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ORDER DENYING PETITION FOR WRIT OF CERTIORARI, COLORADO SUPREME COURT (JANUARY 26, 2026)

COLORADO SUPREME COURT

Colorado Bondshares - A Tax Exempt Fund and UMB Bank, N.A.,

Petitioners,

v.

Marin Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado and Century at Landmark, LLC.,

Respondents.

Supreme Court Case No: 2025SC474

Date Filed: January 26, 2026

Certiorari to the Court of Appeals, 2024CA1092
District Court, Arapahoe County, 2022CV30866

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgement of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, JANUARY 26, 2026.

OPINION, COLORADO COURT OF APPEALS (JUNE 12, 2025)

COLORADO COURT OF APPEALS

Marin Metropolitan District,
a quasi-municipal corporation and political subdivision of the State of Colorado,

Plaintiff-Appellee,

v.

Colorado Bondshares – A Tax Exempt Fund and UMB Bank, N.A.,

Defendants-Appellants,

and

Century at Landmark, LLC,

Interested Party-Appellee.

Court of Appeals No. 24CA1092
Arapahoe County District Court No. 22CV30866

Date Filed: June 12, 2025

Before: Honorable, Ben L. LEUTWYLER III, Judge.

Judgment Affirmed

Division II
Opinion by JUDGE SCHUTZ
Fox and Harris, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced June 12, 2025

¶ 1 This appeal arises from the latest lawsuit involving a special district, owners of land within that district, the tax exempt fund that purchased the bonds, and the bank that held the bond proceeds in trust. *See Landmark Towers Ass'n v. UMB Bank, N.A.*, 2018 COA 100, ¶¶ 1-13 (*Landmark*).

¶ 2 In this case, Marin Metropolitan District (MMD), sought a declaratory judgment holding that it could not be compelled to impose a 2008 mill levy on approximately eleven acres of vacant land (vacant land) owned by Century at Landmark, LLC (Century), which is the only property that remains within MMD's boundaries. MMD named as defendants Colorado Bondshares — A Tax Exempt Fund (Bondshares), which owns the bonds, and UMB Bank, N.A. (UMB), which originally held the bond proceeds in trust. Bondshares and UMB asserted various defenses and counterclaims related to the enforceability of the bonds and mill levy. The suit included Century as an interested third party.

¶ 3 The parties filed multiple motions for summary judgment. The district court granted MMD's motion in part and denied Bondshares and UMB's motions. The parties tried the remaining claims to the court. After finding that the Century property derived no benefit from the bond proceeds, the district court denied all of UMB and Bondshares' claims and entered judgment in favor of MMD.

¶ 4 Bondshares and UMB appeal the district court's summary judgment orders and its final judgment entered after the bench trial. We affirm.

I. Background

¶ 5 Zachary Davidson developed property in the City of Greenwood Village (Greenwood Village). By 2007, Davidson had constructed two high-rise condominium towers (Landmark Towers) owned by Landmark Towers Association, Inc. (Landmark), an entity which Davidson controlled.

¶6 In 2007, Davidson, or one of his closely held development entities, acquired the vacant land, which is adjacent to the Landmark Towers. Davidson decided to form MMD to finance, own, and manage the infrastructure necessary to develop the vacant land. As a condition to obtaining Greenwood Village's approval for the formation of MMD, Davidson had to provide Greenwood Village with a service plan that addressed the scope of the public improvements to be built in the district, the amount of bonds that would be required to fund the creation of those improvements, and how those bonds would be repaid.

¶ 7 The service plan requirements created a problem for Davidson. From the beginning, it was clear that, even once the vacant land was fully developed and sold out, the properties on the vacant land would not have a combined assessed value to provide sufficient revenue to repay the bonds needed to fund the public improvements. In short, a special district that included only the vacant land was not financially viable.

¶ 8 So Davidson developed a fraudulent scheme. to gain Greenwood Village's approval for the formation of MMD, Davidson included the Landmark Towers within MMD's boundaries, thereby providing a sufficient tax base to repay the bonds necessary to develop the vacant land. Upon its inclusion in MMD, Landmark Towers provided 90% of the assessed value of all of the property in MMD, while the vacant land provided only 10%. But all of the infrastructure proposed to be financed and operated by MMD was located only on the vacant land. Based on the projected cash flows created by the Landmark Towers, Greenwood Village authorized the formation of MMD, including its authority to issue in excess of $30 million in bonds.

¶ 9 At the time MMD was formed, the individual condominiums at Landmark Towers were in the process of being sold to the public. As a condition to approve the service plan, Greenwood Village required Davidson to notify these prospective purchasers of their inclusion in MMD. Davidson failed to do so.

¶10 In 2008, MMD issued over $30 million in bonds to fund the improvements. Bondshares purchased the bonds. MMD's bond resolution included a trust indenture stating that it would annually impose a debt service mill levy on all taxable property within MMD to generate the revenue necessary to satisfy the bonds and associated interest. The proceeds from the sale of the bonds were specially earmarked to fund the infrastructure improvements contemplated by the MMD service plan.

¶ 11 UMB held the bond sale proceeds in trust. Davidson set up a mechanism that allowed him to draw on the bond funds. He only needed UMB's approval for the reimbursements, not MMD's. By the end of 2008, Davidson had requested and received $8 million, purportedly to fund construction of the infrastructure. However, no improvements were ever built. Davidson misappropriated the bulk of the $8 million for personal use.

¶ 12 In August 2009, MMD hired an independent engineer to determine how much of the disbursed funds were eligible for public expenses for tax purposes. The report eventually established that some funds had been misappropriated and listed the expenses that were potentially public expenditures.

¶ 13 Davidson's company filed for bankruptcy in August 2009, and Davidson personally filed for bankruptcy in early 2010. Late in 2012, Davidson was indicted for embezzlement and misuse of public funds; he died by suicide shortly thereafter. UMB returned the remaining bond proceeds it was holding (about $13 million) to Bondshares. MMD imposed a mill levy on the property within the district for six years, between 2008 and 2013. The district paid an additional $13 million in principal and $11.5 million in interest to Bondshares.

¶ 14 In 2011, Landmark sued MMD to prevent MMD from further assessing the mill levy against the Landmark Towers condominiums. After a bench trial in 2013, the trial court permanently enjoined MMD from imposing the mill levy on the condominiums. In 2018, a division of this court affirmed that injunction in *Landmark*.

¶ 15 Century purchased the vacant land in 2016. At the time, the injunction barring imposition of the mill levy was in full force and effect. In 2021, Greenwood Village petitioned to exclude Landmark

Towers from MMD. The trial court granted the petition, and the exclusion order took effect at the end of 2021. Thus, the vacant land is the only property that remains part of MMD. MMD has no funds with which to fund the public improvements contemplated by MMD's service plan and the bond indenture.

¶ 16 In 2020, Bondshares sent a letter to MMD's counsel claiming that MMD had an outstanding balance of approximately $18 million that was "due and owing" under the trust indenture. The letter asserted that MMD was still required to set a debt service mill levy on the unimproved lot within the district to repay the bonds, and it demanded MMD set a levy on the vacant land.

¶ 17 In 2022, MMD filed a complaint for the entry of a declaratory judgment and injunctive relief to establish that Bondshares could not compel MMD to impose a mill levy on the vacant land. Both parties moved for summary judgment.

¶ 18 The district court determined that MMD was entitled to the entry of judgment on its claim that Bondshares was barred by the doctrine of issue preclusion from relitigating *Landmark's* holding that the mill levy was a special assessment rather than an ad valorem tax. The court also determined that MMD's claims were not barred by section 11-57-204, C.R.S. 2024, or section 31-25-538(2), C.R.S. 2024. The court denied the parties' competing motions that hinged on the issue of whether the vacant land received a benefit from expenses paid with the bond proceeds because there were factual disputes regarding that issue.

¶ 19 The parties proceeded to trial to determine if the vacant land benefitted from any improvements and related expenditures funded by the bond proceeds. After the trial was completed, the court entered detailed factual findings and legal conclusions from which it determined that the vacant land did not benefit from any of the bond expenditures and, therefore, imposition of the mill levy against the vacant land would violate Century's due process rights. Based on this conclusion, in concert with its previous summary judgment rulings, the court entered judgment in favor of MMD and against Bondshares and UMB on all claims. The order declared that the bond resolution and trust indenture are void and unenforceable, the bond debt is discharged, and enjoined Bondshares and UMD from attempting to compel MMD to impose a mill levy against the vacant land.

II. Analysis

A. The Nature of the Mill Levy

¶ 20 Bondshares and UMB argue that the district court erred when it concluded that the mill levy was a special assessment rather than an ad valorem tax. The court held that Bondshares and UMB were precluded from relitigating this issue, which was resolved by *Landmark*.

¶ 21 We perceive no error in the district court's conclusion that issue preclusion barred Bondshares and UMB from relitigating the determination that the mill levy was not an ad valorem tax. Moreover, even if issue preclusion did not bar relitigation of the issue, we conclude on the merits that the mill levy was a special assessment, not an ad valorem tax.

1. Issue Preclusion

a. Standard of Review and Applicable Law

¶ 22 "The purpose of issue preclusion is to 'bar relitigation of an issue.'" *Madalena v. Zurich Am. Ins. Co.*, 2023 COA 32, ¶ 21 (quoting *Villas at Highland Park Homeowners Ass'n v. Villas at Highland Park, LLC*, 2017 CO 53, ¶ 29). Thus, issue preclusion prevents parties from relitigating an issue that has already been decided in a prior court proceeding, provided certain conditions are met. *Sunny Acres Villa, Inc. v. Cooper*, 25 P.3d 44, 47 (Colo. 2001).

¶ 23 Issue preclusion applies if

> (1) the issue sought to be precluded is identical to an issue actually determined in the prior proceeding; (2) the party against whom [issue preclusion] is asserted has been a party to or is in privity with a party to the prior proceeding; (3) there is a final judgment on the merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding.

Id.

¶ 24 The application of "[i]ssue preclusion presents a question of law that we review de novo." *Madalena*, ¶ 25 (quoting *Villas at Highland Park Homeowners Ass'n*, ¶ 26).

¶ 25 Bondshares and UMB do not dispute that elements two, three, or four were satisfied. Thus, we focus our analysis on the first element.

b. The Parties' Contentions

¶ 26 Bondshares and UMB argue that the issue they raised in the district court regarding the mill levy is substantively different than the issue they raised in the trial court in *Landmark*. Specifically, they argue that in *Landmark*, the court determined that the levy was a special assessment because the Landmark Towers were included, without the residents' knowledge, in the special district.

¶ 27 Now that the Landmark Towers property has been excluded from the special district by court order, they argue, the levy is an ad valorem tax as it relates to the vacant land. Bondshares and UMB argue that Century purchased the vacant land knowing that it was the sole remaining property in the special district and the contemplated infrastructure was intended to benefit the vacant land. They reason that the applicability of the mill levy to the vacant land presents a different issue than *Landmark* decided.

c. Analysis

¶ 28 In applying the first element of issue preclusion to the facts of this case, we conclude that the controlling question is whether the decision in *Land mark* — that the mill levy is a special assessment, rather than an ad valorem tax — resolves the same issue here. We conclude it does.

¶ 29 The correct framing of the issue presented obviously dictates the conclusion. Recognizing that reality, Bondshares and UMB attempt to frame the issues in the two cases differently, arguing that the issue decided by *Landmark* was whether the mill levy was a special assessment *as applied to the Landmark*

Towers property while the question presented here was whether the mill levy was a special assessment *as applied to the vacant land.*

¶ 30 But Bondshares and UMB's attempt to reshape the issues presented in both cases runs into multiple obstacles. First, the division in *Landmark* concluded that "[t]he levy at issue in this case funds purely local improvements directly and specifically benefiting only the [vacant land]. It does not fund the general expenses of government.' It is therefore a special assessment, not a tax." *Landmark*, ¶ 33 (footnote omitted) (quoting *Bloom v. City of Fort Collins*, 784 P.2d 304, 307 (Colo. 1989)). No portion of *Landmark* states that its conclusion that the mill levy is a special assessment is limited only to the Landmark Towers property.

¶ 31 Second, Bondshares and UMB concede that the nature of the mill levy must be assessed as of the time the mill levy was approved by MMD. *See Barber v. Ritter*, 196 P.3d 238, 248 (Colo. 2008) ("To determine whether a government mandated financial imposition is a 'fee' or a 'tax,' the dispositive criteria is the primary or dominant purpose of such imposition at the time the enactment calling for its collection is passed." (citing *Zelinger v. City & Cnty. of Denver*, 724 P.2d 1356, 1358 (Colo. 1986))). And at that time, as the division in *Landmark* concluded, the mill levy was not intended to generate any revenue for constructing or operating improvements on the Landmark Towers property.

