DRAFT MEMORANDUM

To: Greg Hoch, Director of Planning and Community Development, City of Durango

From: Andrew Knudtsen and David Schwartz, Economic & Planning Systems

Subject: Public Finance Options for the City of Durango; EPS # 21873

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The Economics of Land Use

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Purpose and Background

The City of Durango recently received an annexation application from the Crader LLC for approximately 160 acres of developable land located in the Grandview Area, south of the Three Springs development. As can be seen in **Figure 1** on the following page, the conceptual plan show approximately 250,000 square feet of retail on the northeast portion of the land. The plan also shows the extension of Wilson Gulch Road linking the Three Springs development to the improvements recently constructed by the Colorado Department of Transportation (CDOT).

This section of Wilson Gulch Road provides an important addition to the road network. It will link existing roads, increase the transportation capacity of the subarea, alleviate demand on Three Springs Boulevard, increase the value of the land to be annexed and, finally, provide needed access to the proposed retail development.

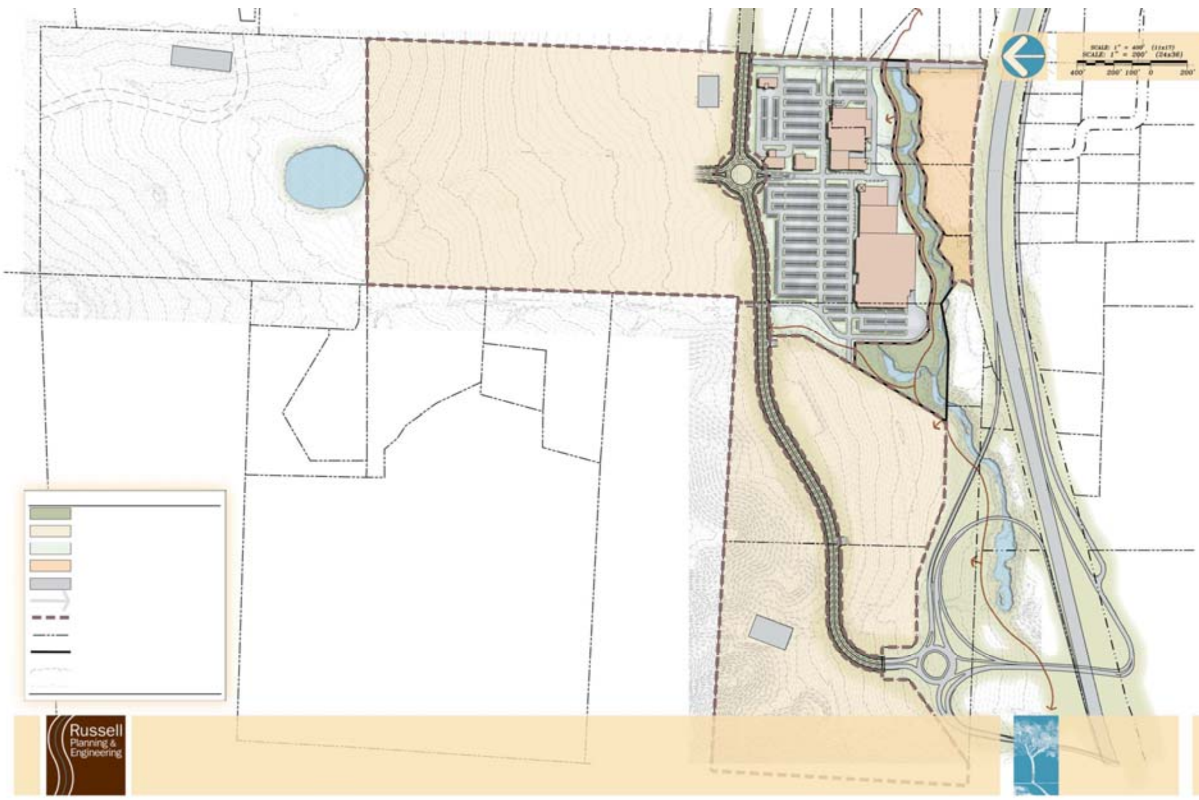
Establishing a funding mechanism to cover construction costs is the focus of this analysis. Discussions to date have described a partnership between the City of Durango, the Southern Ute Indian Tribe (SUIT), and the annexation applicants. The key questions to be addressed include:

- What is the appropriate financing mechanism to be established that would generate sufficient funds to cover the cost of the road and roundabouts?
- What is an equitable distribution of the financial burden among the current and future property owners?

