



ARABIAN ACRES METROPOLITAN DISTRICT
c/o Walker Schooler District Managers
614 N. Tejon St.
Colorado Springs, CO 80903

**SPECIAL BOARD MEETING
AGENDA AND NOTICE
WEDNESDAY, May 12, 2021
5:30 PM**

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/800588117>

You can also dial in using your phone.

United States: [+1 \(872\) 240-3212](tel:+18722403212)

Access Code: 800-588-117

NOTICE IS HEREBY GIVEN that a Meeting of the Board of Directors of ARABIAN ACRES METROPOLITAN DISTRICT, Teller County, Colorado has been scheduled pursuant to emergency rules and regulations for Wednesday, May 12, 2021 at 5:30 p.m. via tele/videoconference for the purpose of addressing those matters in the Agenda set forth below.

Board of Directors / Term Expires

Allan Brown, 2022

Stan Claassen, 2022

Edith Coffman, 2023

Elizabeth Douglass, 2023

Lanny Hoel, 2023

Lynn Willow, ORC

Kevin Walker, WSDM

Rebecca Hardekopf, WSDM

Kristina Kulick, WSDM

1) ADMINISTRATIVE MATTERS

- a) Call to Order & Declaration of Quorum
- b) Confirm any Potential Conflicts of Interest
- c) Discussion and Approval of the Agenda

2) TROUT HAVEN EXCLUSIONS – See attached Memorandum

- a) Consider exclusion of the list of properties noted in the attached memorandum

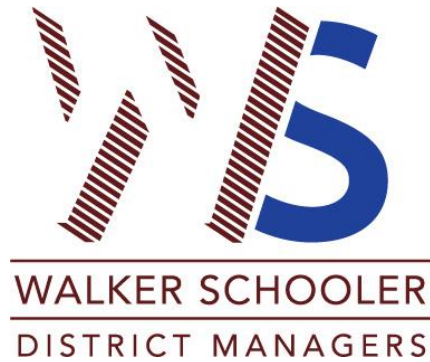
- b) Consider exclusion of exclusion for Lot 21, Block 4 in Trout Haven Filing Number 4
- c) Consider exclusion of exclusion for Lot 29, Block 5 in Trout Haven Filing Number 4

3) PUBLIC COMMENT

Comments will be limited to 3 minutes. Please remain respectful of the Board of Directors as well as of your fellow residents.

4) ADJOURNMENT

THE NEXT REGULARLY SCHEDULED MEETING IS SCHEDULED FOR WEDNESDAY, MAY 19, 2021 at 5:30 p.m.



MEMORANDUM

TO: ARABIAN ACRES METROPOLITAN DISTRICT BOARD OF DIRECTORS
FROM: KEVIN WALKER
SUBJECT: TROUT HAVEN EXCLUSIONS HEARINGS
DATE: MAY 5, 2021
CC: JASON DOWNIE

History

The Arabian Acres Metropolitan District (the “District”) was formed by the Teller County Board of County Commissioners in 2002. The original property that was incorporated into the District has remained the same since that time. The District purchased an existing private water system and issued \$1,425,000 in tax exempt bonds for that purchase in 2007; the bonds are paid for by a debt service property tax currently set at a rate of 24 mills (24 x assessed valuation of property / 1000 = property tax payment) and expected to be paid off in 2030.

At the time of the purchase of the water system, the Trout Haven Subdivision filing within the District was not served by the water system and some limited portions of the District were later served by water line extensions.

Several homes have been built in this area that are served by private, permitted individual wells approved by the State of Colorado which was contemplated by the District’s Service Plan and Water Court Decree that allowed lot owners to drill wells if the District had not extended water mains to the lot, and could not economically extend such mains within a reasonable amount of time (i.e., by the time a Certificate of Occupancy is to be issued).

In 2018, the District completed an engineering study that outlined the issues and costs associated with service in the entire District, including the Trout Haven area. At a public meeting in July of 2018, property owners in this area expressed that they were not interested in taking on the costs associated with that set of improvements and preferred to stay with private wells as the preferred method of water service to housing in this area. At the time in 2018, it was estimated that construct the infrastructure to extend service to the Trout Haven Subdivision would cost at least \$3.75 Million.