¶ 31 Relatedly, Bondshares and UMB fail to cite any authority holding that a mill levy, at the time of passage, may be a special assessment as it relates to some portion of the property it is intended to encumber but, at the same time, is an ad valorem tax against other property in the district. MMD's answer brief noted the absence of any supporting authority on this central point. In their reply brief, Bondshares and UMB acknowledge this void and, even then, fail to cite any authority supporting their contention.

¶ 32 In the face of this void, Bondshares and UMB argue that *Landmark* supports their position. Particularly, they note that *Landmark* held that the "the formation of [MMD] . . . , and the resulting levying of the Landmark [Towers] owners' properties, violated the Landmark [Towers] owners' rights to due process." *Landmark*, ¶ 28. But the finding that the mill levy was a special assessment that violated the Landmark Towers owners' due process rights does not support a conclusion that the levy was a special assessment against Landmark Towers but an ad valorem tax on the vacant land.

¶ 34 Bondshares and UMB next turn to the language in *Landmark* stating that "the injunction doesn't require [MMD] to impose taxes on anyone or on any property. If [MMD] decides to impose a true tax, it can exclude [Landmark Towers] from the District." *Id.* at ¶ 48. Bondshares and UMB argue that this language supports their contention that even though the levy is a special assessment against the Landmark Towers property, it is an ad valorem tax against the vacant land. But that's not what the quoted language says. Indeed, to the contrary, the use of the word "decides" and the reference to excluding the Landmark Towers property suggests something that could happen in the future. But MMD took no further action to pass an ad valorem tax that would apply only to the vacant land. Instead, Bondshares and UMB are trying to unilaterally convert the mill levy from a special assessment into an ad valorem tax without any subsequent enabling action being taken by MMD. Neither *Landmark* nor any other authority cited by Bondshares and UMB supports this position.

¶ 35 In sum, we conclude that *Landmark's* holding that the mill levy is a special assessment resolves the same issue presented here — whether the mill levy is a special assessment or an ad valorem tax. Thus, the first element of issue preclusion is satisfied, and because the parties do not dispute the remaining elements, the district court did not err by applying issue preclusion to preclude Bondshares and UMB from now treating the mill levy as an ad valorem tax.

¶ 36 Ad Valorem Taxes and Special Assessments

¶ 37 In addition, treatment of the levy as a special assessment rather than an ad valorem tax is consistent with the general principles applicable to such taxes.

¶ 38 "An ad valorem tax is a tax upon various classes of real and personal property located within the territorial limits of the taxing authority." *Bloom*, 784 P.2d at 307. An ad valorem tax must be uniformly imposed on real property within the boundaries of the taxing authority. *Landmark*, ¶ 42. Similarly, under the Colorado Constitution, "[e]ach property tax levy shall be uniform upon all real and personal property not exempt from taxation under this article located within the territorial limits of the authority levying the tax." Colo. Const. art. X, § 3(1)(a).¶

¶ 39 In contrast, "[t]he essential characteristic of a special assessment is that it must confer some special benefit to the property assessed." *Bloom*, 784 P.2d at 308. As the supreme court explained,

> The burden of the assessment falls on the property owners because "the benefits they receive from the particular improvements are different from the benefits they enjoy in common with other property owners." *Id.* A special assessment for a local improvement, therefore, must specifically benefit or enhance the value of the premises assessed "in an amount at least equal to the burden imposed." [*Reams v. City of Grand Junction*, 676 P.2d 1189, 1194 (Colo. 1984)]; *see also Satter v. City of Littleton*, 185 Colo. 90, 97, 522 P.2d 95, 98 (1974); *Pomroy v. Board of Public Waterworks*, 55 Colo. 476, 479, 136 P. 78, 80 (1913). The funds generated by a special assessment cannot be diverted to other purposes, since the imposition of the assessment "upon a particular class of taxpayers can be justified only to the extent that such taxes are equivalent to special benefits conferred upon those taxpayers." *Reams*, 676 P.2d at 119.

Bloom, 784 P.2d at 308.

¶ 40 Bondshares and UMB's urged interpretation of the mill levy would run contrary to the fundamental requirement that an ad valorem tax must be uniformly imposed against the same class of properties within the taxing authority. Instead, enforcement of the mill levy as they urge would have required the mill levy to be treated as an unenforceable special assessment against the Landmark Towers, but as an ad valorem tax against the vacant land. This did not and could not happen based on the requirements of an ad valorem tax. *See* Colo. Const. art. X, § 3(1)(a).

¶ 41 The subsequent order excluding the Landmark Towers from MMD also confirms that the mill levy was not and could not be treated as an ad valorem tax. Under section 32-1-503(1), C.R.S. 2024,

> For the purpose of retiring the special district's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the special district shall remain intact, and the excluded territory shall be obligated to the same extent as all other property within the special district but only for that proportion of such outstanding indebtedness and the interest thereon existing immediately prior to the effective date of the exclusion order.

¶ 42 Despite the requirements of section 32-1-503(1), the exclusion order did not and could not provide that Landmark Towers remained liable for repayment of any portion of the subject bonds. Thus, the requirement that an ad valorem tax must be uniformly imposed against all property within the district at the time the debt was incurred could not be effectuated when the bonds and mill levy were authorized and cannot be effectuated now.

¶ 43 For these reasons, the conclusion that the mill levy is a special assessment, in addition to being dictated by issue preclusion, is mandated by the controlling legal distinctions between an ad valorem tax and a special assessment. The district court therefore did not err by concluding that the mill levy was — at the time it was imposed — a special assessment, and it remains a special assessment now notwithstanding the subsequent exclusion of Landmark Towers from MMD.

¶ 44 Recognizing the likelihood of this conclusion, Bondshares and UMB alternatively claimed in the district court that the mill levy should be treated as an enforceable special assessment against the vacant land because the proceeds from the bonds provided the vacant land with material benefits. We turn now to that argument.

B. Value to Century Property

¶ 45 Recall that the district court denied the parties' motions for summary judgment with respect to whether the special assessment provided value to the vacant land because the resolution of this issue required the court to resolve disputed issues of fact. Thus, the central purpose of the trial was to resolve this dispute. After hearing the evidence, the district court made detailed factual findings and concluded that the mill levy provided no value to the vacant land and was therefore an unenforceable special assessment. Bondshares and UMB appeal that finding.

1. Standard of Review

¶ 46 We apply a mixed standard of review to orders entered after a trial before a judge. *Jehly v. Brown*, 2014 COA 39, ¶ 8. We review the district court's factual findings for clear error. *Id.* A factual finding is clearly erroneous only when it lacks any support in the record. *Cronk v. Bowers*, 2023 COA 68M, ¶ 12. We review the court's legal conclusions de novo. *See Frisco Lot 3, LLC v. Giberson Ltd. P'ship, LLLP*, 2024 COA 125, ¶ 66.¶ 47

¶ 47 We agree with Bondshares and UMB that the ultimate conclusion of whether a special assessment provides a sufficient benefit to a parcel of property to be enforceable presents a question of law. *See State Farm Mut. Auto. Ins. Co. v. Johnson*, 2017 CO 68, ¶ 12. But we also agree with MMD that the answer to that question turns on the court's assessment of the evidence related to fact-intensive issues, which we review for clear error. *Id.*

2. The Parties' Contentions

¶ 48 Bondshares and UMB argue that the district court improperly concluded that private expenditures and soft costs cannot be considered a benefit, and that benefits must continue indefinitely to be compensable. Bondshares and UMB also argue that the court erred by not giving appropriate weight to evidence that MMD, after learning of Davidson's fraudulent conduct, procured a study for tax purposes to assess whether any of the $8 million paid to Davidson or his affiliated entities could be treated as eligible public expenses as opposed to private expenditures.

¶ 49 MMD responds that the district court's determination that the $8 million in expenditures provided no benefit to the vacant land is predicated on a series of factual findings that are supported by the record. In addition, MMD argues that the district court did not conclude that soft costs and private expenditures can never result in benefits that are reimbursable. Rather, MMD argues, the court simply concluded that the soft costs and private expenditures in this case provided no benefit to the vacant land. As to the report concerning potential benefits for tax purposes, MMD argues that the district court correctly concluded that whether an expenditure qualifies as a public expenditure for MMD's tax purposes sheds no meaningful light on whether the same expenditures provided a benefit to the vacant land.

¶ 50 We agree with MMD on both the factual and legal contentions.

3. Analysis

¶51 In support of its conclusion that the expenditures provided no benefit to the vacant land, the district court made extensive factual findings, including the following:

- "The evidence and testimony presented at trial demonstrates that the [vacant land] has received no benefit from the 2008 Bonds."
- [MMD's] accountant, who served in that capacity from early 2009 to 2022, testified that "no actual public infrastructure was built, despite the expenditure of funds, and no benefit was conveyed to the [vacant land] by those expenditures."
- A Bondshares representative who visited the vacant land several times stated he was not aware of any improvements that were built on the vacant land, saying, "I'll be honest with you, I still don't know what was actually built."
- "Design, engineering, architecture, and other 'soft' costs incurred by Davidson did not enhance the value of the [vacant land]. . . . [N]obody has located these design plans, and in any event, they have no value today."

¶ 52 Based on these findings, and many others, the district court concluded that "no evidence has been presented that any actual benefit has been conveyed to the [vacant land] from the expenditure of bond funds by Davidson and/or [MMD]." There is a plethora of record evidence to support this conclusion, and we therefore will not disturb it.

¶ 53 We also reject Bondshares and MMD's argument that the audit for tax purposes has any bearing on the question of whether expenditures made by Davidson or MMD provided any benefit to the vacant land. We fail to see how a report assessing whether the expenditures may be claimed as a "public expenditure" for tax purposes informs the analysis of whether any of the expenditures actually benefitted the vacant land. And Bondshares and UMB provide no meaningful analysis to support their implicit contention that the two assessments should be treated as interchangeable.

¶ 54 Finally, as illustrated by the court's detailed factual findings, it did not operate from an erroneous legal assumption that soft costs and private expenditures can never qualify as a benefit to a special district or the property located therein. Rather, the court found only that the soft costs and private expenditures in this case have not provided, and will not provide, any benefit to the vacant land.¶

¶ 55 We perceive no error in the district court's conclusion that the expenditures therefore did not provide a benefit to the vacant land that would justify imposition of the mill levy. Recall that a special assessment must not only provide a theoretical benefit to the taxed property, but it must also provide a benefit that "specifically benefit[s] or enhance[s] the value of the premises assessed 'in an amount at least equal to the burden imposed."' *Bloom*, 784 P.2d at 308 (quoting *Reams*, 676 P.2d at 1194). Using this measure, we perceive no error in the district court's conclusion that the bonds provided no benefit to the vacant land.

¶ 56 We also reject Bondshares and UMB's argument that no due process violation occurred even if the bonds provided no benefit to the Century property because Century purchased the vacant land with knowledge that the bond and mill levy resolution existed. In making this argument, Bondshares and UMB draw on case law developed in the context of a due process claim under the Takings Clause of the Fifth Amendment. U.S. Const. amend. V ("[N]or shall private property be taken for public use, without just compensation."). In that context, the supreme court has stated that the "'reasonable investment-backed expectations' of the regulated party is the dispositive factor in takings analysis when the regulated party is 'on notice' of the extent of the government's regulatory authority over its property." *State Dep't Health v. Mill*, 887 P.2d 993, 1000 (Colo. 1994) (quoting *Golden Pac. Bancorp v. United States*, 15 F.3d 1066, 1072 (Fed. Cir. 1994)). From there, Bondshares and UMB assert that when Century purchased the vacant land, the bonds and associated mill levy were public knowledge, as was the fact that the vacant land was included in MMD. Therefore, the argument continues, Century acquired the vacant land with full notice that it was subject to the bonds and mill levy and no due process violation occurred.

¶ 57 We reject these contentions for multiple reasons. First, MMD's claim that due process prohibited it from assessing the mill levy on the vacant land was not based on the Takings Clause, or the case law developed thereunder. Rather, the claim was based on Colorado's due process jurisprudence holding that a special assessment cannot be imposed on property that does not receive a commensurate benefit from the funds generated by the special assessment. *Bloom*, 784 P.2d at 308. This analysis does not depend upon whether the property owner had notice of the special assessment prior to purchasing the subject property. Thus, UMB and Bondshares' argument is premised on a legal principle that does not apply to this case.

¶ 58 Second, we disagree with the factual premise of the argument. Century did not make its purchase knowing that the vacant land alone would bear the burden of repaying the bonds, even though the bonds provided no benefit to its property. Indeed, at the time of the purchase, an injunction was in place prohibiting MMD from imposing the mill levy. Moreover, the Landmark Towers property remained in the district and the mill levy was passed based on the assumption that the bonds would be repaid by imposing the mill levy against both the vacant land and the Landmark Towers property. Thus, the factual premise of Bondshares and UMB's takings argument is also unsupported.

