



*La Plata County*  
Colorado

## MEMORANDUM

**TO:** La Plata County Planning Commission  
**FROM:** Sheryl Rogers, County Attorney and Danielle Lorrigan, Research Analyst  
**DATE:** May 26, 2011  
**RE:** County Mechanisms to Finance Public Infrastructure

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At the May 12, 2011 Planning Commission meeting the Commission expressed a desire to learn more about the mechanisms available to La Plata County and the public to pay for public infrastructure either through the County's own initiative or through public/private cooperation. This memo is intended to provide a basic explanation of several mechanisms for water, sewer and roads but is not exhaustive of all financing options available to counties to finance other types of services and infrastructure. Additionally, there are mechanisms afforded to municipalities which are not available to counties. This memo addresses municipal options for informational and comparative purposes. The topics covered in this memo include the following:

1. Bonds, Notes and Other Obligations
2. Special Districts
3. Improvement Districts
  - a. Public Improvement Districts
  - b. Local Improvement Districts
4. Building Authorities
5. Certificates of Participation
6. Impact Fees
7. Municipal Mechanisms not Available to Counties

### Bonds, Notes and Other Obligations

As most are aware, when a governmental entity lacks sufficient funds to pay for infrastructure improvements, it may borrow funds to do so and assess a tax on its citizens to service the debt or simply increase the amount of taxes paid by the citizenry to pay the costs of the improvements. For example, one option available in Colorado is the use of economic development revenue

bonds. The County and Municipality Development Revenue Bonds Act, C.R.S. § 29-3-101, *et seq.*, provides legal authority for the County to issue specific types of bonds for the purpose of financing improvements to the “...end that pollution may be ameliorated and controlled ... [and] more adequate residential housing facilities for low- and middle-income families and persons may be provided... .” C.R.S. § 29-3-102(2). However, in Colorado the ability of the County to utilize such borrowing mechanisms or increasing taxes is significantly limited by the provisions of TABOR, Colorado Constitution Article X, Sec. 20. TABOR requires advance voter approval for any increase in the mill levy above that for the prior year and voter approval of any form of borrowing beyond the current fiscal year. As such, the County may not borrow money or increase the taxes of the citizenry to pay for infrastructure improvements unless the borrowing and the tax increase are approved by the voters.

It is also important to note that even when a borrowing is authorized, there may be limitations on the use of the money borrowed. For example, in many instances the County is prohibited from using bond revenue for condemnation proceedings so while it may borrow the money to construct the improvements, it must rely on the cooperation of property owners to sell or dedicate the property necessary to install them or have other funds available if condemnation is needed.

### Special Districts

Another mechanism that is frequently used to create and maintain public infrastructure are Special Districts. For the purpose of this memo, “special district” refers to districts organized under Article 1 of Title 32 of the Colorado Revised Statutes. These districts are separate and distinct from the County and are quasi-municipal corporations and political subdivisions of the state which are organized at an election adopting a “service plan” and an initial five to seven member board of directors. Districts generally exist in perpetuity unless specific steps are taken to dissolve them.

A special district can be organized in one county, several counties, one or more municipalities, or in both a county and municipality. The district may consist of noncontiguous parcels of property. They can be organized for a single purpose (i. e. road improvements or sanitation) or multiple purposes (i.e. a metropolitan district which provides water, sanitation, fire protection, road improvement, etc.). Special districts have general authority to construct, operate and maintain facilities, but have limited condemnation powers.

Special districts possess ad valorem (mill levy) taxing authority, can issue general obligation and revenue bonds, and can fix rates, tolls, fees and charges for services, facilities, programs, and indebtedness. However, they face the same limitations under TABOR as the County. As such, their formation is most successful when a single or few property owners desirous of developing their property create a district and approve the taxes and borrowing necessary to fund the improvements in conjunction with the development itself. They cannot assess costs or issue assessment bonds, nor can they levy sales tax.

## Improvement Districts

Improvement Districts are distinguishable from Special Districts by the fact that they are a type of governmental entity that is organized by the County (as opposed to property owners) and they may raise revenue through assessments as well as taxes. There are two types of improvement districts that a county may organize: a Public Improvement District (PID) and a Local Improvement District (LID).