- What is the appropriate role for the City in structuring a partnership and how does it ensure that civic interests are addressed?

Economic & Planning Systems (EPS) is a full-service land use economics firm with offices in Denver, Colorado and Berkeley, Sacramento and Los Angeles, California. The firm specializes in market analysis, fiscal and economic impact assessment, and public financing strategies. It often works with both public and private entities to develop partnerships to create solutions that work for the larger community as well as specific property owners. It has been retained by the City to evaluate options and define a strategy to fund the road.

Figure 1
Proposed Public Improvements and Potential Development
Durango Infrastructure Financing



Public Finance Options

EPS has identified four public financing mechanisms available in the State of Colorado that would be applicable to the Wilson Gulch Road proposed improvements as described below and summarized in **Table 1** on page 7.

- General Improvement District (GID)
- Special Improvement District (SID)
- Public Improvement Fee (PIF)
- Enhanced Sales Tax Incentive Program (ESTIP)

General Improvement District

A general improvement district (GID) has the power to finance and implement a broad spectrum of public improvements. The county equivalent to a GID is a public improvement district (PID).

- **What is a General Improvement District?** A GID is a legal entity which is separate from the city, even though the same city council which governs the city sits as the board of directors of the general improvement district and governs the district. The city council, as governing board, must approve all activity within the GID, including all contracts for project construction, all terms related to costs and financing, and must be accountable for the day to day operations within the District. As a separate entity, a general improvement district is not liable for the city's debts, nor is the city liable for the debts of the district. The autonomy enables the property owners within the District as well as the City to focus on revenues and expenditures specific to the needs within the defined boundary. The GID has the authority to build improvements, provide services, charge fees, and impose taxes. The boundary of a GID typically includes multiple properties that do not need to be contiguous.

- **How are general improvement districts created?** GIDs may be created in one of two ways:

    - Initiation by petition of the majority of the owners of property in the district followed by publication, notice, and public hearings. The district is created by ordinance of the city council.

    - Initiation by not less than 30 percent or 200 of the electors of the proposed district, whichever is less. After publication, notice, and public hearings, an election is held and if the election is successful, the district is established upon recording of the ordinance. The electorate of the general improvement districts is composed of city electors residing in the general improvement district.

- **How does a GID raise revenues?** A general improvement district has the power to levy and collect ad valorem taxes on real and personal property within its boundaries in order to support the public improvements it was formed to provide. It may also collect fees from users of these improvements. It may issue general obligation, revenue, or special assessment bonds based on these revenues. To the extent required by TABOR, such bonds can not be issued unless first approved at an election held for that purpose.

An election is not required for revenue bonds if the revenue bonds are for a TABOR-defined enterprise.

- **What are the authorized improvements and services?** Public improvements that may be constructed, installed, reconstructed, renewed, or replaced by means of a general improvement district include improvements to: the water, wastewater, flood control, and storm drain utility systems; streets, roadways, and alleys; medians, curbs, gutters, and sidewalks; street lights; landscaping; bicycle ways; and parking. Additionally, general improvement districts can also run programs and provide services.

Special Assessment Districts

Special Assessment Districts (SIDs) are mechanisms used in municipalities while Local Improvement Districts (LIDs) are used in counties. Assessment districts are the most defined and restricted of all district options in terms of governance; however, they have the greatest latitude in terms of allocating financial responsibility among property owners within a district. Assessments are based on any reasonable method to establish proportional use. Examples include linear front footage on a street, total site area, total floor area, proportional use, etc. Ad valorem property taxes are not authorized for assessment districts, although some districts use mill levies as the methodology to establish reasonable assessment.

- **What is a special improvement district?** A SID is a tool that may be used to finance the construction of public infrastructure that confers a special benefit to a property within a city. It is considered part of the city government, and not a separate governmental entity, like a G10. It enhances the city's ability to provide public improvements by assessing all or part of the cost of the improvements against the properties that specially benefit from them.