¶ 59 We therefore reject Bondshares and UMB's argument that the district court's due process ruling was wrong because Century purchased the property with notice of the bonds and mill levy.

C. Statutes of Limitation

¶ 60 Bondshares and UMB argue that the district court erred by rejecting their affirmative defense asserting that MMD's claim for declaratory relief was time barred under two different statutes. We address each statute in turn.

1. Section 11-57-212, C.R.S. 2024

¶ 61 We review a district court's statutory interpretation de novo. *Educhildren LLC v. Cnty. of Douglas Bd. of Equalization*, 2023 CO 29, ¶ 27. In doing so, "[o]ur principal goal is to effectuate the legislature's intent. To do this, we 'read a statutory scheme as a whole, "giving consistent, harmonious, and sensible effect to all of its parts,"' and we ascribe plain and ordinary meaning to its terms." *Id.* (citations omitted). We must apply the statute as written and may not add or subtract words. *Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 12.

¶ 62 Section 11-57-212 provides: "No legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of securities by a public entity shall be commenced more than thirty days after the authorization of such securities."

¶ 63 The 2008 bond resolution that authorized the issuance of the bonds incorporated the statute. Because section 11-57-212 requires that a challenge to the "authorization or issuance of securities by a public entity" be brought within thirty days, Bondshares and UMB argue that MMD's claim for declaratory and injunctive relief concerning the bond indenture and mill levy was time barred. MMD counters that the declaratory judgment action does not challenge the resolution authorizing the issuance of the bonds, but rather challenges imposition of a mill levy on the vacant land because the bonds and associated mill levy provided no value to that property.

¶ 64 The district court concluded that the statute did not apply to MMD's claims. The court agreed that

MMD did not challenge the legislative acts or proceedings associated with the authorization or issuance of the bonds. Rather, MMD sought declaratory relief to determine whether it could be compelled to impose an unconstitutional special assessment against the vacant land. While acknowledging that MMD's claim was "tangentially" related to the issuance of the bonds, the court concluded that the claim fell outside the reach of section 11-57-212. We agree with the district court.

¶ 65 *Landmark* addressed the applicability of section 11-57-212 to Bondshares and UMB's assertion that Landmark's claim in that case was time barred. In rejecting the assertion, the division reasoned as follows:

> [T]he argument fails on the merits. The statute applies, by its terms, to "the authorization or issuance of securities." § 11-57-212. Landmark, however, challenges, on constitutional grounds, the creation of [MMD] to include the Landmark [Towers] and the associated levies. We won't expand the reach of the statute beyond the plain meaning of its language. *See Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1089 (Colo. 2011) (if statutory language is clear, we apply the statute as written); *Spahmer v. Gullette*, 113 P.3d 158, 162 (Colo. 2005) ("We will not create an addition to a statute that the plain language does not suggest or demand.").

Landmark, ¶ 22. We find this analysis persuasive.

¶ 66 Bondshares and UMB try to distinguish *Landmark*, reasoning that the Landmark Towers owners were only challenging their inclusion in the district. But, as the division in that case made clear, it found section 11-57-212 not applicable because the Landmark Towers owners were challenging "the creation of [MMD] to include the Landmark [Towers] *and the associated levies*." *Id.* (emphasis added). And the *Landmark* division found the levy was unenforceable against the Landmark Towers owners because the levy was an unconstitutional special assessment. *Id.* at ¶ 33.

¶ 67 Here, MMD's claim for declaratory relief was premised on the contention that the levy was a special assessment that could not be imposed on the vacant land because to do so would violate Century's due process rights. In evaluating whether MMD's claim fell within the reach of section 11-57-212, we see no material distinction between the essence of MMD's claim and the claim made in *Landmark*.

¶ 68 The district court did not err by rejecting the argument that section 11-57-212 barred MMD's claims.

2. Section 31-25-538(2), C.R.S. 2024

¶ 69 Bondshares and UMB next argue that the district court erred by concluding that section 31-25-538(2) did not bar MMD's claims. Section 31-25-538(2) provides that "[a]ny action brought with respect to . . . levying of any assessments . . . taken under this part 5 shall be commenced within thirty days" of "issuing [the] bonds." § 31-25-538(2). The district court held that the statute did not apply because MMD's claim was not brought under part 5 of title 31, article 25, which applies to "special improvement districts," and MMD is not a special improvement district. Moreover, the court noted that MMD could not have been acting under part 5 because the bond documents were completed before part 5 was amended to allow special districts to establish a special improvement district.

¶ 71 On appeal, Bondshares and UMB assert that MMD cannot have it both ways — that is, it cannot argue, on the one hand, that the levy was a special assessment and also argue, on the other hand that section 31-25-538(2) does not apply to its claim.

¶ 72 At first blush, Bondshares and UMB's consistency argument seems persuasive. But it fails on closer examination.

¶ 73 Bondshares and UMB do not argue that MMD is, or ever was, a special improvement district. Indeed, they concede that it has always been a special district. And Bondshares and UMB also concede that in 2008, when the mill levy was authorized, special districts like MMD were not authorized to act with the powers of a special improvement district.[1] Not surprisingly then, none of the paperwork related to the bonds make any reference to section 31-25-538(2). That is because MMD had no authority to act as a special improvement district and did not purport to do so.

¶ 74 Nevertheless, Bondshares and MMD argue that the district court was bound to apply section 31-25-538(2) as if MMD had been created as a special improvement district before the resolution authorizing the mill levy was passed. As we understand its

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[1] In 2009, special districts were granted authority to form special improvement districts within their boundaries by following certain procedures. *See* § 32-1-1101.7, C.R.S. 2024; Ch. 81, sec. 2, § 32-1-1101.7, 2009 Colo. Sess. Laws 298-99. The record contains no evidence that MMD ever formed a special improvement district within its boundaries.

argument, it reasons that because *Landmark* concluded in 2018 that the mill levy was and is a special assessment, we must now assume that MMD properly imposed a special assessment under section 31-25-538(2) when it issued the bonds. Alternatively, they contend that indenture and mill levy resolutions should be deemed subject to section 31-25-538(2) as of 2018, when the *Landmark* decision became final. But Bondshares and UMB cite no authority supporting these arguments, and we are aware of none.

¶ 75 Ironically, during the course of the *Landmark* litigation, the defendants in that case — including UMB — argued that the court should refuse to recognize the mill levy as a special assessment because MMD had no authority to impose special assessments. In rejecting this argument, the division reasoned:

> Defendants also argue the levy couldn't have been a special assessment because, when [MMD] was created, special districts didn't have statutory authority to impose special assessments. But the fact [MMD] wasn't authorized to impose special assessments doesn't mean it didn't do so. As discussed, the nature of the levy is determined by its purpose and characteristics. If the purpose and characteristics of a levy show that it's a special assessment, then that's what it is. In the end, even if defendants are right about the state of the law at the time of the election, that means only that there's another reason for declaring the special assessment invalid.

¶ 76 *Landmark*, ¶ 33 n.7. Switching horses, Bondshares and UMB now ask us to apply section 31-25-

538(2) as though MMD was acting within its authority to impose a special assessment.

¶ 77 Bondshares and UMB's current position is the product of misinterpreting or misapplying the reasoning of *Landmark*. That decision did not conclude that the mill levy was a properly authorized special assessment in 2008, or that it became a properly authorized special assessment once *Landmark* was announced. Rather, the division concluded that MMD had no authority to impose the special assessment that it sought to impose, whether in 2008 or 2018.

¶ 78 In sum, MMD took no action in this case as a special improvement district, and nothing about the decision in *Landmark* transforms the invalid special assessment into a validly authorized and adopted special assessment within the purview of section 31-25-538(2). Thus, the district court properly concluded that the statute did not bar MMD's declaratory judgment claim.

D. Bondshares and UMB's Counterclaims

1. Colorado Constitution Article XI, Section 6(1)

¶ 79 Bondshares and UMB argue that article XI, section 6(1) of the Colorado Constitution precluded MMD's claim that the mill levy could not be assessed against the vacant land. They argue that the bonds were a general obligation debt that could not be repealed until the indebtedness was "fully paid or discharged."

a. Standard of Review and Applicable Law

¶ 80 We review de novo the district court's interpretation of the Colorado Constitution. *Qwest Corp. v. Colo. Div. of Prop. Tax'n*, 2013 CO 39, ¶ 11. The relevant portion of the Colorado Constitution provides, "No political subdivision of the state shall contract any general obligation debt by loan . . . except by adoption of a legislative measure which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged." Colo. Const. art XI, § 6(1).

b. Analysis

¶ 81 As we have previously concluded, the mill levy was and is a special assessment. A general obligation debt exists only when specific circumstances are satisfied, including that "the obligation requires use of revenue from a tax otherwise available for general purposes." *Fischer v. City of Colorado Springs*, 260 P.3d 331, 335 (Colo. App. 2010). Consistent with its status as a special assessment, the mill levy was not available for general purposes.

¶ 82 In an effort to avoid this conclusion, Bondshares and UMB return to their argument that, when adopted, even though it was not a general obligation debt with respect to the Landmark Towers property, it was a general obligation debt as applied to the vacant land. But we reject this contention for the reasons previously stated: a tax cannot qualify as a general obligation against some of the taxing authority's property at the time that it is adopted while simultaneously qualifying as a special assessment against other property within the jurisdiction. The mill levy, since adoption, was and remains a special assessment.

¶ 83 Thus, the district court did not err by rejecting the argument that MMD's declaratory judgment claim was barred by article XI, section 6(1).[2]

2. Unjust Enrichment

¶ 84 Finally, Bondshares and UMB argue that the district court erred by rejecting their unjust enrichment claim.

¶ 85 Bondshares and UMB argue that, even if the mill levy is an unenforceable special assessment, the bond proceeds unjustly enriched MMD. Therefore, they contend, they should be allowed to recover against MMD under a theory of unjust enrichment because "it would be inequitable for the benefit to be retained without payment of the value."

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[2] Having reached this conclusion, we need not and do not address MMD's alternative argument that the bonds have been discharged by virtue of the *Landmark* decision combined with the judgment entered in this case. At oral argument, counsel for MMD acknowledged that the entry of the district court's declaratory order stating that the bond resolution and trust indenture are void and the debt was discharged was not necessary to resolve the question of whether the mill levy could be imposed against the vacant land. Bondshares and UMB did not directly appeal this declaration; instead they contested the declaration only as it relates to the enforcement of the mill levy against the vacant land. Having rejected those contentions regarding the enforceability of the mill levy on other grounds, we need not and do not reach the question of whether the district court erred by declaring the bond resolution and trust indenture void and the bond debt discharged.

a. Standard of Review

¶ 86 "Unjust enrichment claims require that courts make extensive factual findings to determine whether a party has been unjustly enriched. Because careful consideration of particular circumstances is required in unjust enrichment claims, we [review] trial court determinations for abuse of discretion." *Lewis v. Lewis*, 189 P.3d 1134, 1140 (Colo. 2008) (citation omitted).

b. Analysis

¶ 87 We perceive no abuse of discretion in the district court's determination that MMD was not unjustly enriched.

¶ 88 As a starting point, all parties acknowledge the general principle that equitable claims — such as unjust enrichment — cannot be invoked to enforce a void contract with a governmental entity. *See Falcon Broadband, Inc. v. Banning Lewis Ranch Metro. Dist. No. 1*, 2018 COA 92, ¶¶ 47-48 (citing *Normandy Ests. Metro. Recreation Dist. v. Normandy Ests., Ltd.*, 553 P.2d 386, 388-89 (Colo. 1976)); *Rocky Mountain Nat. Gas, LLC v. Colo. Mountain Junior Coll. Dist.*, 2014 COA 118, ¶ 31 ("[W]here a contract is void because it is not within a municipality's power to make, the municipality cannot be estopped to deny the validity of the contract."). But Bondshares and UMB rely on *Normandy Estates* to argue that an unjust enrichment claim should be recognized under the circumstances of this case. We conclude that their reliance on *Normandy Estates is* misplaced.

¶ 89 In *Normandy Estates*, a special district approved and disbursed bond proceeds to acquire an existing swimming pool and the associated acreage, but the district did not pay the full purchase price to the seller. 553 P.2d at 387-88. The special district claimed the contract to purchase was not enforceable because it had neglected to hold an election on the issue. *Id.*

¶ 90 The supreme court held that, although the contract was invalid because the required election was not held, the seller was nevertheless able to recover the land in question *or* the balance of the purchase price because allowing the special district to keep the land without paying the full, agreed-upon price would be unjust. *Id.* at 389-90.

