

**MINUTES OF JOINT WORKSHOP
MEDITERRA NORTH AND SOUTH
COMMUNITY DEVELOPMENT DISTRICTS**

The Boards of Supervisors of Mediterra North Community Development District and Mediterra South Community Development District held a Joint Workshop on **Monday, April 22, 2013 at 10:00 a.m.**, in the **Sun Room at The Club at Mediterra, 15755 Corso Mediterra Circle, Naples, Florida 34110.**

Present for Mediterra North were:

Joseph Kaenzig	Chair
Brian Neary	Vice Chair
Frank Godshall	Assistant Secretary
Dan Abrams	Assistant Secretary

Present for Mediterra South were:

Kenneth Nails	Chair
Kenneth Tarr	Vice Chair
Bill Rowe	Assistant Secretary
Michael Bishko	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Jonathan Johnson (via telephone)	District Counsel
Tom Hart	MCA Counsel

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the joint workshop to order at 10:42 a.m., and noted, for the record, that Supervisors Kaenzig, Neary, Godshall and Abrams were present, in person for Mediterra North. Supervisor Van Tassel was not present. Supervisors Nails, Tarr, Rowe and Bishko were present, in person for Mediterra South. Supervisor Luby were not present.

SECOND ORDER OF BUSINESS

Discussion: Potential Use of Bond Proceeds for Community Irrigation Facilities

Mr. Nails indicated that this matter relates to a potential litigation issue, brought to the Boards' attention by Mr. Abrams.

Mr. Abrams stated that there is potential evidence of fraud, on the part of Bonita Bay, with respect to the irrigation system that was installed, provides irrigation to both CDDs and is currently owned by RCS. He noted that RCS is a for profit corporation owned by members of Bonita Bay Group.

Mr. Abrams explained that the possible fraud relates to tax exempt money being used to pay for the irrigation system; the law states that tax exempt monies cannot be used to fund for a "for profit" enterprises. Secondly, the CDDs' money was used to pay for an asset owned by RCS. Mr. Abrams indicated that he was unable to have a second meeting with the party who has inside information about this matter.

Mr. Abrams stated that Mr. Adams was asked to review check requisitions from the first few years, to identify anyone that might have been involved in installing the irrigation system. He discussed the pump house on the golf course and a recharge well; it was discovered that those items were turned over to Bonita Bay; they own the pipes, have easements, etc. Mr. Abrams explained that RCS is not regulated and can increase prices anytime they want.

Mr. Abrams indicated that Mr. Adams reviewed the requisitions and, although they are not in very good shape, he found approximately \$460,000 of possible spending on the irrigation system. Mr. Abrams suspected that the amount could be more, once the records are further investigated. He felt that it will be difficult to receive voluntary input and assistance from local vendors, due to Bonita Bay's strong influence in the area.

Mr. Abrams reported that a meeting was held with the MCA and it was concluded that, financially, The Club had no involvement and the MCA had modest involvement; therefore, the CDDs are most affected. Mr. Abrams discussed the matter of whether this is a securities law violation with Mr. Bret Sealy; Mr. Abrams voiced his opinion that it is.

Mr. Abrams stated that the Districts have bills and this appears to be fraud because the bills and checks were issued to vendors that install pipe; however, they cannot be identified as specifically related to the irrigation pipes. He noted that the scale of costs is not known; the records need further investigation. Mr. Abrams felt that, if the Districts want to pursue this, they should hire a forensic accountant to review the requisitions and determine what would be the best outcome for the Districts. He felt that the best outcome would be for the Districts to own

the pipes and the pump house and RCA can either pay back what they took or the funds can be recovered as a charge on the water sold to residents, over the years. Mr. Abrams recommended that the Districts hire a litigator. He suggested a budget allocation to hire the forensic accountant. Mr. Abrams feels that it could be a large payoff, if the information proves correct; he has no reason to believe that it is anything other than correct.

Mr. Tarr asked if the legal problem is because RCS remained the owner of the pipes. Mr. Abrams explained that Bonita Bay did not pay for the pipes, the CDDs paid. Mr. Abrams confirmed that the legal issue relates to CDD money being used to pay for pipes that RCA currently owns. Mr. Abrams summarized that RCS, a “for profit” corporation, used CDD monies to pay for assets that were conveyed to them.

Mr. Tarr wondered if this was a simple oversight by Bonita Bay Group.

Mr. Adams discussed the typical requisition process and conceded that the records are not in good condition. He was able to locate 11 requisitions that contain applications for payment of what appears to be irrigation transmission lines.

In response to a question, Mr. Adams indicated that Severn Trent was the district management company, at the time, and Mr. Jim Ward was the District Manager who handled these items and signed off on payment of the requisitions. It appears that most of the activity was related to the 1999 and 2001 bonds for Mediterra South and the 2001 bond for Mediterra North. Mr. Adams agreed that, if the Districts want to go forward, a forensic accountant should be hired to review the requisitions.