- **How are special improvement districts created?** A group of property owners or the city may initiate the process, which requires at least 50 percent of owners within the proposed district to sign a petition requesting council create a special improvement district for the construction, installation, reconstruction, renewal, and replacement of local improvements that confer special benefit upon land. If more than 50 percent of the property owners protest the creation of the district, then the city can only assess 50 percent of the cost of the public improvements back to the property owners that benefit.

- **How does a SID raise revenues?**

    - **Charges** - The city usually pays for and builds the improvements, although it is not required to. It then creates assessments to charge back the cost of the improvements to the property owners, either as a lump sum or over time.

    - **Assessments v. Taxes** - Since special improvement districts are not separate entities and are simply a way of making special assessments, the courts have held that the payments are not taxes. Historically, elections under TABOR have not played a role for assessments because taxation is not a part of the equation.

    - **Bonds** - Bond terms are shorter than more conventional public financing districts, falling into the 10- to 15-year range. In some cases, cities front the costs with portions of their Capital Improvements Plan (CIP) then use the payments on assessments to reimburse the CIP fund. There are questions as to the need for a TABOR mandated citywide election or if a district wide election would suffice for bond issues. A CIP reimbursement plan makes the TABOR issue moot.

- **What are authorized public improvements?** Public improvements that may be constructed, installed, reconstructed, renewed, or replaced by means of a special improvement district include improvements to systems for water, wastewater, flood control, and storm drainage; streets, roadways, and alleys; medians, curbs, gutters, and sidewalks; street lights; landscaping; bicycle paths; and parking.

Other Mechanisms

Public Improvement Fee (PIF)

- **What is a PIF?** A Public improvement fee (PIF) is a fee imposed by the developer on commercial tenants; the tenants in turn typically pass on the fee to the consumers as a fee on sales of merchandise. A developer uses lease terms and other real estate agreements to impose the PIF. Thus, it is a private agreement. However, as a practical matter, the city works with developers to establish terms for the PIF and typically collects the PIF along with its sales tax, remitting the PIF back to the developer. In some cases, the city agrees to reduce its sales tax rate for a given project for a given time period, in what is called an "in lieu of PIF," to keep the total charge competitive with other retail outlets. A PIF is part of the cost of sales and services so it is subject to sales tax.

- **How are PIF's created?** A PIF is established based on a development covenant or lease agreement between a development company and its tenants. Technically, it does not require public approval; however, it is in the best interest of the developer to work with a local government as it can collect the PIF as part of its sales tax collection process.

- **How does a PIF raise revenue?**

    - **Charges -** The purpose of a PIF is to finance public improvements. PIFs are a collected as a fee charged on sales and sometimes also on services within a set of negotiated categories and a designated geographic boundary.

    - **Bonds** – A metropolitan district established by the property developer issues bonds to provide the necessary capital to cover the cost of public improvements. Retailers within the district pay the private improvement fee to an established non-profit public improvement corporation (PIC). Oftentimes the c ity collects the PIF on behalf of the public improvement corporation. The fee is then passed on to the metro district to service the debt obligation. Depending on the financing body, corporate, general obligation, or revenue bonds may be issued. As stated, a PIF is not a tax but a fee, therefore it becomes a party of the cost of the sale/service and is subject to sales tax. Developers may also issue bonds based on the revenue stream, most likely in conjunction with some form of metropolitan district.

Enhanced Sales Tax Incentive Program (ESTIP)

- **How are ESTIPs created?** An enhanced sales tax incentive program (ESTIP) is a tax incentive program for home rule cities to encourage establishment or expansion of retail projects. It is not limited to urban renewal or downtown settings and can be used in peripheral areas for new development. The ESTIP agreement exists between the city and the property developer. The city agrees to share a portion of future sales tax revenues to reimburse the developer for the expenses incurred providing eligible public improvements such as streets, sidewalks, pedestrian amenities, stormwater drainage, etc. Most cities with ESTIP agreements restrict the limit of shareback to 50 percent of net new sales tax revenue over a predetermined payback period.