¶ 91 But the supreme court cautioned that the exception it was recognizing was extremely narrow:

> We note, however, that the recovery authorized by this decision is a limited one. The party dealing with the municipal entity must have acted in good faith, and the contract must be one not positively condemned by law, as distinguished from one which is merely invalid because of want of power to contract or because statutory procedure was not followed in its making. We hold, further, that there can be no recovery where the property is no longer in existence or identifiable, or where it cannot be restored to the plaintiff without serious damage to other property of the municipality.

Id. at 390 (citations omitted).

¶ 92 These conditions preclude the recognition of an unjust enrichment claim in this case. The money is gone. MMD does not retain any funds generated by the sale of the bonds. No improvements were ever built on the vacant land. And we have affirmed the district court's findings that the portion of the bonds that was paid out to Davidson or various vendors provided no benefit to MMD or the vacant land. The remainder of the bond proceeds were returned to MMD or used to reduce the interest and principal of the bonds. Thus, the proceeds of the bonds are "no longer in existence or identifiable." *Id.*

¶ 93 Moreover, the district court concluded that the equities in this case favor MMD:

> [MMD] itself is a victim of Davidson's self-dealing and fraud. Bondshares is a sophisticated institutional investor that knowingly took on higher risk investment opportunities; it knew that the Service Plan wasn't feasible; knew that Davidson was exerting pressure to gain free use of the bond proceeds, but simply left it up to UMB to deal with that pressure; and, should have seen that there were virtually no controls in place regarding requests for payment by the District, which were in fact requests for payment by Davidson.

¶ 94 Given the district court's detailed factual findings, which are supported by the record, we cannot say that it abused its discretion by rejecting Bondshares and UMB's unjust enrichment claim.[3]

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[3] Given our disposition, we do not need to address Bondshares and UMB's argument that section 24-10-113(3), C.R.S. 2024, provides a mechanism to collect the sums it asserts remain due on the bonds. That statute provides a mechanism for a special district to impose a mill levy to satisfy a judgment. It is not relevant here because no judgment has been entered against MMD.

III. Disposition

¶ 95 The judgment is affirmed.

JUDGE FOX and JUDGE HARRIS concur.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS AFTER TRIAL, ARAPAHOE COUNTY DISTRICT COURT (MAY 2, 2024)

DISTRICT COURT,
ARAPAHOE COUNTY, COLORADO

MARIN METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision of the State of Colorado,

Plaintiff,

v.

COLORADO BONDSHARES –
A TAX EXEMPT FUND, and UMB BANK, N.A.,

Defendants,

and

CENTURY AT LANDMARK, LLC,

Interested Party.

Case No. 22CV30866

Date Filed: May 2, 2024

Division 15

Before: Ben L. LEUTWYLER, III,
District Court Judge.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS AFTER TRIAL TO THE COURT

After a trial to the Court, and after considering the pleadings, testimony, exhibits, and applicable law, the Court makes the following findings of fact, conclusions of law, and orders[1].

SUMMARY OF CASE

This case has a long and complex history. Marin Metropolitan District (the "District"), Colorado Bondshares ("Bondshares"), and UMB Bank have been parties to prior civil actions. In brief, the District issued bonds which were purchased by Bondshares. The District seeks an order from the court declaring its obligations pursuant to the bonds, and it seeks a permanent injunction against Bondshares from compelling the District to impose a levy on the 11.4 acre lot owned by Century, the sole landowner in the District, to repay the bonds. Bondshares asserts that the District should be required to impose the mill levy set forth in the parties' applicable agreements and also seeks a judgment against the District for the unpaid principal and interest.

FINDINGS OF FACT

The parties called five witnesses and introduced 62 exhibits, most of which were stipulated exhibits. The Court has considered the exhibits, the testimony and credibility of the witnesses, the arguments of

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[1] The Court took under advisement motions made by each party pursuant to C.R.C.P. 50. Those motions are now moot.

counsel, and pertinent portions of the file, and makes the following findings of fact[2]:

I. The Marin Metropolitan District

1. The District was formed in 2007. TMO Stip. Fact No. 1; *Landmark Towers Association, Inc. v. UMB Bank, N.A.*, 2011-CV-1076 (Arapahoe Cty. Dist. Ct. Sept. 6, 2013) ("Landmark Initial District Court Order") (PX23)[3] at 4. The District originally contained the following taxable parcels located within the City of Greenwood Village: the Landmark Towers, consisting of 271 residential condominium units, and an 11.4-acre vacant lot (the "Unimproved Lot"). *See* District's Petition for Organization ("Petition") (PX7) at 8; District's Service Plan ("Service Plan") (PX6) at 21. The Landmark Towers contained two high-rise towers of condominiums. Landmark Initial District Court Order (PX23) at 2. The Unimproved Lot, which Zachary Davidson proposed converting into residential community known as the "European Village," consisted of over 11 acres of vacant land. *Id.* at 3-4.

2. Davidson organized the District in order to fund construction of certain local public improvements, including streets, sidewalks, curbs, gutters, water lines, sanitation lines, and landscaping, that were intended to benefit only the European Village. *See* Petition (PX7) at 2-3; Service Plan (PX6) at 3-5.

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[2] Citations to trial testimony are to the rough transcript provided to the Court at the conclusion of each day of testimony.

[3] The trial exhibits have been uploaded to the case with the designation PX for Plaintiff's exhibit and DX for Defendants' exhibit. Reference in this Order follow that numbering convention.

3. On August 27, 2007, the Greenwood Village City Council approved the District's Service Plan. TMO Stip. Fact No. 2; see Service Plan (PX6) at 2. The Service Plan described the planned public infrastructure improvements that would be undertaken as part of the development of the European Village project, and how the District would issue bonds to fund those improvements. Service Plan (PX6) at 2-3.

4. In a supplement to the Service Plan, the City of Greenwood Village made clear that the District could not spend funds on improvements that Zachary Davidson, through his other entities, had agreed to provide the City in a Development Improvement Agreement and Sales Rebate Tax Agreement entered into in 2005, before the District was created. Supplement to Service Plan (PX193); 10/16/23 (Rough) Trial Tr. 287:12-290:23; *see also* PX190.

5. Following judicial certification of a vote of eligible electors (all associates of Davidson), the District was officially organized on December 7, 2007. Landmark Initial District Court Order (PX23) at 5.

6. On May 27, 2008, the District enacted a "Bond Resolution" authorizing the issuance and sale of its "Limited Tax General Obligation Bonds" and approving the documents allowing for that sale. See Bond Resolution (PX10) at 1. On June 1, 2008, the District issued $30,485,000 in Limited Tax General Obligation Bonds, Series 2008 (hereafter the "Bonds") under a Trust Indenture. TMO Stip. Fact Nos. 3 and 4; *see* Trust Indenture (PX14) at 16.

7. The Trust Indenture provided that the District would annually impose a debt service mill levy (the "Demanded Mill Levy") on "all taxable property" within

the District in order to generate revenue to pay back the 2008 Bonds (and associated expenses such as interest). Trust Indenture (PX14) at 12. Today, the mill levy is the sole remaining mechanism to repay the Bond debt.

8. The Limited Offering Memorandum explains that the 2008 Bonds were issued pursuant to Title 32, Article 1 and Title 11, Article 57 of the Colorado Revised Statutes. Limited Offering Memorandum (PX11).

9. Bondshares purchased the 2008 Bonds on June 12, 2008. TMO Stip. Fact No. 5; *see* Bondshares Answer ¶ 17. The proceeds from the sale of the Bonds were specifically earmarked for the infrastructure improvements in the District's Service Plan. Trust Indenture (PX14) at 1.

10. The Landmark Towers were included in the District in order to provide "a sufficient tax base" to fund the improvements. Landmark Initial District Court Order at 4 (PX23); *see also* 10/17/23 (Rough) Trial Tr. at 21:14-18 (Simmons) (Q. " . . . without the Towers, would it have been possible for the unimproved lot by itself to pay back the bonds that were issued in 2008? A: At that point — no. Absolutely not"). Fred Kelly, Bondshares' portfolio manager, testified that Bondshares would not have purchased the Bonds if the Landmark Towers were not included in the District.

11. John Simmons, the District's accountant from early 2009 until 2022, testified that the Unimproved Lot made up only 10% of the District's assessed value in 2013—the rest of the assessed value was the Landmark Towers. Marin Metropolitan District 2013 Mill Levy Certification (PX203); Property Taxes, Tax Year 2013, Parcel No. 032589175 (PX152).

12. Mr. Kelly testified that even if the European Village had been built out as projected, the Cash Flow Analysis for the Landmark Towers showed that at least 50% of the scheduled debt service payments would be covered by the Landmark Towers. He testified that Bondshares never expected the European Village property alone to sustain a $30 million debt burden. Indeed, it expected the District to have to refinance to pay off the full debt even if the European Village was built, which it was not.

13. The Trust Indenture earmarked $13 million in Bond proceeds to be used for improvements to the Unimproved Lot, which would be returned if Zachary Davidson in his capacity as developer—failed to obtain financing for and construct "at least 221,575 square feet of the manor home units and brownstone units" in his European Village project. Trust Indenture 5.3(g) (PX14) at 36.

14. As Mr. Kelly testified, Bondshares reviewed the Limited Offering Memorandum (PX11) related to the investment before investing.

15. The Limited Offering Memorandum laid out the risks of the investment, including that there was no guarantee of a buildout such that the mill levy could generate the projected revenue. Limited Offering Memorandum (PX11) at 11-12. The Cash Flow Analysis in the Limiting Offering Memorandum was an estimate based on a number of assumptions (such as absorption and property value), including that the Facilities would be fully built out and that Landmark Towers were part of the tax base. *Id.* at 192-194. There was no guarantee that the numbers in the Cash Flow Analysis would pan out. *Id.* at 192.

16. Both a District board member, Cynthia Myers, as well as the District's accountant, Mr. Simmons, testified that although $8 million was disbursed to Davidson to construct the public improvements described in the Service Plan, none of those improvements were ever constructed. Moreover, Ms. Myers and Carl Nelson, Century's Colorado Division President, have each visited the property multiple times since 2017 and inspected it as recently as 2023, and both testified that none of the planned improvements are present on the Unimproved Lot.

17. Zachary Davidson's development companies filed petitions for bankruptcy in August 2009. Zachary Davidson filed a personal petition for bankruptcy on or about February 1, 2010. Material Event Notice (PX67) at 6-7.

18. Greenwood Village's records do not reflect that any of the planned improvements were ever built. In fact, according to the City, the only public infrastructure on the Unimproved Lot is a "sidewalk and some curbing," installed long before the District was formed and repaired by the City in 2018. CORA Request (PX216) at 1.

19. On October 17, 2011, the District and the City of Greenwood Village amended their Intergovernmental Agreement which had been executed in order to implement the provisions of the Service Plan to require the District to suspend all actions to build the planned Improvements. See First Amendment to Intergovernmental Agreement (PX65), ¶ 2.

20. As of 2011, Bondshares knew and Mr. Kelly admitted that the District had no funds to build any public infrastructure within the District. UMB's rep-

resentative, Mark Heer, further testified that UMB carried the 2008 Bonds as default since 2011.

21. All remaining undisbursed proceeds from the sale of the 2008 Bonds $13 million were returned to Bondshares on December 1, 2011, because development milestones for the European Village were not met. TMO Stip. Fact No. 9. The bond proceeds that had been in the Capitalized Interest account and most of the Reserve Fund account were used to pay interest to Bondshares.

22. $8,000,000 of the Bond proceeds was placed in the Facility Fund and was used to reimburse the Developer, Everest Marin, LLP, one of Davidson's entities.

23. Davidson was indicted on December 27, 2012, for embezzlement and misuse of public funds (in particular, the proceeds from the 2008 Bonds), Material Event Notice (PX67) at 5, and soon thereafter, he died by suicide. *UMB Bank, N.A. v. Landmark Towers Ass'n*, 2017 CO 107, ¶ 15, 408 P.3d 836, 839; (PX123).

24. Boundshares was aware of Davidson's bankruptcies and indictment. Material Event Notice (PX67) at 5-7; *see also* June 12, 2008 Reporting Agreement (PX68) (requiring UMB to provide notice to Bondshares).

25. The District imposed the Debt Service Mill Levy each year from 2008 to 2013. TMO Stip. Fact No. 6. The District used this mill levy revenue to pay interest as well. As Mr. Simmons testified, the District paid $11,584,587 in interest and $13,000,000 in principal on the 2008 Bonds between 2008 and 2014. Mr. Simmons further testified that since 2011 the District has no funds available to pay the bond debt.

