

MEMORANDUM

Date: March 26, 2012
To: Bob Marshall, Chairman
Cc: Riverwood CDD Board of Supervisors
From: Calvin Teague, District Manager

Subject: Questions on turnover of CDD property to Community Association

I was requested to prepare a memo of what I felt were the opportunities to turn CDD property over to the Riverwood Community Association (RCA) specifically the roads and recreational facilities. As I have stated previously, as a governmental entity the CDD can't give public property away unless it is not needed by the District or it furthers their governmental purposes. We must keep in mind that there is a huge difference between a private homeowners association and a public special purpose district. The RCA is a private organization serving the interests of their members while the CDD is a local unit of government serving the specific public interests of it's residents. The bigger issue though is what impact such a transaction would have on the fact that the CDD assets were paid for with tax exempt bonds. By transferring ownership it brings the validity of the tax exempt status of the bonds into question and subject to inquiry by the IRS. I have posed several questions as asked and responded in a bulleted response for your review. Those questions and responses are as follows:

1. **When the bonds are paid off in 2014 the Activity Center has to come back to the HOA.**
 - No the Activity Center is owned by the CDD and financed by tax exempt bonds. Actually there are four public indebtedness issues that are still outstanding. Three of them mature in 2014 and the fourth (for the amenity center) in 2022.
2. **Can the Roads be Turned over to RCA to make them "truly" private roads?**
 - I believe that the roads can only be turned over if the CDD is dissolved under Ch. 190.046 and then that can only be done if there isn't any outstanding debt and if "all community development systems, facilities, and services that it is authorized to perform have been transferred to a general-purpose unit of local government in the manner provided in subsections (4), (5), and (6)" In this case that would be Charlotte County.
3. **Can the District be reduced in size to remove all assets except the Utility System (Water and Sewer)?**
 - Another question is if the District can be reduced in size thus "abandoning" the roads or other assets owned by the CDD through contraction to the RCA? This is not an option after a District has been created and operational. It is usually done before any bonds are issued and is an option or tool to reduce the size of the CDD before it is ever built. I don't see how this would be done as the RWCDD is fully operational and not in a development stage.
 - If this **could** be done it would require a \$1,500 payment for submitting a petition. During review of the petition all regulatory agencies including SWFWMD, County Planning, Florida

Land and Water Adjudicatory Commission would have to approve. Also, under the statute, the District can't be reduced by more than 10% of the land in the initial District and in no event can it be greater than 250 acres of cumulative net basis.

- Yet another issue is that the roads were all dedicated to the CDD on the subdivision plats, we would likely have to go through a process with the County in order to vacate or amend those plats.
- As stated above though, the tax implications would over ride any opportunities to reduce the size of the District.

4. **The Activity Center is not "owned" by the RCDD, it is owned by the residents and needs to be in the RCA's name.**

- I don't understand this question as the CDD is made up of the Riverwood residents and is in the name of the **Riverwood CDD**. The tax implications of the bonds though prevent this from being a turned over to the RCA.

5. **Why would we want to have the RCDD own and manage the community assets?**

- There are various benefits in having the CDD own and operate the various assets of the community. As a local unit of government Riverwood CDD is exempt of all taxes including sales tax for purchases and any property taxes.
- The CDD has 100% protection for all community funds even above the FDIC guarantees.
- As a local unit of government, the CDD has sovereign immunity and any claims against Riverwood will be capped at the statutory limits set by the State of Florida. This is especially important when the liability exposure for roads, utilities and recreational facilities are considered.
- The CDD operates in the "sunshine" and there can be no backroom decisions made outside of a public meeting that has been advertised.
- Major investments for the enhancement of the community can be funded through tax fee bond issues or loans.
- During difficult financial times the CDD will always be able to collect assessments because of they are put on the tax roles and they have a superior position even above that of a mortgage.

Bob, I hope this meets your needs, as you can see this is an impossible task. This is a memo based upon my understanding of the Laws regulating Community Development Districts. If you feel a more formal response with specific reference to statutes and case law are needed I will contact Scott and have him prepare a legal opinion on this. If any other questions please contact me.

Respectfully,

Calvin Teague
Riverwood District Manager