In 2020, the Board of Directors of the District, at the request of Trout Haven property owners, agreed that the District would consider the possibility of exclusion of property from the District if presented in accordance with the applicable statutes.

As a result of this process, the District has received petitions from 41 distinct property owners that own 69 separate platted lots in Trout Haven (see the attached map) and has scheduled a hearing for May 12, 2021 to hear testimony and to vote on these requests. The exclusions have been reviewed by District Management and District Counsel and are qualified to be heard for exclusion per State Statute.

There are 133 separate platted lots in Trout Haven Filing 4.

- 69 lots are affected by the petitions, or 52% of the total lots
- 10 lots are served by the current water system, 8%
- 16 lots are adjacent to the current water system and staying in the District, 11%
 - 11 lots have houses with wells
 - 5 lots are vacant and remaining in the District
- 38 lots are remaining in the District but not adjacent to the water system, 29%

As required by Statute, the owners have made a deposit that will cover the discrete costs of this exclusion process.

Exclusion Property Owners and Description

See the Exhibit of Trout Haven Exclusion – List of Owners, Addresses, Lot, and Block .

Criteria for Exclusion

Exclusions from Special Districts are governed by Chapter 32 of the Colorado Revised Statutes. The entire Statute can be viewed at <https://leg.colorado.gov/colorado-revised-statutes>. The exclusion section is C.R.S.§32-1-510(1) (See attached Exhibit of the Statute) which establishes the criteria for Exclusion of property, which reads as below:

3) The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition or to finally adopt the resolution or any portion thereof:

(a) The best interests of all the following:

- (I)** The property to be excluded;
- (II)** The special district from which the exclusion is proposed;
- (III)** The county or counties in which the special district is located;

(b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all the properties within the special district's boundaries;

(d) Whether the special district can provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area or by the fire protection district or county fire

improvement district that has agreed to include the property to be excluded from the special district;

(e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;

(f) The economic impact on the region and on the special district, surrounding area, and state if the petition is denied or the resolution is finally adopted;

(g) Whether an economically feasible alternative service may be available; and

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

The Resolution that approves (or disapproves) these exclusion actions will contain the Board's findings that each of these has been met (or not).

The resolutions will be prepared by District Counsel and delivered under separate cover.

Guidance on this process has previously been sent to the Board in August of 2020 as a confidential memorandum as legal advice. This will be sent again as a separate communication to the Board.

Hearing Procedures

With the large number of exclusions requested, we recommend that the Board not hear each request individually. There are at least three separate groups of properties that might be groups that can be heard and voted on separately.

Those groups include:

1. Requests that are not near a water line
2. Requests that are near or adjacent to an existing water line
3. Requests that are for property owned by a Board member. This distinction will allow those owner/Board members to abstain from voting on their property line.

District Counsel has advised that the Board can hear testimony and vote on these groups together and will construct the resolutions to be flexible for different vote totals if there are any. All the property owners have been notified of the meeting and the meeting was published in the Pikes Peak Courier in early April. There may be property owners who want to speak on behalf of their petitions and the process in general and the hearing should accommodate that relevant testimony.

More direction on the hearing particulars will be available at the meeting from your Manager and Counsel.

Issues

There are several issues that we have been discussing since the beginning of the process, including domestic water availability, debt service obligations, future improvements and fiscal impact of the exclusions. We will cover a general discussion of each of those below

- Domestic water availability – the District reviewed the situation of the availability of water not just for the District but also for the excluded properties. We hired an attorney to review

the ramifications of a possible exclusion. To summarize his reports, the exclusion will not have an impact on the District's water rights or costs of managing those rights over time.

The impact on the excluding property owners is not the District's responsibility; the petitions that were signed by the property owners have the following statements:

The exclusion of the Petitioner's property is requested because the District does not provide water services to such property and it is not contemplated that such property will be served water by the District or the District may not be capable of providing water service to the property.