- What is an ESTIP? An ESTIP is established by a local government as an agreement with a developer. The terms of the agreement are negotiated at the city council level and then implemented by the city staff. The city collects sales tax revenue earmarked by the ESTIP and rebates it to the developer, most often on a quarterly basis.

In an example of a ESTIP agreement, Enhanced Sales Tax revenue refers to the amount of sales tax revenue generated to the city by a property above the sales tax revenue generated by the property 12 months prior to the execution of the agreement, or the existing sales tax base, and after the deduction of a percentage of the city's sales tax rate that is reserved for capital. Once the Annual Enhanced Sales Tax revenue and percent shared is agreed upon, the business must generate a minimum of the monthly equivalent every month to receive its full share.

- How does a PIF raise money?

    - **Charges** – ESTIPs are funded through sales tax collections. Typically, a threshold is set by the city to represent the existing level of sales tax revenue from a project and/or submarket. Once cannibalization sales flows are accounted for, the city will rebate a percentage of net new incremental sales to the developer.

    - **Bonds** – Similar to a PIF, bonds to finance public improvements are issued by a metropolitan district created by the property developer. Depending on the financing body, corporate, general obligation, or revenue bonds may be issued. The proceeds from the ESTIP are used to service the debt obligations.

Table 1
Revenue Sharing Agreements
Durango Retail Study and Infrastructure Financing

	Public Improvement Fee	Enhanced Sales Tax Incentive Program	General Improvement Dist. Public Improvement Dist.	Special Improvement Dist. Local Improvement District
Purpose	Used to finance certain public improvements such as public roads, traffic and safety controls, water and sewer systems, and storm water drainage systems.	ESTIPS are created to encourage establishment or expansion of retail projects and finance public improvements.	Districts are created to construct, install, acquire, operate, and maintain allowed public improvements. Provides a tool that is fiscally independent of the City yet maintains City oversight.	Purpose is to assess costs of public improvement to those who benefit. SIDs are formed usually to address geographic-specific public improvement deficiencies. Debt retirement is typically shorter than most other mechanisms (i.e., 10 to 15 years).
Revenue Sources	Fee on eligible purchases made within PIF boundary.	Percentage of net new city sales tax collected within ESTIP boundary.	AD valorem taxes; rates, tolls, and charges for services.	Assessments determined by calculations such as per-lineal-foot or per-acre. Ad valorem property taxes not an option.
Formation	Agreement between developer and tenants.	Agreement approved by a home rule city council and a property developer.	Petition signed by not less than 30% or 200 electors, which ever is less filed with City. City adopts ordinance and sets up election (can be waived if 100% of owners sign petition). Bond election by property owners required.	Petition filed by property owners accounting for a minimum of 50% of costs. City reviews petition and adopts ordinance and sets up an election. Bond election by property owners required.
Governance	City or public improvement corporation (PIC) acts as collecting agent.	City rebates revenue to developer	The Mayor and Council constitute the ex-officio Board.	Assessment districts have the least independence of all financing mechanisms available. There is no board of directors and the municipal governing body makes all decisions.
Financing Options	Depending on financing body, corporate, general obligation, or revenue bonds.	Depending on financing body, corporate, general obligation, or revenue bonds.	GO Bonds and Revenue bonds.	Special Assessment bonds may be issued by the City on behalf of the SID. In many cases, the City will fund improvements from CIP and use assessments to reimburse City.
Other	It is a fee, not a tax.			Assessment payments are not deductible from individual income taxes, reducing appeal to participants.
Future O & M for City	City assumes responsibility for public improvements once dedicated.	City assumes responsibility for public improvements once dedicated.	Proceeds may address both capital and operating expenses.	District does not provide mechanism to generate O & M funds for City in perpetuity.