II. The Landmark Litigation

26. In 2011, Landmark Towers owners filed a lawsuit seeking to enjoin the District from assessing the Demanded Mill Levy against their property. TMO Stip. Fact No. 7. The lawsuit named Bondshares, UMB Bank, and the District as defendants. TMO Stip. Fact No. 8; *Landmark* Initial District Court Order (PX23) at 1.

27. Following a bench trial in this judicial district, the court issued a permanent injunction on September 6, 2013, that enjoined the District from imposing the Demanded Mill Levy on the Landmark Towers in order to repay the 2008 Bonds. TMO Stip. Fact No. 10; *Landmark* Initial District Court Order (PX23) at 28. The court explained that a "subsequent owner/tax-payer[] [can] challenge the obligation to pay real property taxes on the grounds that the special district has provided no actual benefit or increment of value to their property." PX23 at 25. As relevant here, the court held that the Demanded Mill Levy was unlawful because "[n]otwithstanding whatever speculative or illusory benefit might have been found in the Service Plan," "nothing was constructed or done to benefit anyone." *Id.* at 24, 26.

28. The District has not imposed the Debt Service Mill Levy on any property since the Landmark injunction was issued on September 6, 2013. TMO Stip. Fact No. 11. Bondshares and UMB were aware that the District has not imposed the Demanded Mill Levy since at least that time. Mr. Simmons also confirmed that the District has not received Specific Ownership

Tax (and cannot) since it stopped imposing the operating mill levy in 2016.[4]

29. On May 31, 2018, the Colorado Court of Appeals upheld the injunction enjoining the District from imposing the Demanded Mill Levy on the Landmark Towers to pay the 2008 Bonds. *Landmark Towers Ass'n v. UMB Bank, N.A.*, 2018 COA 100, ¶ 33, 436 P.3d 1139, 1148; (PX124) (hereinafter "*Landmark II*"); *see also id.* at ¶ 15 (explaining that the case was on remand from the Colorado Supreme Court following a reversal of the Court of Appeals on a statute-of-limitations issue). First, in paragraph 33 of the opinion, the court held that the Demanded Mill Levy was a special assessment, and not an ad valorem tax, because the Demanded Mill Levy "funds purely local improvements directly and specially benefitting only the European Village Project" and "does not fund 'the general expenses of government."' *Id.* at ¶ 33 (quoting *Bloom v. City of Fort Collins*, 784 P.2d 304, 307 (Colo. 1989)). The court recognized that those intended improvements never came to fruition, as Davidson's company "didn't build any of the promised European Village Project infrastructure." *Id.* at ¶ 12. The court then held that "Colorado law makes clear that imposing a special assessment on property that doesn't specifically benefit from the funded improvements violates those property owners' rights due process." *Id.* at ¶ 29. And "[b]ecause the Landmark owners' properties don't receive any special benefit from the improvements,"

[4] Nonetheless, only Specific Ownership Tax revenue generated from the Demanded Mill Levy was pledged to Bondshares; thus, Bondshares has no claim to such taxes that could be generated from any other levy. Trust Indenture (PX14) at 17.

the court concluded that "the District's imposition violates their rights to due process." *Id.*

30. Bondshares sought Colorado Supreme Court review of the Court of Appeals' special assessment holding, but its petition for a writ of certiorari was denied. *UMB Bank, N.A. v. Landmark Towers Ass'n*, 2019 WL 1321166 (Colo. Mar. 25, 2019). The case was remanded to the District Court, which entered final judgment on September 3, 2020.

31. On August 23, 2021, the City of Greenwood Village petitioned to exclude the Landmark Towers from the District.

32. This Court granted the exclusion motion in a nunc pro tunc order dated effective December 27, 2021. TMO Stip. Fact No. 14. Only the Unimproved Lot remains within the boundaries of the Marin District. TMO Stip. Fact No. 15. As the owner of the Unimproved Lot, Century is the sole landowner in the District.

III. Century Buys the 11.4 Acre Lot from the FDIC in 2016

33. FirsTier Bank acquired the Unimproved Lot at a 2010 foreclosure sale following Davidson's bankruptcy. The Colorado Davidson of Banking subsequently closed FirsTier. The Federal Deposit Insurance Commission ("FDIC") then became the receiver for FirsTier, and thereby acquired the Unimproved Lot in 2011. Material Event Notice (PX67) at 6.

34. In March 2016, while this Court's permanent injunction barring imposition of the Demanded Mill Levy was in effect and on appeal, Century purchased the Unimproved Lot from the FDIC for $10,000,000.

IV. Bondshares Demands that the District Impose the Mill Levy

35. On September 25, 2020, Bondshares sent a letter to counsel for the District claiming that the District had an outstanding balance of "approximately $18 million, plus interest, due and owing under the Trust Indenture." *See* 9/25/2020 Demand Letter (PX25) at 2. The letter claimed that "the District is still required to set a debt service mill levy on the unimproved lot within the District for repayment of the Bonds," and "demand[ed] that . . . the District set an operating mill levy and a 50-mill debt service levy on the unimproved lot within the District for collection in 2021." *Id.* Bondshares asserted that if the District did not "take[] action . . . in connection with setting" these levies, it was "prepared to purse all rights and remedies available . . . under the Trust Indenture and by law, including the pursuit of breach of contract and other remedies against the District." *Id.*

36. On December 4, 2020, Bondshares sent a second demand letter to counsel for the District. 12/4/2020 Demand Letter (PX26). The letter "reiterate[d Bondshares'] demand that the District board . . . certify . . . an operating mill levy and a 50-mill debt service levy on the unimproved lot within the District by no later than December 15, 2020." *Id.* at 2 (emphasis omitted). Bondshares also repeated that it was "prepared to purse all rights and remedies available . . . under the Trust Indenture and by law, including the pursuit of breach of contract and other remedies against the District." *Id.*

37. On June 4, 2021, Century filed a complaint for declaratory and injunctive relief against the District, Bondshares, and UMB to prevent the District from impo-

sing the Demanded Mill Levy on Century's Unimproved Lot. *Century at Landmark, LLC v. Marin Metropolitan District, et al.*, 2021CV30989 (Arapahoe Cty. Dist. Ct.). That action was filed less than a year after Bondshares made its demands. But Bondshares argued that the case was not ripe. On September 24, 2021, Judge Volz of this judicial district dismissed Century's action for lack of ripeness because the court was uncertain "whether or not the District will in fact impose such a levy, what the amount of the levy will be, and many other questions concerning the basis for any such levy if it is imposed." Order Re: Motion to Dismiss Complaint, *Century at Landmark, LLC v. Marin Metropolitan District, et al.*, 2021CV30989 (Arapahoe Cty. Dist. Ct. Sept. 24, 2021) (PX130).

38. The District filed its complaint in the present action for declaratory and injunctive relief on May 13, 2022. That complaint named Century as an interested party. This action was filed less than two years after final judgment in the Landmark case and less than two years after Bondshares made its demands.

V. The Unimproved Lot Has Received No Benefit from the Expenditure of Bond Funds

39. The evidence and testimony presented at trial demonstrates that the Unimproved Lot has received no benefit from the 2008 Bonds. Specifically:

a. John Simmons, the District's accountant from early 2009 to 2022, testified that no actual public infrastructure was built, despite the expenditure of funds, and no benefit was conveyed to the Unimproved Lot by those expenditures. To the extent that Davidson was reimbursed for any eligible public expenses, those expenses were in the nature of "soft" design and planning costs that did not benefit the Unimproved Lot. According to Mr. Simmons, the District believed in 2010 that some of Davidson's soft cost expenditures "could have" eventually provided a benefit to the property if the infrastructure was built. But, as Mr. Simmons testified, the District ultimately wrote off the entire value of its reimbursements to Davidson in its 2012 financial statement, some 11 years ago, because those expenditures did not lead to the construction of physical improvements in the District and therefore "these assets have no value, that's why they were written off." 10/717/23 (Rough) Trial Tr. At 79:12-13 (Simmons); District 2012 Financial Statement (PX204) at 17. Mr. Simmons also testified that the Unimproved Lot is not more valuable today because of the bond funds expended. He also confirmed that no public infrastructure has been built on the Unimproved Lot that has been conveyed to the District or any other government entity.

b. Century's representative, Carl Nelson, is a licensed engineer who has twenty years of experience in real estate, including working with special districts. Mr. Nelson reviewed the District's Service Plan and Trust Indenture, personally visited the Unimproved Lot multiple times, and in 2023 inspected the Unimproved Lot and testified he did not see any evidence of the improvements contemplated in the Service Plan being built, or any benefit to the property from the expenditure of bond funds. Mr. Nelson also personally reviewed records provided by the City of Greenwood Village relating to public infrastructure and private construction of any kind on the Unimproved Lot and found no evidence that any public improvements were made to the property by the District. Moreover, Mr. Nelson explained that to the extent bond proceeds were used to fund any design, engineering, planning, or other "soft" expenses, the Unimproved Lot has received no benefit from those expenditures because they never resulted in any physical improvements on the property.

c. The District's representative, Cindy Myres, has personally visited the Unimproved Lot multiple times since 2017, has inspected the property, and concluded that Facilities contemplated by the Service Plan were not built. Ms. Myers has also reviewed the District's records and permit records from the City of Greenwood Village and determined that the District has not built any public infrastructure on the Unimproved Lot.

d. Chad Cox, a founding District Board member and architect for Davidson's European Village project, testified in the 2013 *Landmark* Trial that "None of the improvements for the Marin site were ever constructed," All Parties' Designation of Testimony, Ex. B (7/30/2013 Landmark Trial Tr. at 73:18-22 (Cox)) (filed October 13, 2023).

e. In the course of resolving the Landmark litigation, the District Court, the Colorado Court of Appeals, and the Colorado Supreme

Court each observed that, Davidson's company "never constructed any of the infrastructure that was to serve European Village [i.e., the Unimproved Lot]." *UMB Bank*, 2017 CO 107, ¶ 15; *see also Landmark* Initial District Court Order (PX23) at 24 ("nothing was ever constructed by" the District); *Landmark II*, 2018 COA 100, ¶ 12 ("In the end, [Davidson's company] didn't build any of the promised European Village Project infrastructure."). Mr. Simmons testified to the same effect.

f. 2015 photos of the Unimproved Lot show a vacant lot with nothing but a dilapidated temporary private sales center on the property. Asset Management Committee Decision (DX1052).

g. 2022 aerial photos of the Unimproved Lot in the Broker Opinion of Value show no improvements. Broker Opinion of Value (PX188).

h. 2023 photos of the Unimproved Lot taken by Cindy Myers show an empty, grassy lot. Photos Taken by Cindy Myers (PX141, PX142, PX143).

i. Review of the Unimproved Lot on Google Earth photos taken in 2022 confirms that no improvements have been made, that the property is an empty lot. Google Earth (PX146).

j. The City of Greenwood Village has no record of any improvements on the Unimproved Lot funded by the District. In response to a CORA request from Century for all documentation related to public infrastructure on the Unimproved Lot, Greenwood Village stated that "the only public infrastructure on the property is a sidewalk and some curbing." (PX216) at 1; *see also id.* at 3 (sidewalk repair in 2018). A follow-up request for documents related to any construction or demolition on the property yielded no further evidence of District-bond funded public improvements. Records Received from Second CORA Request (PX222). Moreover, Greenwood Village identified no public improvements conveyed to or from the District. If any improvements had been built on the Unimproved Lot, Greenwood Village would have records of permits/final inspection reports.

k. Bondshares has admitted that construction on the Unimproved Lot have not been completed:

   i. "The District has not completed or caused the completion of the Facilities[.]" 12/1/22 Defs. First Am. Answer and Countercl. ¶ 94.

   ii. "The District failed to build the facilities." 5/19/23 Defs' Mot. Summ. J. 2.

   iii. "[The District] failed to complete construction of the Facilities as required." 9/18/23 Proposed Joint TMO 3.

40. In addition, Bondshares has offered no concrete contrary evidence that actual public improvements have been made to the Unimproved lot. Bondshares' representative, Fred Kelly, has visited the Unimproved Lot several times and is not aware of any improvements that were build on the Unimproved Lot. Mr. Kelly stated: "I'll be honest with you, I still don't know what

was actually built." 10/17/23 (Rough) Trial Tr. At 169:21-171:2 (Kelly). He said that the European Village project "did not get started" and did not "break[] ground." *Id.* at 167:9-15 (Kelly).