Petitioner acknowledges that Petitioner's ability to obtain water is dependent upon state law and its implementation by the Colorado Division of Water Resources ("Division"). It is the District's understanding based on representations from Division staff that under current law and policies, an owner of any property excluded from the District's service area is not prevented from obtaining an exempt well permit; however, the Petitioner accepts all risks with respect to the same.

The summary is that there is a reasonable expectation that the District's water supply will not be impacted, the cost to operate the water supply will not be impacted and the property owners have an expectation that they should be able to apply for and receive a domestic well if they exclude from the District, though this expectation is entirely at their risk, as stated in the petition itself.

- Impact on the District's finances – The exclusion of any property from the District will not affect the requirement that the properties that are excluded will still be required to make the debt service property tax payments until the bonds are paid off. This has been confirmed by the bond counsel and the trustee for the bond holders as well as your District Counsel. State statute reads as follows: § 32-1-1204. *Liability of property included or excluded from district All real property included within, or excluded from, a special district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion as provided in parts 4 and 5 of this article.*

Additionally, the petitions signed by the property owners has the followed provision: *If this petition were to be granted, Petitioner would be responsible for its portion of any bonded indebtedness in existence immediately preceding the effective date of the order until retired as set forth in any exclusion order that may be adopted by the District.*

The current debt of the District, exclusive of the bonded indebtedness, has been through loans between various public entities, including the state of Colorado, and the District. The property owners that are requesting exclusion are not obligated to the repayment of this debt; only the users of the District are paying for that through the District's rates and charges. These exclusions will not reduce the current number of payers toward this debt.

The District is not authorized to issue any further bonded indebtedness and so losing these properties will not impact future financing options.

These properties currently do not pay nor do they receive water service from the District so there is not material impact on the operations of the District.

There is no change to the District's financial future related to extensions to serve District properties for water service. If an individual property owner were to request water for a property removed at a distance from our current system, it would be required by the District's current Rules and Regulations that the property owner would be required to extend the system at their expense. They may be able to receive reimbursement from other property owners if they were to develop, but the District does not guarantee this reimbursement. There is no change to the District's financial exposure in this situation.

- Requests for exclusion of lots adjacent to existing facilities – There are property owners who have requested exclusion that are for lots that have water lines adjacent to these properties in the street in front of their homes. Each of these were granted domestic wells before the water line was constructed and they are not customers of the District.

If these properties were to request a well permit today, it is the District's policy to require them to hook up to system and pay the tap fee and the monthly charges. No vacant properties that are adjacent to the existing water line are being excluded and the parcels that are requesting exclusions are restricted from receiving a building permit on lots that have been combined for taxing purposes.

If these properties were to request water service in the future, they would be required to request inclusion in the District and would be subject to the then established fees and charges from the District.

Previous discussions about these properties have centered around a possible policy of the District, rule or regulation of the District or of the State that all lots within 100' of District facilities must connect on. There is no such 100' rule.

There is a statement in the Service Plan that states that the District will “fully cooperate with . . . unbuilt lot property owners within the District to apply for, and receive, a well permit . . . provided that District service to the lot, at the time of construction neither exists nor is expected to exist within a reasonable period of time . . .”

The District does not have plans to extend water lines in the reasonable future to these areas of Trout Haven that are asking to be excluded. The most recent discussion of this was in June of 2018 and at a public hearing, the overwhelming majority of property owners in Trout Haven were not supportive of water main extensions, preferring to stay with the private domestic well option for future building.

- Service Plan Material Modification – In the past 30 days the Manager and Counsel have been in communication with Teller County officials regarding the provision in the Service Plan that exclusions are a “Material Modification” to the service plan. Material Modifications require BOCC approval as stated in the Service Plan.

The State Statute has defined situations where a Material Modification of the Service Plan is required to be approved; exclusions are not in the Statute as a required Material Modification.

The County has advised that this is a step in the process that can occur only after the Board has taken action to approve the exclusions. This is a step that could take at least 20 days after the May 12 meeting, possibly longer.