### *Public Improvement Districts (PID)*

A Public Improvement District (PID) is a “taxing district” which is generally defined as a financing entity with the authority to impose property taxes. These districts are created to construct, install, acquire, operate and maintain certain public improvement facilities (specifically excluded are solid waste, industrial waste, trash and garbage facilities, treatment and transfer facilities). They are also authorized to provide any service that the county which forms the district is authorized to provide. PIDs may include noncontiguous tracts. Their boundaries may also overlap the land of other jurisdictions with approval from those jurisdictions. Once formed, PIDs exist in perpetuity.

PIDs are separate political subdivisions of the state that have boards of directors, although these are the county governing boards serving ex officio. They have the power to levy ad valorem taxes, and to fix rates, tolls and charges to pay for services, facilities, and indebtedness. They may issue general obligation bonds and revenue bonds but they too are subject to the limitations of TABOR. They may impose assessments and, PIDs, if they form a LID (discussed below) may, with voter approval, levy a sales tax.

Because the independence of a PID from the County is somewhat limited (the Board of County Commissioners is the ex officio members of the PID board) one may question their utility. However, when the County as an entity levies an ad valorem tax, all taxpayers in the county (with some exceptions) pay the tax. In contrast, when a PID levies a tax, generally speaking, only those taxpayers that directly benefit from the improvements within the district pay the tax. One advantage of a PID over a LID (discussed below) is that a PID derives ongoing tax revenue to operate and maintain the improvements once they are installed whereas a LID is a one-time assessment that generally pays for the initial installation and operation and maintenance are then assumed as part of the functions of the local governmental entity forming it.

### *Local Improvement Districts (LID)*

A LID’s primary purpose is to assess the costs of public improvements to those who are specially “benefited” by the improvements. “Benefit” includes, but is not limited to, any increase in property value, alleviations of health and sanitation hazards or adaptability of the property to a superior or more profitable use.

These districts have the least independence of all financing mechanisms and they exist only as geographic areas within which improvements are constructed and as administrative subdivisions of the County. The Board of County Commissioners (BOCC) makes all the decisions on its

behalf and may not operate in any capacity as an independent governmental entity. The LID may have its boundaries overlap the land of other jurisdictions with approval from those jurisdictions, with the exception that LIDs, if they impose a sales tax, may not include municipal territory.

In a LID, the costs of public improvements are payable from assessments. To qualify as a special assessment, a charge must be directed against the users of an improvement and the revenue derived from the charge must be applied only to the maintenance, operation or development of the improvements.<sup>1</sup> Costs are assessed on an equitable and rational basis of determining benefit (e.g., lineal feet of street frontage or square feet of acreage). The benefit must be at least equal to the cost imposed. Although the costs of improvements are usually borne through assessments by those “specially benefited,” the County can bear some of the costs if it determines that a portion of the benefit accrues to the county as a whole. Assessments can be paid in one full payment or in installment payments over a specified period of time. Assessment payments are not deductible from individual income taxes; thus, other types of financing mechanisms may be more advantageous to homeowners.

Costs are often financed through special assessment bonds issued by the county on behalf of the LID. These bonds must be approved at election, and the BOCC determines whether the electors of the district or the electors of the county will vote on the question of the assessment bonds. The assessment constitutes a lien on the affected property until bond redemption.<sup>2</sup> LIDs are also authorized to issue sales tax revenue bonds. Any LID debt is considered the debt of the County and, as such, may affect its borrowing for other purposes.

### Building Authorities

Building authorities are organized under the Colorado Nonprofit Corporation Act (C.R.S. Title 7, Articles 20 - 29). A building authority acts “on behalf of” a governmental entity, which normally ratifies the directors of the authority and approves the issuance of bonds. A building authority may construct any public improvement so long as that improvement is dedicated to the governmental entity on behalf of which the authority is acting. To secure bond repayment, an assessment lien is recorded against certain properties by contract with the property owners.

