, such as subordinate promissory notes and/or other subordinate obligations payable by a District to the Petitioner. In addition to the anticipated costs of the Public Improvements, the proceeds of special levy bonds may also fund District formation costs, bond issuance costs, the establishment of a reserve fund(s), and interest accruing on the bonds for a period not to exceed three years from their date of issuance.

Total bonded indebtedness capacity of the District is estimated at $4,740,000 (2018 dollars) and includes allowances for issuance costs, capitalized interest, and reserve funds. The proceeds of the estimated bond capacity which would be available to finance, pay, or reimburse for the cost of the Public Improvements, is estimated at $4,012,101, leaving estimated infrastructure costs of $12,587,995 to be financed through other sources after the County's $2M contribution. The actual aggregate principal amount of the District's bonds and/or notes will vary based on, among other things, the current market conditions at the time of issuance.

The District may issue bonds and/or notes secured by a senior and/or subordinate pledge of the special levies (described in detail below). Bonds and notes are anticipated to be fixed rate with bonds amortized over a thirty year term which is consistent with the useful life of the improvements. The estimated principal amount of any subordinate special levy bonds and/or notes will be a function of, among other things, market conditions and absorption. The number of serial and term bonds, notes, call premiums, and other features of the bonds will be determined in connection with their issuance. The Application contemplates that one bond series issuance would be authorized by the District Board during calendar year 2022.

To the extent that the cost of Public Improvements is not paid in full at the time of conveyance to a District, subordinate notes and other obligations are anticipated to be issued in advance of special levy bonds and may be issued in lieu of bonds in order to memorialize a District's current obligation to pay the corresponding cost of Public Improvements plus interest at a rate authorized by a District Board on the principal amount of the note to the Petitioner for such public improvements conveyed to the District by the Petitioner or another a builder. Alternatively, a District may make direct payments to the Petitioner from special levy proceeds to satisfy one or more other subordinate obligations payable by a District to the Petitioner, and such direct payments may include interest in addition to the principal amount of reimbursable costs.

Under the Act, a District is a separate political subdivision of the State of New Mexico, whose bonds and obligations are entirely its own obligations, and are without recourse to the taxing authority, general funds, or other resources of the County or other local government jurisdiction in which the district is located, or the State of New Mexico. In this case, the bonds and/or notes of the District will be secured by a lien on property within the District co-equal with the lien of annual property taxes, and by reserves established for the payment of debt service. Owners of the bonds and/or notes, as well as parties contracting with the District, will not have recourse to the County's taxing powers, general funds, other revenues or resources. The issuance of bonds, notes, and/or other obligations of the District will not affect the County's credit rating or its ability to issue debt.

Special Levies:

A special levy is a benefit assessment imposed against levyable property within the boundaries of the District. The special levy may be apportioned according to direct or indirect benefits conferred upon the affected real property, as well as acreage, front footage, the cost of providing Public Improvements for affected real property, or another reasonable method, as determined by the County Council or a District Board, as applicable.

There are two main benefits to the use of a special levy, as compared to the general obligation method: first, the annual special levy may not exceed a specified maximum amount established and noticed prior to sale of property to third-party purchasers, providing property owners with certainty regarding the amount of any special levy requirements; and second, the special levy eliminates the risk of large increases since a special levy against privately owned residential property may only be increased over time by an amount not exceeding two percent per year, except that the amount of special levy actually imposed may be increased by up to ten percent as a result of the delinquency or default by the owner of any other parcel within the District, but in no case shall the amount of the special levy imposed exceed the maximum special levy provided in the Rate and Method of Apportionment of Special Levy (the "Rate and Method").

The Act requires the District to record a notice of information upon formation of the District and within thirty days before June 1 and December 1 of each year and that such be delivered to any third-party purchaser of property within a District. The notice will provide such prospective purchaser with:

- information that the property is within a public improvement district;
- the purpose of the district;
- an explanation that the purchaser is obligated to pay a special levy;
- an explanation that the special levy is in addition to any other taxes and assessments;
- the maximum special levy that is authorized to be imposed upon the property; and
- information that the failure to pay the special levy could result in the foreclosure of the property.

Petitioner has prepared disclosure forms as part of the Application.

The notice is to be provided by a seller, or the agent or broker of such seller, to a prospective homebuyer prior to accepting an offer to purchase residential real property located within a District. In the event of a finalized sale, any person who suffers any loss of money or property, real or personal, as a result of a violation of the notice requirements in the Act by a seller or an agent or broker of a seller may bring an action to recover actual damages and may be granted injunctive relief under the principles of equity and on terms that the court considers reasonable. The court shall award attorney fees and costs to the party complaining of a violation if the party prevails and actual damages are awarded.

All of the Land, unless exempted by law or by the Rate and Method, shall be subject to a special levy for the purpose of funding Public Improvements and paying other related costs of the District, including but not limited to administrative costs. No ad valorem tax levy, levy for enhanced services, or other charge is anticipated in connection with the District.

The Rate and Method establishes special levy classifications and a corresponding maximum annual special levy as follows:

TABLE VII-5 Mirador PID Maximum Special Levies				
Levy Classification	Count	Maximum Special Levy Per EU	EU Factor	Maximum Special Levy
Residential:				
70' Typical Lot Width	38	$2,550.00	1.00	$2,550.00
60' Typical Lot Width	77	$2,550.00	0.84	$2,130.00
50' Typical Lot Width	46	$2,550.00	0.72	$1,830.00
MF	54	$2,550.00	0.45	$1,143.00
Commercial:				
Specialty Retail (1,000 BSF)	4.3	$2,550.00	0.20	$500.00

Ultimately, the Petitioner may choose not to request imposition of the applicable, maximum special levy permitted within the parameters described above. Rather the Petitioner may seek imposition of a lower special levy based on current market conditions, public infrastructure costs, benefits received, and restrictions prescribed by the Act.

District Administration:

The District Board will be charged with implementing the general plan. The District is empowered under the Act to employ staff, counsel and consultants to undertake necessary administrative actions. The County should have no obligation to fund district administrative costs. The Petitioner expects to pay all reasonable administrative costs of the District until such time as the District generates sufficient revenue to support its annual operating budget.

Outside Professionals:

The Petitioner has engaged numerous qualified, expert consultants on the project, including Huitt Zollars (as engineers); David Pearson, MAI (as MAI appraiser); 30 Three Sixty Public Finance (as economic consultant); and Rodey, Dickason, Sloan, Akin & Robb, P.A. (as counsel to the Petitioner).