This is an unexpected requirement from the discussions in the past year. However, we feel that this is a routine request and will process this in due course after the Board votes. We recommend that the resolution approving the exclusions, if the exclusion petitions are accepted, should be made subject to the approval of a Material Modification of the Service Plan for the District by the Board of County Commissioners of Teller County.

We are preparing the submittal per Teller County officials' recommendations for immediately after the May 12 meeting.

Other issues, questions, commentary, or discussion will be heard on Wednesday the 12th at the Special Board Meeting to hear the Exclusions.

Please contact me at our office or by email if you have any further questions.

TROUT HAVEN EXCLUSION

LIST OF OWNERS, ADDRESSES, LOT, AND BLOCK

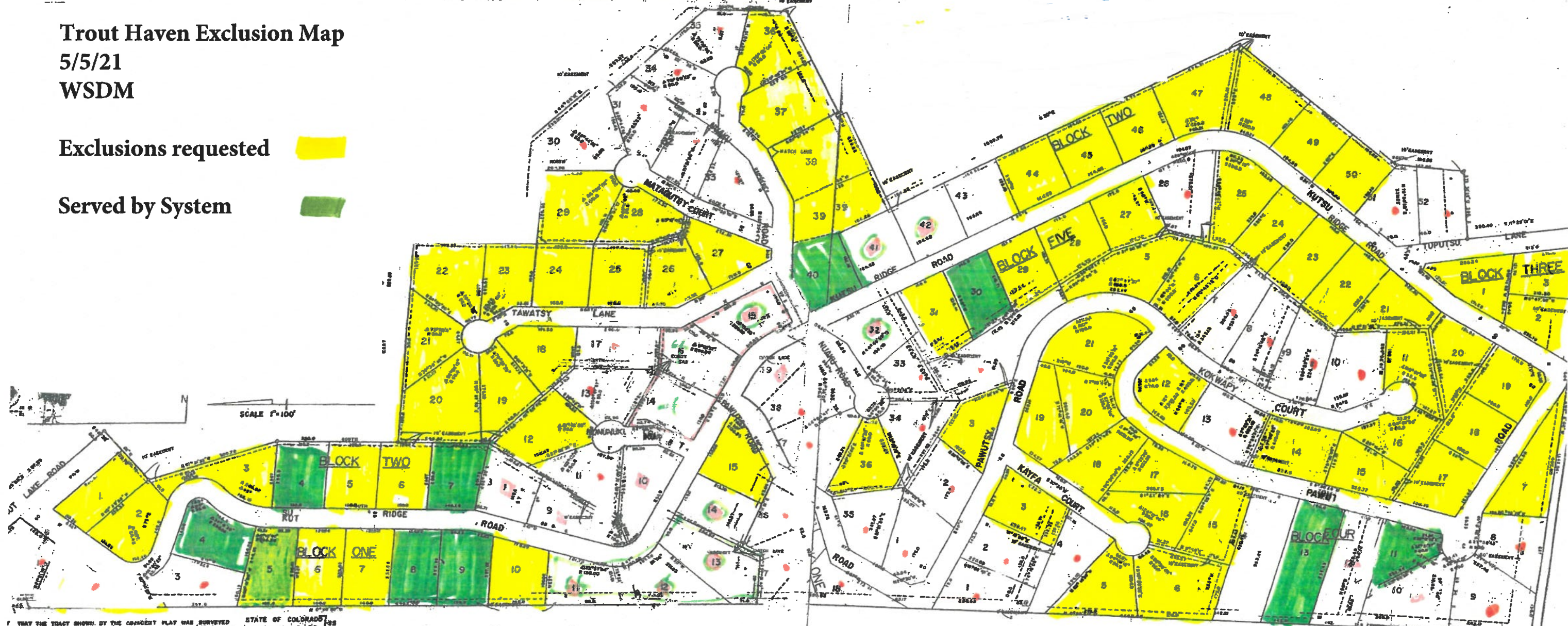
<u>Petitioner</u>	<u>Petitioner address</u>	<u>Property address</u>	Trout Haven Fourth Filing	
		All addresses below are Florissant, CO 80816	<u>Lot</u>	<u>Block</u>
Alvin & Donna Graham, Trustee	4867 N, Hillcrest, Belaire, KS 67220	47 Kayfa Ct.	3	4
Donnie Cundiff	7521 W 116th Street; Coyle, Ok 73027	91 Kayfa Ct	5	4
Ralph & Doris Palmer	10317 W. Andover Avenue; Sun City, Az 85351	264 Kutsu Ridge Road	47	2
		222 Kutsu Ridge Road	48	2
Deborah Figie	P.O. Box 381; Divide, CO 80814	133 Kutsu Ridge Road	22	5
Richard & Donna Coyle	325 Pawutsy Road, Florissant , CO 80816	325 Pawutsy Road	20	4
		211 Kutsu Ridge Road	25	5
Allan & Susan Brown	401 Pawutsy Road, Florissant, CO 80816	401 Pawutsy Road	21	4
Judith M. Owsley Trust	2820 N. Chelton Road, Colorado Springs, CO 80909	136 Nuaku Rd	37	2
		184 Nuaku Rd	38	2
		156 Nuaku Rd	39	2
Evan Sonnenberg	421 Kutsu Ridge Road, Florissant, CO 80816	422 Kutsu Ridge Road	31	5