Source: Economic & Planning Systems
H:\21873-Durango Retail Study & Infrastructure Financing\Data\[21873-Financing Options.xls]Matrix

Public Finance Comparables

Centerra Public Improvement Fee

Centerra is a 3,000-acre mixed-use development in Loveland located at the intersection of I-25 and US-34. It includes a 500,000 sq. ft. lifestyle center called the Promenade Shops at Centerra. It also includes an outlet center, power center, hospital, business/office park, and residential community. As is common with developments of its size, several public financing tools were employed to finance the project totaling $650 million. An Urban Renewal District was created with Tax Increment Financing based on an 81 mill tax levy. Impact fees from the City of Loveland were deferred for seven years. A total of five metropolitan districts were created and set at 35 mills and 5 mills for residential and commercial districts, respectively. Public infrastructure costs were estimated to total $80 million for interstate interchange improvements plus others. Centerra has a Public Improvement Fee (PIF) of 1.25 percent to pay for required infrastructure improvements. To offset the PIF, the City of Loveland waived 1.25 percent of city sales tax to lower the sales tax burden for shoppers from the City's standard 3 percent to 1.75 percent. In addition, the development assumes a 1.0 percent retail sales fee

Glenwood Meadows Public Improvement Fee

Glenwood Meadows, completed in 2005, is a 300-acre shopping center in Glenwood Springs. Two metropolitan districts were created to finance $15.3 million worth of public improvements including roads, traffic and safety controls, water and sewer systems, and storm water drainage systems. In addition to the metropolitan districts, Glenwood Meadows imposes a Public Improvement Fee (PIF) of 1.5 percent. The PIF is anticipated to last 20 years and expire in 2025. The developer of Glenwood Meadows charges a PIF on all merchandise as well as services that fall outside historical definition of taxable goods, such as haircuts at the salon or prescriptions at a pharmacy. The City of Glenwood Springs did not enter into a sales tax revenue sharing agreement with the developer, nor did the City reduce sales tax for items purchased at Glenwood Meadows; thus there is a differential is sales tax rate between this center and others in the community.

Colorado Mills Public Improvement Fee

Colorado Mills is a 130-acre discount mall located in Lakewood. All purchases made at the mall are subject to a 1.4 percent PIF. The fee funds the repayment of infrastructure improvements. It is expected to last 25 years, at which point it will expire in 2027. For the first seven year of the Colorado Mill's operation, the city of Lakewood waived 1 percent of city sales tax on items purchased at Colorado Mills. The 1 percent waiver expired in 2009, and purchases are now subject to the City's 3 percent sales tax in addition to the PIF.

Boulder Junction Access General Improvement District

In November of 2010, the City of Boulder adopted two General Improvement Districts (GIDs) to address parking management issues for properties located in Phase I of the Transit Village Area Plan (TVAP), a 160-acre redevelopment area (including Phase I and II) at the intersection of 30th Street and Pearl Parkway near the proposed commuter rail stop. Properties in the GIDs pay annual property taxes in exchange for both Transportation Demand Management services and the construction of additional shared off-site parking facilities. Both GIDs are currently funded with a 5.0 mill property tax. The TDM district is authorized up to a maximum of 20 mills and the parking districts may be set as high as 30 mills. The annual mill levy will be based on the magnitude of debt service required (reflecting the extent of capital facilities and TDM programming). The repayment is expected to last approximately 25 years, but the district lasts in perpetuity.

Landmark Greenwood Village Enhanced Sales Tax Incentive Program

The City of Greenwood Village negotiated an Enhanced Sales Tax Incentive Program (ESTIP) with the developer of Landmark Greenwood Village in 2007. The City agreed to share 50 percent of net new sales tax revenue with the developer over a 20 year period. The developer also negotiated 100 percent of revenues from permit and plan review fees collected during the construction period. The sales tax revenue sharing will be used to repay the developer for construction of $16.9 million in public improvements that included roadway extension and improvements and a 858 space parking structure. The ESTIP will terminate when the $16.9 million of eligible costs have been covered or after 20 years, whichever comes first. Projections forecast that all eligible costs would be reimbursed over a 16 to 17 year period. A metropolitan district was also created to finance public improvements.

Loghill Village Local Improvement District

The Loghill Village Local Improvement District is located in Ouray County. Because Loghill Village is located in an unincorporated area of Ouray County, the County makes all decisions for the LID. In 2004, 436 property owners in Loghill Village approved a $1.34 million bond to finance paving of the roads to Loghill Village. Each property owner was assessed $3073.50 to fund paving. Eighty-two property owners paid in full; the remaining owners were assessed a property tax levy, which in 2010 amounted to 0.719 mills, to be paid in installments over time. While the Local Improvement District cannot use property taxes as a form of revenue, this example shows how the mill levy methodology was used to set the assessment ratio. Flexibility was achieved, in terms of timing, with some participants paying upfront and others paying over an extended period of time.