41. Bondshares' general and specific claims of actual improvements were disproven at trial:

a. As Mr. Simmons testified and the Service Plan shows, any demolition that was done on the Unimproved Lot in 2008 to remove the existing office building was not reimbursable from the Bond funds under the Service Plan. *See* Service Plan (PX6) at 29 (showing the costs of "existing building demolition" were not eligible to be paid from District funds). Mr. Simmons testified that the Developer, not the District, should have paid those costs.

b. Mr. Nelson further explained at trial that any water lines on the Unimproved Lot were not public, but were private and therefore ineligible for reimbursement with Bond funds.

c. A detention pond on the property, Mr. Nelson explained, was constructed before the Marin District existed. PX222 at 116 (showing detention pond existed on 2005 survey).

d. Any improvements to East Berry Avenue were ineligible for reimbursement with Bond funds because they were listed in the Landmark Development Improvement and Sales Tax Rebate Agreement (PX190) at 2, and therefore expressly excluded under the Supplement to the District's Service Plan

(PX193) because they were the Developer's responsibility.

e. The private sales center was a temporary building used by Zachary Davidson for purely private purposes to sell units in the Towers and homes in the European Village Project. It was demolished by Century in 2019 because it was deemed a nuisance by Greenwood Village. Nuisance Abatement Notice (PX176) at 1 ("A former temporary sales office and accompanying courtyard, landscaping, driveway and fencing exist from the time they were installed in 2006. All of these improvements were meant to be temporary. The temporary sales office site was intended to be demolished by 2010 and the site restored at that time.").

f. A permit was obtained to fill in a detention pond on the property in 2012, after the Bond funds had been returned. Thus, any work on filling in detention ponds did not use Bond funds. Greenwood Village CORA Response (PX222) at 106 (showing permit was dated May 24, 2012).

g. Landscaping improvements made north of Berry Avenue were for the Landmark Towers, not the Unimproved Lot. 10/16/23 Trial Tr. (Rough) at 286:7-19 (Simmons).

h. Mr. Simmons also testified that landscaping surrounding the Sales Center was temporary, PX176 at 1, served no public purpose, and provided no benefit to the Unimproved Lot.

i. Any between the planned private community associations for Landmark Towers and Century properties that would have allowed future residents on the Unimproved Lot to share in the associations' private amenities of the Landmark Towers did not serve the general public. Further, an order from a final judgment in 2017 vacated the reciprocal use easement. *Century Land Holdings, LLC v. 7677 E. Berry Ave. Associates, LP et al.*, Case No. 2016CV31446, Final Judgment re Combined Motion for Entry of Order of Dismissal (PX173).

j. As Ms. Myers and Mr. Simmons testified, no improvements were ever conveyed by the District to the City or any other government entity.

k. Design, engineering, architecture, and other "soft" costs incurred by Davidson did not enhance the value of the property. Mr. Simmons testified that nobody has located these design plans, and in any event, they have no value today. As Mr. Nelson explained, soft costs are generally not reimbursable from public funds when no actual improvements have been made. Cost of issuance payments to lawyers and underwriters are not physical improvements benefitting the Unimproved Lot.

l. The Court finds that no evidence has been presented that any actual benefit has been conveyed to the Unimproved Lot from the expenditure of bond funds by Davidson and/or the District.

VI. The District Was a Victim of Davidson's Fund

42. Davidson acted for his own benefit when he misappropriated the Bond proceeds. Davidson used the proceeds to fund personal expenses, and he was indicted for his misuse of the funds. As Mr. Simmons testified, Davidson's misuse of funds harmed the District and was an act *against* the District.

43. Davidson structured the agreements in a way that allowed him to submit requisition forms to obtain reimbursement without getting District approval for the reimbursements. All Parties' Designations of Testimony, Ex. A (8/30/11 Preliminary Injunction Hearing Tr. at 80 (Cox)) (filed October 13, 2023). He submitted 6 Requisitions to UMB and was paid out $8,000,000 by UMB of all the funds he requested in 2008. By the time John Simmons was hired, UMB had already disbursed $8,000,000 in proceeds to Davidson. When Mr. Simmons and the District learned of Davidson's misuse of funds, it initiated an investigation by hiring Guy Ford in August 2009, an engineer from Independent District Engineering Services ("IDES"). All Parties' Designations of Testimony, Ex. B (7/30/13 *Landmark* Trial Tr. at 207:22-25 (Cox)).

44. Mr. Ford was hired by the District in order to determine what portion of the funds that were disbursed to Davidson were eligible as public expenses for tax purposes, as opposed to being private expenditures. He was not hired to audit Davidson's requisitions. Nor was he hired to determine whether the money spent provided any benefit to the Unimproved Lot. Indeed, the vast majority of the expenses he reviewed were design, engineering, and other "soft costs" for a project that was never built.

45. Zachary Davidson obstructed Mr. Ford's ability to write his reports, delaying Mr. Ford's report and causing the District to be so late in submitting its auditing report that the state withheld tax revenue. All Parties' Designations of Testimony, Ex. A (8/30/11 Preliminary Injunction Hearing Tr. at 118-120 (Cox)); Ex. B (7/30/13 *Landmark* Trial Tr. at 207-214, 268-275 (Cox)). The Board accepted the reports under pressure because they were past the requirements for their audit report and the state was withholding tax revenue. *Id.*, Ex. B (7/30/13 *Landmark* Trial Tr. at 212, 270 (Cox)); Ex. A (8/30/11 Preliminary Injunction Hearing Tr. at 119 (Cox)).

46. Following the completion of Guy Ford's reports, the District Board imposed a lien on the property of Everest Marin L.P., one of Davidson's companies. PX202.

47. Ford's reports do not establish that the remaining $7.7 million (those beyond the $348,000 the report found was misappropriated) benefitted the District or the Unimproved Lot. Moreover, the reports only found that certain types of expenses could be eligible to be public expenditures. According to Chad Cox, Davidson misspent close to $4 million out of the $8 million. All Parties' Designations of Testimony, Ex. A (8/30/11 Preliminary Injunction Hearing Tr. at 157 (Cox)). The 2013 District Court concluded that it strongly suspected more than $348,000 was misspent and much more was spent on soft costs or private expenses. Mr. Simmons agreed with this conclusion at trial.

48. The testimony at trial also showed that the expenditures in the reports were for items that were specifically excluded by the Service Plan—including

costs attributed to "Construction" and "Demolition (Building)," both of which related to the removal of an office building previously on the European Village site, which was an ineligible expense under the Service Plan. Service Plan (PX6) at 29. Mr. Ford also credited costs that were meant for private purposes (such as temporary landscaping for Davidson's private sales center), costs that were not on the Unimproved Lot but on the Landmark Towers property, and soft costs that never resulted in any physical improvements to the Unimproved Lot. Mr. Ford was not aware of the Supplement to the Service Plan disallowing the District from paying expenses that the Developer was supposed to pay under the separate Development Improvement Agreement. All Parties' Designations of Testimony, Ex. C (7/31/13 *Landmark* Trial Tr. at 16:5-8 (Ford)). Moreover, Carl Nelson, an experienced developer and trained engineer, testified that the costs deemed eligible by Mr. Ford do not appear reasonable by industry standards, notwithstanding representations to the contrary in Mr. Ford's reports.

49. Indeed, as Mr. Simmons testified, the District ultimately wrote off the entire value of the reimbursements it made to Davidson, recognizing that it had received no value from Davidson's expenditures. Marin Financial Statement (PX204).

50. Bondshares and UMB failed to mitigate the risk that the facilities might not be built and bear some responsibility for Davidson's misuse of funds. Bondshares was advised of the risk that the facilities might not be constructed when it purchased the Bonds. Limited Offering Memorandum (PX11). Under the terms of the Trust Indenture, UMB was required to approve Davidson's Bond fund requisitions. Trust Indenture

(PX14) at 35. But, as Mr. Heer testified, UMB accepted the requisitions for reimbursement without doing any investigation into whether improvements were ever built:

> "Q. And UMB didn't review the lines items and the requisitions to determine if they qualify as public expenditures under the District service plan, right? A. Correct. It had no duty to do so. Q. And UMB didn't check with the inspect the direct property for confirm construction completed before providing the funds, right? A. Correct, again, no duty. Q. And UMB didn't check with the District that they approved the requisition, right? A. No duty to do so, no. Q. So if you saw a signature from Davidson who was the authorized issuer representative, you provided the bond funds? A. So long as what was required under the indenture was provided, then, yes, we provided the bond funds. Q. So sitting here today, you have no actual knowledge as to whether any public improvements were actually built on the unimproved lot, correct? A. Me personally, no."

10/17/23 (Rough) Trial Tr. at 203:19-16 (Heer).

51. To the extent the requisition process outlined by the Trust Indenture lacked appropriate safeguards, Bondshares was aware of and agreed to that process nonetheless. *Landmark II*, 2018 COA 100, ¶¶ 39-40 ("Bondshares should've seen that 'virtually no controls were in place regarding the requests for payment by Marin and specifically that there was no process for verification of the accuracy or validity of the claims for payment made."').

52. Bondshares has significant experience investing in special district bonds. Fred Kelly, the Fund's portfolio manager, has invested in hundreds of special districts. Bondshares does its due diligence on its deals, weighs the risks, and invests in higher risk bonds because of the potential higher return. In this case, Mr. Kelly admitted that he made a bet on an unknown developer Zachary Davidson whose European Village project was "lofty."

53. Based on the evidence and testimony presented at trial, the Court agrees with the Court of Appeals in *Landmark II* that Bondshares was a "sophisticated institutional investor with some knowledge of both the risk and the lack of benefit to the Landmark Project, and the means and incentive to obtain more." *Landmark II*, *Id.* ¶ 41.

54. Based on the evidence and testimony at trial, the Court further agrees with the Court of Appeals in *Landmark II* that: "Bondshares, a sophisticated institutional investor with a great deal of experience in this area, 'had full opportunity to evaluate the viability of Mr. Davidson and his entities which were the moving forces behind the Marin district'"; "Bondshares knew that Davidson was exerting pressure to gain free use of the bond proceeds, but simply left it up to UMB, the trustee, to deal with that pressure"; "Bondshares believed that the financing plan in the Service Plan wasn't feasible, and purchased the bonds on terms differing substantially from these called for by the Service Plan"; and "Bondshares knew that, absent some 'magical ability' to collect the $23.8 million balloon payment at the end of the bonds' term, that payment wouldn't be made and the bonds would have to be refinanced." *Landmark II*, *Id* at ¶ 40.

55. Moreover, the Court finds that the District began taking the position that the Demanded Mill Levy was unenforceable once the *Landmark* Court's legal holdings became final. At that point, a final judgment established the Demanded Mill Levy's status as a special assessment, and the District, as required by law, accepted that proposition.

56. Mill levy revenue is calculated by multiplying the mill levy rate (here, 50 mills has been demanded) by the assessed value of the property, divided by 1000. The assessed value is the appropriate value to calculate mill levy revenue, not actual market value or resale value. If the District were to have imposed the Demanded Mill Levy on the Unimproved Lot from 2014 to the present, it would only have resulted in less than $1 million in total revenue. 10/17/23 (Rough) Trial Tr. at 30:7 (Simmons); (Arapahoe County Real Property Tax Statements (PX152-PX161); PX228 ([Demonstrative Only] Mill Levy Revenue)). Yet, Bondshares asks for approximately $34 million in damages, with $3,764.13 of additional interest accruing each day, so that the debt is growing in perpetuity with no way of the District paying back this amount based on the Demanded Mill Levy.

57. In its public filings, Bondshares values the Marin Bonds at approximately $1.57 million, a reflection of what Bondshares thinks the Bonds could sell for. 10/17/23 (Rough) Trial Tr. at 163:16-20 (Kelly).

CONCLUSIONS OF LAW

I. The District is Entitled to Declaratory Judgment

Bondshares' request to impose a mill levy upon the Century Parcel cannot be granted. The Court previously ruled that Bondshares and UMB Bank are precluded from asserting that any levy imposed by Bondshares to raise funds to pay the bond indebtedness is an ad valorem tax rather than a special assessment. *See*, June 7, 2023 Ruling on Plaintiff's Motion for Summary Judgment. The Court's ruling was grounded upon the ruling from the court of appeals in *Landmark II*. In *Landmark II* the court of appeals stated that "a tax funds such public uses as 'schools, the support of the poor, . . . police and fire protection, . . . health sanitation, . . . waterworks and the like.' Special assessments, in contact, fund local improvements that benefit particular property." *Id.*, ¶ 31 (internal citations omitted). Given that ruling, to prevail on its claim for declaratory judgment Bondshares must establish that the Century Parcel has benefitted from the Bond funds.

The Court finds that Bondshares has presented insufficient evidence to establish any improvement directly benefiting the Century Parcel. Bondshares has pointed to the "soft costs" which it characterizes as "construction in progress". The "soft costs" relate to planning and design of the anticipated improvements to the parcel. Had any infrastructure construction been started then the costs associated with the planning and design of that infrastructure may have been a benefit to the parcel. However, it is absolutely clear that no infrastructure construction was ever initiated.