Glen & Janet Drassner	6910 Mikado Lane, Colorado Springs, CO 80919	345 Kutsu Ridge Road	28	5
Mathew & Megan Blake	95 Kayfa Court; Florissant, CO 80816	95 Kayfa Court	6	4
Conrad Blumhagen	Heierbusch 6, 45133 Essen, Germany	37 Pawutsy Road	7	4
Ricky & Rhonda Rebber	693 Kutsu Ridge Road, Florissant CO 80816	693 Kutsu Ridge Road	10	1
Mike Evans	324 Pawutsy Road; Florissant, CO 80816	325 Pawutsy Road	12	5
William & Stephanie Kees	346 Kutsu Ridge Drive; Florissant, CO 80816	346 Kutsu Ridge Drive	44	2
William, Stephanie, Daniel & Marjorie Kees	346 Kutsu Ridge Drive; Florissant, CO 80816	274 Kutsu Ridge Drive	45	2
		270 Kutsu Ridge Drive	46	2
Mike Miller	P.O. Box 4578; Woodland Park, CO 80816	261 Pawutsy Road	17	4
Christopher Ashbaugh	715 Pawutsy Road, Florissant CO, 80816	715 Pawutsy Road	15	1
Karen Adkins	2444 Craycroft Drive; Colorado Springs, CO 80920	358 Pawutsy Road	6	5
Scott Dean Schoenthaler	492 Pawutsy Road; Florissant, CO 80816	492 Pawutsy Road	3	5
Ramond & Suzanne Patterson	146 Kokwapy Court Florissant, CO 80816	146 Kokwapy Court	11	5
Kevin Swanson	850 Kutsu Ridge Road; Florissant, CO 80816	850 Kutsu Ridge Road	3	2
Paula J. Fox	58 Matagutsy Ct; Divide, CO 80814	58 Matagutsy Ct	29	2
Diane & Thomas Moore	5 Nuaku Road; Florissant , CO 80816	5 Nuaku Road	36	5
Joanne Reinhard	15725 Split Creek Drive; Monument, CO 80132	77 Kutsu Ridge Road	21	5
Apex Properties, LLC	6003 Driftwood Ct; Arlington, Tx 76016-1010	204 Kutsu Ridge Road	49A	2
James C. & Karen D. Ellenberger	28 Tawatsy Ln; Florissant, CO 80816	28 Tawatsy Ln	26,27,28	2
Pete J. Esquibel	26 S. Garlan Avenue; Colorado Springs, CO 80910	400 Pawutsy Road	5	5
Lisa Parnell-Rowe Revocable Trust	1821 W. 9th Street; Hastings, Ne 68901	168 Pawutsy Road	14	5
Leonard & Sherry Arias	Po Box 963; Divide, CO 80814	21 Kutsu Ridge Road	19	5
		63 Kutsu Ridge Road	20	5