Platte Avenue Special Improvement Maintenance District

Platte Avenue Special Improvement Maintenance District is located along a one-mile stretch of Platte Avenue between Union Boulevard and North Circle Drive in Colorado Springs. The SIMD was created in 1989 to improve the overall condition of the streetscape by adding irrigated grass along medians, lighting, and signage. Properties are assessed based upon the length of frontage each property has along Platte Avenue. In 2011 the annual expenditure of the SMID was $29,676 and the district is not set to expire as landscape maintenance is an ongoing obligation.

The public finance comparables are illustrated in **Table 2** on the following page.

Table 2
Public Finance Comparables
Durango Infrastructure Financing

Project Name	Location	Eligible Costs (Millions)	Site Size	Revenue Source	Revenue Rate	Revenue Length	City Sales Tax %	City Sales Tax Waived	City Sales Tax Length	Net Sales Tax Change
PIF										
Centerra	Loveland	Unkown	3,000 ac.	Sales Tax	1.25%	25 years	3.00%	1.25%	?	0.0%
Glenwood Meadows	Glenwood Springs	18	300+ ac.	Sales Tax	1.50%	20 years	3.70%	0.00%	---	1.5%
Colorado Mills	Lakewood	Unknown	130 ac.	Sales Tax	1.40%	25 years (renewable)	3.00%	1.00%	Expired 2009	0.4%/1.4%
ESTIP										
Landmark Greenwood Village	Greenwood Village	16.9	160,000 sq. ft. retail	Sales Tax	50%	20 years	---	---	---	---
GID										
Boulder Junction Access GID	Boulder	Unknown	160 ac.	Property Tax	5 mills	25+ years	---	---	---	---
CAGID	Boulder	Unknown	30 Blocks	Property Tax	5.134 mills	Ongoing	---	---	---	---
Rimrock Marketplace GID	Grand Junction	3.98	9.2 ac.	Property Tax	?	?	---	---	---	---
SID/LID										
Briargate Center SID	Colorado Springs	9.7	?	Assessment	4.409 mills	25-30 years	---	---	---	---
Loghill Village LID	Ouray County	1.34	436 prop. owners	Assessment	0.719 mills		---	---	---	---

Source: DOLA; Economic & Planning Systems

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Evaluation of Options

A recommended financing strategy can be defined once the objectives of the community are recognized. A preliminary set of criteria is provided below in **Table 2** to enable the City to evaluate the attributes of each financing tool. The purpose of these criteria is to ensure that the decision process is transparent and equitable. Each project and community requires a unique set of criteria which should be tailored to the attributes of the project, and which can be easily amended at the onset of the project if needed.

Table 2
Criteria for Evaluation
City of Durango Wilson Gulch Road Financing Analysis

Term	Definition	Measure
Governance	Simplicity and reasonable cost to City for district administration	Staff time and direct costs
Equity	Ability to ensure that benefits and costs are equally proportioned among property owners	Benefit analysis
Timing	Flexibility to treat current and future property owners consistently	Capability of district to establish present values
Protection of City Interests	Appropriate balance of risk and reward by City	Return on Investment and opportunity cost analysis
Fit	Complexity of district(s) is appropriate for scale and cost of public improvements	Steps required to establish district

Source: Economic & Planning Systems

H:\21873-Durango Retail Study & Infrastructure Financing\Data\[21873-Financing Options Durango Criteria.xls]Durango Criteria

Next Steps

EPS will recommend the optimal financing approach to City Council based on the following three tasks:

1. EPS will conduct a technical evaluation of future market demand to assess timing, use, and intensity of development for the balance of the parcels in the Crader annexation.

2. With the findings from the market analysis, EPS will provide an allocation of land use by property, which can then be used to forecast public revenue.

3. EPS will model the four public financing tools based on the allocation of land use and provide options to the City that generate sufficient revenues to cover costs. EPS will test the viable options against the criteria and provide an analysis which the City and the annexation applicant can use to refine the strategy and develop amenable annexation terms.