### Certificates of Participation

Many local governments, including building authorities, use a particular type of lease-purchase financing called Certificates of Participation (“COPs”). COPs are leases divided or “certificated” into shares; the shares are the certificates of participation, are sold to investors and represent a proportionate interest in the right to receive revenues paid by the lessee (a government) to the lessor/vendor. COPs, compared to other lease-purchases, are for a large dollar amount with a longer term, and are usually rated by bond rating agencies. The proceeds are used to pay for the construction of buildings or structures, such as parking garages and office buildings. One advantage of COPs is that they are not subject to TABOR limitations.

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<sup>1</sup> *Cherry Hills* 670 P.2d 799 (Colo. 1983), *Bloom*, 784 P.2d 304.

<sup>2</sup> In addition to special assessments, LIDs in counties with populations greater than 100,000 can impose a sales tax of not more than one-half of one percent throughout the district, if approved at election.

## Impact Fees

As most of the Commissioners are aware from their experience last year, an impact fee<sup>3</sup> is a legislative action taken by the Board of County Commissioners to assess a one-time charge against any new development to recover the costs incurred by the County in providing public facilities required to serve a new development. An impact fee is not a tax, which is a general revenue raising mechanism, but a fee charged solely to cover the cost of a specific activity, service or infrastructure. An impact fee is calculated based on the impact of all new development and the same fee is charged to all new development in a particular class. All impact fee schedules must include “provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which the impact fee or other similar development fee is charged.”

The impact fee must relate to a capital expenditure;<sup>4</sup> and be imposed as a condition of approval of land development, as a prerequisite to obtaining a permit or service. There is no requirement that the value of the improvements to each property exactly matches the amount contributed by each property, nor must an impact fee be designated for a specific construction project. Furthermore, facilities funded by impact fees need not import special “benefits” to the fee payer, as with a LID.

Statute requires local government to “quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development.” A technical study demonstrates this nexus, relates the impact fee to a need created by new development, and shows that the amount charged is proportional to the cost of providing public facilities.

## Municipal Financing Mechanisms Not Available to Counties

Although some financing mechanisms employable by counties have direct municipal counterparts (i.e. a county Public Improvement District is like a municipal General Improvement District; a county Local Improvement District is akin to a municipal Special Improvement District), there are other financing mechanisms unique to municipalities.

Two types of municipal authorities, Downtown Development (DDA) and Urban Renewal (URA) Authorities, make public improvements in urban areas to promote urban redevelopment. The public improvements are financed through the issuance of tax-exempt bonds, usually revenue bonds. DDAs and URAs are also authorized to finance public improvements by using Tax Increment Financing (TIF), a tool not available to Colorado counties. The theory behind a TIF is

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<sup>3</sup> Statute does not define “impact fee” but uses the terms “land development charge”, which are defined as: “[A]ny fee, charge or assessment relating to a capital expenditure which is imposed on land development as a condition of approval of such land development, as prerequisite to obtaining a permit or service.” C.R.S. § 29-1-802.

<sup>4</sup> [A]ny expenditure for an improvement, facility, or piece of equipment necessitated by land development which is directly related to a local government service, has an estimated useful life of five years or longer, and is required by charter or general policy of a local government pursuant to resolution or ordinance. C.R.S. § 29-1-802.

that public improvements made in the specified areas of the DDA or URA area increase assessed valuation and/or increase taxable sales, and therefore additional taxation is justified.

### Summary

This memo provides a brief overview of financing options available to counties to fund public improvements related to water, sewer and roads. Each mechanism provides opportunities and constraints unique to the tool, and therefore each has certain utility depending on the particular infrastructure considered. Oftentimes, multiple mechanisms must be used to meet the overall needs of the community. For your convenience we are also attaching a helpful chart published by the Colorado Division of Local Government which lists the various types of special districts and improvement districts, how they are formed and their permitted activities and powers.

If it is of benefit to the Planning Commission, staff is available to provide a formal presentation and/or question and answer session regarding these financing options for further explanation and information. Please also feel free to contact Sheryl Rogers directly if you have specific questions.