		50 Kutsu Ridge Road	1,2,3	3
Stanley J. Claasen Revocable Trust	357 Kutsu Ridge Road, Florissant CO 80816	357 Kutsu Ridge Road	29	5
Ruth Wyka	122 Tawatsy Lane, Florissant, CO 80816	122 Tawatsy Lane	23A	2
Pamela Cartwright / Ann Rohde	P.O. Box 201, Port Aransas, Tx 78373	166 Tawatsy Ln	21A	4
Donald & Lisa Doggett	12466 W. 16th Place; Lakewood, CO 80215	115 Kokwapy Ct	15	5
		132 Pawutsy Rd	16	5
		48 Pawutsy Rd	17A	5
David Biondo	273 Kutsu Ridge Road, Florissant, CO 80816	273 Kutsu Ridge Road	27	5
Jonathon Goudy	169 Tawatsy Ln; Florissant, CO 80816	169 Tawatsy Ln	12	2
		54 Nununukuku Ct	18A	2
Armstrong Revocable Trust	3655 Abbey Heights; Colorado Springs CO 80917	44 Kayfa Ct	18	4
	3656 Abbey Heights; Colorado Springs CO 80917	44 Kayfa Ct	19	4
Mark & Marilyn Gillette	7871 W. Quarto Drive, Littleton, CO 80128	76 Kayfa Ct	15A	4
Shelia Volland	189 Kutsu Ridge Road; Florissant CO 80816	189 Kutsu Ridge Road	23A	5
Jeffrey W. Decker	794 Kutsu Ridge Road, Florissant CO 80816	794 Kutsu Ridge Road	5A	2
Dennis & Patti Wilkinson	783 Kutsu Ridge Road, Florissant CO 808016	783 Kutsu Ridge Road	6A	1
Joseph & Cynthia Zimmerli	8251 Jellison St; Arvada, CO 80005	62 Trout Lake Rd	1	2
	8251 Jellison St; Arvada, CO 80005	904 Kutsu Ridge Rd	2	2
David Biondo	274 Kutsu Ridge Road, Florissant, CO 80816	99 Uintah Ridge Dr	7A	1, Trout Haven First Filing

TROUT HAVEN ESTATES — FOURTH FILING
A SUBDIVISION IN TELLER COUNTY, COLORADO

Trout Haven Exclusion Map
5/5/21
WSDM

Exclusions requested
Served by System



I, THAT THE TRACT SHOWN BY THE CONJECTURE PLAN WAS SURVEYED
IN MY SUPERVISION AND THAT SAID PLAN ACCURATELY SHOWS
THE ACT AND SUBDIVISION THEREOF TO THE BEST OF MY KNOWLEDGE

STATE OF COLORADO
COUNTY OF TELLER
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN
MY OFFICE AT DENVER, COLORADO, THIS 5TH DAY OF MAY, 2021
AND IS BEING RECEIVED IN MY OFFICE AT DENVER, COLORADO, THIS 5TH DAY OF MAY, 2021

PROJECT	TROUT HAVEN ESTATES
FILED	FOURTH FILING
DATE	5/5/21
SCALE	1" = 100'
PREPARED BY	JOE 6406
ENGINEER	EL WILLIAMS CONSULTING ENGINEER

SCALE 1" = 100'

PROJECT	TROUT HAVEN ESTATES
FILED	FOURTH FILING
DATE	5/5/21
SCALE	1" = 100'
PREPARED BY	JOE 6406
ENGINEER	EL WILLIAMS CONSULTING ENGINEER

Joe Williams
EL WILLIAMS CONSULTING ENGINEER

Joe Williams
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Joe Williams
EL WILLIAMS CONSULTING ENGINEER

C.R.S. 32-1-501

Copy Citation

Current through Chapter 25 of the 2021 Regular Legislative Session

Colorado Revised Statutes Annotated Title 32. Special Districts (§§ 32-1-101 – 32-21-114) Special District Act (Art. 1) Article 1. Special District Provisions (Pts. 1 – 18) Part 5. Exclusion of Territory (§§ 32-1-501 – 32-1-503)

32-1-501. Exclusion of property by fee owners or board - procedure

(1) The boundaries of a special district, except health service districts, may be altered by the exclusion of real property by the fee owner or owners of one hundred percent of any real property situate in the special district filing with the board a petition requesting that such real property of the fee owner or owners be excluded and taken from the special district. The petition shall set forth a legal description of the property, shall state that assent to the exclusion of the property from the special district is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for conveyance of land. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings.