The Court finds that those soft costs did not benefit the parcel or add to the value of the parcel.

Bondshares has also argued that the demolition of a vacant office building on the parcel was funded by Bond funds and benefited the parcel. The Court finds that the costs of demolition were not eligible expenses for reimbursement pursuant to the Service Plan. PC006 at 29. On behalf of Bondshares, Mr. Kelly testified that Bond funds may have been used to construct the temporary sales center, and that it is possible the retention pond might have been created without the City of Greenwood Village knowing about it. The Court finds Mr. Kelly's testimony to be unacceptably speculative. Finally, while testimony was presented regarding an increase in value of the Century parcel, there was no evidence presented attributing the increase in value to expenditures of Bond funds.

The Court finds that there have been no improvements to the Century parcel and that the Century parcel has received no benefit from the expenditure of Bond funds. In the absence of improvements or benefits to the Century parcel, the only property within the District, the District is precluded from imposing a mill levy against the Century parcel. *See Id.*, ¶ 29 ("Colorado law makes clear that imposing a special assessment on property doesn't specially benefit from the funded improvements violates those property owners' rights to due process.").

II. Defendants' Counterclaims

A. First, Second, Fourth, and Fifth Counterclaims

Defendants have asserted counterclaims for breach of Bond Resolution and breach of Trust Indenture (first, second, fourth, and fifth counterclaims). To prove a breach of contract claim, a plaintiff must prove: (1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff. *Marquardt v. Perry*, 200 P.3d 1126, 1129 (Colo. App. 2008).

The District asserts that these counterclaims are barred by the six-year statute of limitations found in C.R.S. section 13-80-103.5. While the Court agrees that section 13-80-103.5 provides the applicable limitation period, the Court finds that the District cannot assert it here. "The established law in Colorado and the predominating rule elsewhere is that, where obligations of this kind are payable only in a special manner and exclusively from a particular fund derived from special assessments or taxes, the defense of limitation is not available unless all of the administrative steps have been taken to create the fund. *Denver-Greeley Val. Irr. Dist. v. McNeil*, 80 F.2d 929, 931 (10th Cir. 1936). Because the District has not previously taken all of the administrative steps to create the fund with which to repay the Bonds, the statute of limitations is not available to it.

However, regardless of the applicability of the statute of limitations the Court finds that there has been no breach by the District because its performance under these contracts is impossible. Impossibility of performance is a defense to a breach of contract action. *City of Littleton v. Employers Fire Ins. Co.*, 453 P.2d 810, 812 (Colo. 1969). The first, second, fourth, and fifth counterclaims assert that the District has breached its obligations by failing to set a required mill levy on the 11.4 acre parcel, failing to collect any ad valorem property taxes from that parcel, and failing to pay down the Bonds. Am. Comp. and Counterclaims, ¶¶ 65,70,79, 84. The only way for the District to perform its obligation to collect on a required mill levy is to impose a special assessment on the Century Lot. The Court has ruled that imposing a special assessment on the Century Lot would violate Century's constitutional right to due process and that the District is enjoined from imposing a special assessment. Therefore, the Court finds that it is impossible for the District to: 1) construct the improvements anticipated by the bond resolution and trust indenture; 2) the mill levy required by the contracts at issue in this case; 3) impose or collect a special assessment from the 11.4 acre lot.

The Court finds in favor of the District on Defendants' first, second, fourth, and fifth counterclaims.

B. The Obligation to Pay the Bond Debt is Unenforceable Under the Plain Terms of the Trust Indenture

Given the unconstitutionality of the Demanded Mill Levy, the District's alleged obligation to pay the bond debt is unenforceable. "In construing a contract, [the court's] primary goal is to determine and give effect to the intent of the parties. [Courts] determine the parties' intent primarily from the language of the instrument itself." *Klun v. Klun*, 442 P.3d 88, 92 (Colo.

2019) (internal citation omitted). Critically, the Trust Indenture limits Bondshares' right to payment to money raised from a mill levy. *See* 10/17/23 (Rough) Trial Tr. at 138:5-19 (Kelly) ("A. That is our sole source of payment, property tax and specific ownership tax, interest earnings, those kinds of things. Q. So if the District fails to impose the mill levy, then there is no opportunity for you or your shareholders to get their money back? A. That is correct."). The District cannot lawfully impose the Demanded Mill Levy and the Trust Indenture does not require or allow the District to use any other mechanism to pay back the remaining bond debt.[5]

Specifically, sections 2.2 and 7.1 of the Trust Indenture govern repayment of bond debt and limit repayment to funds from the "Trust Estate." The former, entitled "Source of Payment of the Bonds," provides that the District is "obligated to pay the principal of, and the premium (if any) and interest on the Bonds *from the Trust Estate*." Trust Indenture (PX14) at 16 (emphasis added). Section 7.1 similarly provides that the District:

> [C]ovenants that it will cause the Trustee to pay the principal of, premium (if any) and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein, . . . *provided*

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[5] Although Bondshares' first and second counterclaims allege breach of the Bond Resolution, and not the Trust Indenture, Bondshares correctly recognizes that the obligations the District agreed to undertake in the Bond Resolution incorporate the terms of the Trust Indenture. 5/19/23 Defs. Statement of Undisputed Material Facts ¶ 24. As such, the terms of the Trust Indenture govern the counterclaims related to the Bond Resolution as well.

> *that the principal, premium (if any) and interest are payable by the [District] solely from the Trust Estate*[.]

Id. at 46 (emphasis added). Section 7.1 then states: "Nothing in the Bonds or this Indenture shall be considered as assigning or pledging any other funds or assets of the [District] *other than the Trust Estate*." *Id.* (emphasis added).

As defined in the Trust Indenture, the "Trust Estate" encompasses four elements. Trust Indenture (PX14) at 14. The central element is the District's "Pledged Revenues," *id.*, i.e., "all revenues derived from property Taxes and Specific Ownership Taxes," *id.* at 11, two types of taxes that in turn are defined as money raised via the Demanded Mill Levy, *id.* at 11-13. In other words, without the Demanded Mill Levy, the District cannot raise any Pledged Revenues, the most significant avenue by which the District is obligated to pay back the Bonds and the only mechanism contained in the Trust Estate for ongoing payment.

The other three elements of the Trust Estate do not apply. These elements are: first, the "Trustee's right, title and interest in and to and remedies under the Bond Documents," Trust Indenture (PX14) at 14, which merely refers to Bondshares' and UMB's right to sue for enforcement of the Trust Indenture and does not expand the sources of payment available thereunder; second, various accounts on deposit with UMB that are funded solely from Pledged Revenues, proceeds from the Bonds, and any investments UMB made of that money, *id.*; *see id.* at 35-45; and third, any additional property the District pledged as security for the Bond debt, *id.* at 14, which the District did not do.

Thus, the District's repayment obligation is limited to funds from the Trust Estate, and due to the return of $13 million to Bondshares and depletion of the Capitalized Interest and Reserve funds, the outstanding repayment obligation is effectively limited to the proceeds of the Demanded Mill Levy. By agreeing to a limited repayment mechanism, Bondshares tethered recouping its investment to the success of Davidson's development plans and the District's ability to raise funds via the Demanded Mill Levy. The Limited Offering Memorandum issued in conjunction with the Bond Resolution and Trust Indenture expressly warned that "[p]rospective investors . . . should consider . . . [the] risks involved with . . . limitations on the District's ability to levy ad valorem property taxes to generate the Property Taxes necessary to provide for payment of debt service," and that "the scope, pace and extent of real estate development and sales of condominium units and homes within the District" would determine how much revenue the District could raise. Limited Offering Memorandum (PX11) at 10, 12.

Following Landmark, that eventuality has come to pass. The central purpose of the bond transaction raising funds to construct public infrastructure to be repaid by the imposition of the Demanded Mill Levy—has been frustrated, and the District's duties under the contract are therefore discharged. *See* Restatement (Second) of Contracts § 265 ("Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged[.]"); *Beals* *v. Tri-B Assocs.*, 644 P.2d 78, 80-81 (Colo. App. 1982) (adopting § 265).

Bondshares cannot square the circle of the Demanded Mill Levy's illegality by saying money could be raised to repay the 2008 Bonds via a mill levy to collect a judgment. *Landmark II* instructs that "the purpose and characteristics of the levy," and not the levy's "from" or "label," determine whether the levy is a tax or an assessment. 2018 COA 100, ¶ 30. The purpose of any judgment levy on Bondshares' counterclaims would be merely to repay the 2008 Bonds, something the Court has already held constitutes a special assessment. This lack of any means to raise money to lawfully pay back the debt further dooms Bondshares' counterclaims. Re-labelling the mill levy a mill levy to pay a judgment, rather than the bond debt, does not change its actual purpose and characteristics.

C. Bondshares' Third Counterclaim

Bondshares' third counterclaim invokes Article XI, § 6(1) of the Colorado Constitution to assert that the District's debt, and corresponding pledge to impose the Demanded Mill Levy, is irrepealable. That provision states that "[n]o political subdivision of the state shall contract any general obligation debt . . . except by adoption of a legislative measure which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged[.]" For two independent reasons, that provision is inapplicable here.

First, Article XI, § 6(1) does not apply because the 2008 Bonds do not constitute "general obligation debt." A debt qualifies as "general obligation debt" only if it "requires use of revenue from a tax otherwise available for general purposes." *Fischer v. City of Colorado*

Springs, 260 P.3d 331, 335 (Colo. App. 2010) (citing *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 878-879 (Colo. 1983)). As explained above, the Demanded Mill Levy is a special assessment, not a tax otherwise available for general purposes.

Second, even if the 2008 Bonds do constitute general obligation debt, Article XI, § 6(1) provides that a debt can be repealed if "fully paid or *discharged*" (emphasis added). Interpretation of constitutional provisions "begin[s] with the text." *Bickel v. City of Boulder*, 885 P.2d 215, 227 (Colo.1994). Here, "the use of the disjunctive 'or' reflects a choice of equally acceptable alternatives." *Willhite v. Rodriguez-Cera*, 274 P.3d 1233, 1238 (Colo. 2012). In other words, full repayment is a sufficient, but not necessary, condition for repeal of general obligation debt. Such debt may also be repealed if it is discharged. The word "discharge" means "to release from an obligation." Merriam-Webster Online Dictionary, https://tinyurl.com/mw3c2p9f. Because imposing the Demanded Mill Levy is unconstitutional, unconstitutional contracts are unenforceable, and impossibility of performance is a defense to breach of contract, the District has effectively been released from any obligation to impose the Demanded Mill Levy.

The treatment of "fully paid" and "discharged" as disjunctive conditions each sufficient on their own to trigger repeal of a debt is confirmed by the maxim that "an interpretation which harmonizes different constitutional provisions is favored over one that would create a conflict between them," *Bickel*, 885 P.2d at 229. Under Bondshares' reading. Article XI, § 6(1) would essentially become a "super provision," overpowering the Due Process Clause (if the mill levy is viewed as a special assessment) of both the Colorado Constitution and the United States Constitution by forcing Century to pay an exaction otherwise barred by those provisions. On the other hand, if a debt is "discharged" when repayment of the debt would be unconstitutional, every provision of the Colorado Constitution has equal effect. Under the harmonization principle, Bondshares' reading is untenable. Therefore, the Court rules against Bondshares on its third counterclaim.

D. Bondshares' Sixth Counterclaim

Bondshres' sixth counterclaim is promissory estoppel. The Court finds that the contracts here are void, as they require the District to impose a special assessment in violation of the Colorado and United States Constitutions. "[W]here a contract with a governmental entity is void . . . recovery under any theory, except the limited exception [*See*, *Normandy*, *infra*] not applicable in this case." *Falcon Broadband, Inc., v. Banning Lewis Ranch Metro. Dist. No. 1*, 474 P.3d 1231, 1243, 2018 COA 92, ¶ 48; *See also Harding v. Heritage Health Products Co.*, 98 P.3d 945 (Colo. App. 2004) ("[E]quitable doctrines may not be used to enforce an illegal void agreement."); *Menzel v. Niles Co.*, 281 P. 364, 365 (Colo. 1929) ("A contract which is contrary to public policy is void because it is contrary to public policy, and neither party to the contract is estopped from questioning it merely because the other party has parted with a property right or rendered service in reliance upon it."). This principle of law bars Bondshares' promissory estoppel claim. However, the Court will address the equities of the claim as well.

Bondshares' argument is that the Bond Resolution and Trust Indenture were authorized by law at the time they were executed, and that equity requires that the District not benefit from its breach of these contracts and that Bondshares be repaid. Bondshares relies on *Normandy Estates Metropolitan Recreation District v. Normandy Estates, Ltd.*, for its position that, when a party provides money to a governmental entity, it is entitled to be repaid even if the contract is determined to be invalid or unlawful. However, *Normandy* is distinguishable from the facts presented here.