(1.5)

(a) In addition to the procedure specified in subsection (1) of this section, the board, through adoption of a resolution, may alter the boundaries of a fire protection district through the exclusion of real property from the district if the property to be excluded will be provided with the same service by another fire protection district or by a county fire improvement district and the board or governing body of that district has agreed by resolution to include the property into the district immediately after the effective date of the exclusion order.

(b)

(I) Not more than forty-five days nor less than thirty days prior to a meeting of the board to consider final adoption of a resolution proposing property to be excluded, the secretary of the fire protection district shall send letter notification to the fee owner or owners of one hundred percent of all proposed real property to be excluded from the district as listed on the records of the county assessor on the date

requested.

(II) The letter notification shall indicate that it is a notice of a meeting required to be held pursuant to subsection (2) of this section concerning the exclusion of the property from the district, shall indicate the date, time, and location of the meeting, and shall contain both a reference to the fire protection district or county fire improvement district proposed for inclusion and the current mill levy of the district, if any.

(III) The mailing of the letter notification to all addresses or post office box addresses within the area proposed to be excluded from the district shall constitute a good-faith effort to comply with this section, and failure to so notify all fee owners shall not provide grounds for a challenge to the meeting being held.

(2) The board shall hear the petition or resolution at a public meeting after publication of notice of the filing of the petition or preliminary adoption of the resolution, the place, time, and date of the meeting, the names and addresses of the petitioners, if applicable, a general description of the area proposed for exclusion, and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted or the resolution should not be finally adopted. The board may continue the hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing special district to file a written objection shall be taken as an assent on his or her part to the exclusion of the area described in the notice.

(3) The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition or to finally adopt the resolution or any portion thereof:

(a) The best interests of all of the following:

(I) The property to be excluded;

(II) The special district from which the exclusion is proposed;

(III) The county or counties in which the special district is located;

(b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;

(d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area or by the fire protection district or county fire improvement district that has agreed to include the property to be excluded from the special district;

(e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;

(f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;

(g) Whether an economically feasible alternative service may be available; and

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

(4)

(a)

(I) Except as provided in subparagraph (II) of this paragraph (a) and if the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition or resolution or some portion thereof should be excluded from the special district, it shall order that the petition be granted or that the resolution be finally adopted, in whole or in part.

(II)

(A) If the property to be excluded from the special district will be served by a special district not yet organized, the board shall not order that the petition be granted or that the resolution be finally adopted until the special district has been organized pursuant to part 3 of this article.

(B) If the property to be excluded from the special district will be served by a fire protection district or county fire improvement district as provided in subsection (1.5) of this section, the board shall not order that the petition be granted or that the resolution be finally adopted until the fire protection district or county fire improvement district has adopted a resolution agreeing to include the property in the district immediately after the effective date of the exclusion order and has filed the resolution with the court.

(C) Notwithstanding any other provision of this article to the contrary, the property to be excluded may be included within the boundaries of the proposed special district.

(b) Upon granting the petition or finally adopting the resolution, the board shall file a certified copy of the order of the board excluding the property from the district with the clerk of the court, and, except as provided in paragraph (c) of this subsection (4), the court shall order the property to be excluded from the special district and, if applicable, included into the fire protection district or county fire improvement district that has previously agreed to include the property as provided in subsection (1.5) of this section.