The Normandy court stated that "[u]nder the circumstances here, it would be grossly inequitable to permit the district to continue to enjoy the benefits of the contract without fully compensating [the defendant]." 553 P.2d 386, 389 90 (Colo. 1976). The important circumstances in Normandy include the existence of recreational facilities that were funded by money lent to the metropolitan district. Under those circumstances the supreme court adopted the rule that "where property is furnished to a municipal corporation under an unenforceable contract, and the municipality has not paid for the property, then the seller or person supplying the property may, upon equitable terms, recover it in specie." *Id.*, at 389. After announcing the foregoing rule, the supreme court then stated

> the recovery authorized by this decision is a limited one. The party dealing with the municipal entity must have acted in good faith, and the contract must be one not positively condemned by law, as distinguished from one which is merely invalid because of want of power to contract or because statutory procedure was not followed in its making. We hold, further, that there can be no recovery where the property is no longer in existence

> or identifiable, or where it cannot be restored to the plaintiff without serious damage to other property of the municipality.

Id. at 390.

Here, the money lent to the District was not used to purchase land or buildings, as in Normandy. It was lent to fund improvements to land that was already within the District. As stated previously, the enforcement of the contract would be an unconstitutional denial of due process to Century. The Court finds this significantly different than merely exceeding the authority of a relevant statute. Additionally, the property (the money lent) is no longer in existence or identifiable, and it could not be restored to Bondshares without serious damage to Century, the only property owner within the District.

The power to fashion an equitable remedy lies within the discretion of the trial court. *La Plata Medical Center Assoc., Ltd. v. United Bank of Durango*, 857 P.2d 410, 420 (Colo. 1993). In *Landmark II* the court of appeals upheld the trial court's finding that it would be inequitable to levy the Landmark owners. Both the trial court and the court of appeals recognized Bondshares' argument that it had done nothing wrong and would suffer millions of dollars in losses, but also recognized that the Landmark owners similarly "did nothing wrong, were actively defrauded, and suffered violations of their rights to due process." *Landmark II*, 2018 COA 100, ¶ 39.

Similarly, the Court finds that the equities favor the District. The District itself is a victim of Davidson's self-dealing and fraud. Bondshares is a sophisticated institutional investor that knowingly took on higher risk investment opportunities; it knew that the Service Plan wasn't feasibile; knew that Davidson was exerting pressure to gain free use of the bond proceeds, but simply left it up to UMB to deal with that pressure; and, should have seen that there were virtually no controls in place regarding requests for payment by the District, which were in fact requests for payment by Davidson. The Court, in its discretion, finds against Bondshares on its claim for promissory estoppel.

E. Bondshares' Seventh Counterclaim

Bondshares seventh counterclaim of unjust enrichment fails for the same reason its counterclaim of promissory estoppel fails. Unjust enrichment is an equitable claim. *City of Arvada ex rel. Arvada Police Dep't v. Denver Health & Hosp. Auth.*, 2017 CO 97, ¶ 37, 403 P.3d 609, 616. As stated in the preceding section, equity cannot be used to enforce a contract that is void as against public policy. *See Falcon Broadband, Inc., v. Banning Lewis Ranch Metro. Dist. No. 1*, *supra*.

F. Permanent Injunction

A party is entitled to a permanent injunction when it shows that: "(1) the party has achieved actual success on the merits; (2) irreparable harm will result unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause to the opposing party; and (4) the injunction, if issued will not adversely affect the public interest." *Saint John's Church in Wilderness v. Scott*, 194 P.3d 475, 480 (Colo. App. 2008). The Court will address each element in turn.

First, as explained above, the Court finds that the District has achieved success on the merits of this action. The Court has declared that the Demanded Mill Levy would be an unconstitutional special assessment to Century's unimproved lot.

Second, the Tenth Circuit has recognized that "[m]ost courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792 (2019). The imposition of the Demanded Mill Levy would violate Century's constitutional due process rights. The Court finds this to be an irreparable harm.

Third, the harm imposed upon Bondshares is limited. The Court does not intend to minimize the economic loss suffered by Bondshares and its investors; however, the contract has been found to be unenforceable. The injunction merely prohibits Bondshares from further attempts to collect on that unenforceable contract. Conversely, the District and Century will be harmed by the costs, financial and otherwise, of future litigation and threats of future litigation. Further, the Demanded Mill Levy would require Century to pay millions of dollars when it has received no benefit of the Bond funds.

Fourth, the Court finds that injunction will not adversely affect the public interest. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights. *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012) (internal quotes and citations omitted). Additionally, a permanent injunction will remove the uncertainty surrounding the issuance of the 2008 Bonds and make economic use of the 11.4 acre lot possible. improvements to the 11.4 acre lot are anticipated to be for residential purposes. It is beyond argument that providing residential opportunities is in the public interest.

Having considered the above four factors, the Court finds the District is entitled to a permanent injunction against the imposition of the Demanded Mill Levy on the Century (11.4 acre) lot.

SUMMARY OF ORDER AND JUDGMENT

1. The Court finds and declares that the Demanded Mill Levy is a special assessment.
2. The Court further finds that there have been no improvements to the Century parcel and that the Century parcel has received no benefit from the expenditure of Bond funds issued by Bondshares.
3. Because the Demanded Mill Levy is a special assessment and no benefit has been provided to the Century parcel, imposition of the Demanded Mill Levy to repay the Bond debt would be an unconstitutional violation of Century's due process rights.
4. The Court finds that the Bond Resolution and Trust Indenture are void and unenforceable.
5. The Court finds against Bondshares and UMB Bank on their counterclaims.
6. Because the Bond Resolution and Trust Indenture are void the District's obligation to repay the Bond debt is discharged.
7. Bondshares and UMB are permanently enjoined from attempting to compel the District to impose a levy or special assessment against

the 11.4 acres lot now owned by Century at Landmark, LLC.

Dated this 2nd day of May, 2024.

/s/ Ben L. Leutwyler, III
District Court Judge

ORDER DENYING PETITION FOR REHEARING, COLORADO COURT OF APPEALS (JULY 10, 2025)

COLORADO COURT OF APPEALS

Marin Metropolitan District,
a quasi-municipal corporation and political subdivision of the State of Colorado,

Plaintiff-Appellee,

v.

Colorado Bondshares – a tax exempt fund and UMB Bank, N.A.,

Defendants-Appellants,

and

Century at Landmark, LLC,

Appellee.

Court of Appeals Case Number: 2024CA1092

Arapahoe County 2022CV30866

Before: FOX, HARRIS and SCHUTZ, Judges.

ORDER DENYING PETITION FOR REHEARING

The PETITION FOR REHEARING filed in this appeal by:

Colorado Bondshares A Tax Exempt Fund and UMB Bank, N.A., Defendants-Appellants,

is **DENIED**.

Issuance of the Mandate is stayed until: August 8, 2025

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, the stay shall remain in effect until disposition of the cause by that Court.

BY THE COURT:

Fox, J.
Harris, J.
Schutz, J.

DATE: July 10, 2025

ASSET MANAGEMENT COMMITTEE DECISION—EXCERPTS (OCTOBER 12, 2023)

CENTURY
COMMUNITIES

ASSET MANAGEMENT COMMITTEE DECISION

PROJECT NAME:
LANDMARK VILLAGE
GREENWOOD VILLAGE, ARAPAHOE COUNTY, CO

GROSS MARGIN: 24.8%
BUDGET DATE: MAY 28, 2015

If approved by the committee, such approval is subject to the contingencies outlined below:

(1) Maximum Spending on Approvals, Architecture, Engineering. Etc. of $175,000.

[. . .]

. . . could cover the cost of the amenities required in our current site plan/budget, but ultimately feel it is most likely that this agreement will be mutually terminated and wit not be an issue.

vi <u>Maintenance and Access Easement</u>: We anticipate this easement will be eliminated through the quiet-title action, and believe it does not pose any material issue to the proposed development.

3. **<u>Deposit</u>**: The PSA states that $110k will become non-refundable once the Notice of Continuation has been provided. The balance of the deposit is subject to Century obtaining all approvals through the City.

4. **<u>Soils Conditions</u>**: The topography of the site will need to be further analyzed. Aztec Survey has conducted an updated topo survey showing current grades. Based on tying the grades to both East Berry (at the NW corner of the site) and the existing retaining wall, the site will need approximately 75k cubic yards of import. This is a preliminary number and will need be refined, and value engineered throughout the engineering process. This cost is included in the LD budget.

5. **<u>Existing Sales Office</u>**: Currently the property is unimproved, (outside of the existing sales center located at the northern portion of the site). The sales center, along with all the supporting infrastructure improvements, will need to be removed prior to construction. CTL has conducted asbestos testing of the sales center, and all results were negative. A typical demolition process can be done to remove the structures with no remediation required. This cost is included in the LD Budget.

6. **<u>Purchase of Marin Drive</u>**:

i. Century is anticipating an answer back from the Marin District on our offer to purchase the Marin Drive parcel ASAP during the week of 5/18/15.

ii. First American pulled title on this parcel. There does not appear to be any restrictions in place that would limit Century's use or ability to modify this parcel to its liking (outside of the City's requirements for access), except for a small sliver of tee "bulb" on the far west side that may need to stay in place to provide access from Marin Drive to the west connection with Quebec Street.

iii. Bob Kunz at Kelmore was out last week and we do not have an answer back on his portion of this parcel (the sliver).

7. Marin Metro District:

i. Mill Levy. We must assume that the current litigation will be in place for the foreseeable future and that the approved mill levy of 69 mills, for an approximate total of 170 mills, will be in place going forward. This mill levy does not include any maintenance for the common areas or individual units as that is proposed to come from either an HOA to be formed on the property or through a special assessment/fee from the Marin District to maintain the common areas.

ii. Litigation. We also must assume the current litigation will be in place for years and that we will be marketing and selling units with the "stigma" of existing litigation. However, we believe that the majority of buyers at this price point will not have an objection to this and, with the proper home purchase contract disclosure along with information/education for buyers on the risks associated, it will not impede sales.

iii Bonds. We have confirmed that DA Davidson originally sold the bonds and have a call with Sam Sharp on 5/20/15 to discuss how the bonds were sold and to obtain additional color on the situation.

8. **HOA**: If the Marin District does not agree to cover the common area maintenance management and costs through a fee or assessment, then the proposed project would need to form a HOA to maintain all common areas. The preference is to have the Marin District maintain those areas so that the risk of construction defect litigation can be reduced.

[. . .]

TKH ASSOCIATES INC. REPORT ON THE CENTURY COMMUNITIES LANDMARK TOWNHOMES—EXECUTIVE SUMMARY (OCTOBER 12, 2023)

HIGHEST AND BEST USE AND FISCAL ANALYSIS FOR CENTURY COMMUNITIES LANDMARK TOWN HOMES

GREENWOOD VILLAGE, CO

PREPARED FOR:
CENTURY COMMUNITIES

PREPARED BY:
THK ASSOCIATES, INC

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Economic & Market Research / Land & Development Planning Landscape Architecture / Community Planning & Design Golf Feasibility Analysis

EXECUTIVE SUMMARY

Residential Use Analysis

The following major assumptions have been made to estimate revenues for the 110 townhomes.

- The average unit price will be $750,000 and the total market value will be $82,500,000.
- The total assessed value will be $6,567,000 (7.096% of market value)
- The current Greenwood Village Mill Levy (exclusive of water and sewer) will remain constant at 2.932
- Property taxes to Greenwood Village will be $175 per unit or $19,254, annually
- Building permit fees will be $407,963 ($750,000 - $150,000 for land = $600,000. $3,233.75 for the first $500,000 plus $4.75 per $1,000 = $3,708.75 x 110
- The plan check fee is 65% of the building permit fee or $265,176 in total
- Use taxes are calculated on value less land ($82,500,000 - $16,500,000) = $66,000,000 * 60% for materials - $3,500 per unit exemption x 3.0% sales tax = $1,176,450
- Median household income is estimated at $214,286, 30% will be spent on retail expenditures, 20% of retail expenditures will be spent in Greenwood Village and the sales tax is 3.0%

- $44,429 in annual retail sales taxes will be realized by Greenwood Village from the Landmark townhomes residents
- At this time the debt portion of the Marin Metropolitan District has been temporarily suspended by court order. However the Counsel for the District, MaryAnn McGeady, expects this decision to be reversed by 2017 or 2018 and at that time the debt portion of the Mill Levy (59.5 mills) would be applicable to properties in the District, including the subject property
- The townhomes will be subject to the Marin Metropolitan District Mill Levy of 61.00 (1.5 operating and 59.5 debt) generating $400,587 in annual revenues for the District