(c)

(I) If the property to be excluded from the special district will be served by a fire protection district or county fire improvement district that has previously agreed to include the property as provided in subsection (1.5) of this section and that has a higher mill levy than the special district and after the certified copy of the order of the board excluding the property from the district is filed with the clerk of the court, the court shall direct the question of excluding the area from the special district and including it in the fire protection district or county fire improvement district with a higher mill levy to the eligible electors of the area sought to be excluded. The court shall order the secretary to give published notice, as provided in part 2 of article 5 and article 13.5 of title 1, C.R.S., of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed exclusion. The election shall be held within the area sought to be excluded and shall be held and conducted, and the results thereof determined, in the manner provided in articles 1 to 13.5 of title 1, C.R.S. The ballot shall be prepared by the designated election official and shall contain the following words:

"Shall the following described area be excluded from the _____ district, which has a

Shall the following described area be excluded from the _____ district, which has a current mill levy of _____, and become a part of the _____ district, which has a current mill levy of _____, and upon the following conditions, if any?

(Insert general description of area) (Insert accurate summary of conditions)
For exclusion from _____ district and inclusion

in _____ district

Against exclusion from _____ district "

(II) If a majority of the votes cast at the election pursuant to subparagraph (I) of this paragraph (c) are in favor of exclusion to become a part of another district and the court determines the election was held in accordance with articles 1 to 13.5 of title 1, C.R.S., the court shall enter an order with any conditions so prescribed excluding the area from the special district and including it in the fire protection district or county fire improvement district with a higher mill levy. The validity of the exclusion to become a part of another district may not be questioned directly or indirectly in any suit, action, or proceeding, except as provided in article 11 of title 1, C.R.S.

(d) The order of exclusion entered pursuant to paragraph (b) or (c) of this subsection (4) shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that the bonded indebtedness is then scheduled to be retired. After July 1, 1993, failure of the order for exclusion to recite the existence and scheduled retirement date of the indebtedness, when due to error or omission by the special district, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll pursuant to section 39-5-125, C.R.S.

(5)

(a) If the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition or resolution should not be excluded from the special district, it shall order that the petition be denied or that the resolution be rescinded.

(b)

(I) Any petition that is denied or resolution that is finally adopted may be appealed to the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. The appeal shall be taken no later than thirty days after the decision.

(II) Upon appeal, the board shall consider the factors set forth in subsection (3) of this section and shall make a determination whether to exclude the properties mentioned in the petition or resolution based on the record developed at the hearing before the special district board.

(c)

(I) Any decision of the board of county commissioners may be appealed for review to the district court of the county which has jurisdiction of the special district pursuant to section 32-1-303 within thirty days of such board's decision.

(II) On appeal, the court shall review the record developed at the hearing before the special district board and, after considering all of the factors set forth in subsection (3) of this section, shall make a determination whether to exclude the properties mentioned in the petition or resolution.

History

Source: **L. 81:** Entire article R&RE, p. 1558, § 1, effective July 1. **L. 88:** (3) R&RE and (4) and (5) added, pp. 1149, 1150, § § 1, 2, effective June 11. **L. 93:** (4)(b) amended, p. 83, § 1, effective March 29. **L. 94:** (1.5) added and (2), IP(3), (3)(a)(I), (3)(a)(II), (3)(b) to (3)(d), (3)(f), (4), (5)(a), (5)(b), and (5)(c)(II) amended, p. 1347, § 1, effective July 1. **L. 96:** (1) amended, p. 474, § 13, effective July 1. **L. 2016:** (4)(c) amended, (SB 16-189), ch. 210, p. 784, § 83, effective June 6.

▼ Annotations

State Notes

Notes

Editor's note:

This article was numbered as articles 8-10, 16-18, 22, and 26 of chapter 89, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references:For foreclosure proceedings for a special district, see part 11 of article 25 of title 31.

Editor's note:(1) This section is similar to former § 32-2-122 as it existed prior to 1981.

(2) Section 2 of chapter 237, Session Laws of Colorado 1994, provides that, prior to the inclusion of any property into a fire district with a higher tax rate, an election pursuant to § 20 of article X of the Colorado constitution shall be held.

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