Mr. Johnson asked Mr. Adams to speak to the fact that it is not uncommon in district construction to have private improvements constructed under a district’s construction contract. Mr. Johnson explained that, normally, there would be a cost share agreement, or similar document, where the developer reimburses the district for the private work performed; however, no agreements were found, in this case. Mr. Johnson asked Mr. Adams if he found evidence of any repayments by the developer, was the possibility eliminated or not yet found. Mr. Adams indicated that the possibility of repayment could exist but an agreement does not exist. Mr. Adams confirmed that he has not reviewed the financial records to determine if there were any repayments by the developer.

Mr. Johnson reminded that all activities that take place regarding this matter be conducted pursuant to the Sunshine Law, until such time as the Districts are parties to pending

litigation. He noted that the Boards or Board Members are not permitted to meet outside the Sunshine to discuss potential litigation or strategy until a lawsuit is filed. If the Districts will explore the legal options and a forensic accounting of the matter, Mr. Johnson recommended that the matter be handled through District Counsel, in order to keep it privileged; otherwise, directly contracted items will be a matter of public record. Mr. Johnson felt that this matter might involve more than just the developer; the District Engineer and former District Manager might be involved. The Districts might have several causes of actions; however, there could be statute of limitations issues.

Mr. Johnson noted that this type of litigation is not inexpensive; therefore, District Counsel would develop a budget for the Boards' consideration.

Mr. Bishko asked if the end result could be that the tax exempt bonds are deemed to not be tax exempt. Mr. Johnson agreed that such a finding is a possibility; generally, if less than 5% of the overall bond issue was spent on noneligible, private activities, there are no repercussions on the tax exempt status of the bonds.

Mr. Adams confirmed that the figures are not close to the 5% threshold. According to the IRS tax code, the amount would be 5% or \$5 million, whichever amount is greater.

Mr. Kaenzig asked if the refinanced bonds are impacted. Mr. Johnson stated that there is no impact on the potential refinancing of the 2003 bonds because none of those funds were used. Noting that the Boards and Staff were not aware of this issue at the time the other bonds were refinanced, Mr. Johnson stated that, if they had known, it would have created a disclosure issue, potentially impacting liability and pricing of the transaction. Mr. Johnson felt that there is no liability problem, since the issue was discovered after the refinancing.

Mr. Godshall asked if there is a statute of limitations on fraud. Mr. Johnson stated that it depends on the specific facts at issue.

Mr. Nails pointed out that, at the time, both Boards were comprised of Bonita Bay representatives. Mr. Johnson acknowledged the comment but stated that the "who" and "what", from depositions and discovery, would determine the strength of the Districts' case. Mr. Adams pointed out that the requisitions in question were not brought before the Boards for approval; an administrative process was adopted, as part of the issuing documents for the bond. It allowed requisitions to be handled administratively between the District Engineer and District Manager. Mr. Adams stated that the District Engineer was WilsonMiller.

In response to a question, Mr. Adams indicated that Wrathell, Hunt and Associates became the District Manager in 2005. He further noted that the banking relationship remains with SunTrust and the trustee is still U.S. Bank.

Mr. Tarr felt that the amount in question should also include compound interest. He asked what other CDD projects Bonita Bay was involved in at the time. Mr. Tarr wondered if this was a simple error, due to the volume being processed, or if was typical. He stated that there is a big difference, in terms of fraud; a clerical error versus a design on the part of senior employees to defraud by using tax exempt funds.

Mr. Johnson agreed that there is a difference and stated that this information is found through discovery.

Mr. Tarr pointed out that only one (1) of the transactions relates to Mediterra North; therefore, Mediterra South would incur the majority of the costs to pursue, as ten (10) transactions are related to its bonds. Mr. Johnson stated that it depends on the allocation of the costs for the expenditures; it is probably appropriate to allocate legal expenses on a prorata basis.

Mr. Hart asked for confirmation that District Counsel is not the same as it was at the time this matter transpired. Mr. Adams stated that it is not.

Mr. Tarr reiterated that clerical errors are common, especially on a project of this size. He feels that if one intends to defraud, they do not do it for only \$400,000.

Mr. Abrams voiced his opinion that this is not a matter of a clerical error; it was a systematic effort to have the CDDs pay for installation of irrigation pipes.

Discussion ensued regarding the difficulty in proving fraud and other types of torts that are easier to prove. Mr. Hart felt that the Districts have a statute of limitations problem. He suggested disclosing the findings to Bonita Bay to see what they say in the matter; perhaps they want to avoid a lawsuit. A question was raised regarding whether the Board Members have a fiduciary responsibility to pursue this, now that it is known. Mr. Bishko asked about involving other CDDs, to determine if they discovered the same thing, or state and federal agencies to investigate the findings.

Mr. Johnson suggested that he, Mr. Adams and one (1) Board Member from either District, work together to locate a forensic accountant, determine the approximate budget to pursue this and how to structure the process to keep it privileged. He felt that there could be an issue; however, there appears to be incomplete records and lack of access to certain information.

Mr. Hart suggested that before engaging a forensic accountant, District Counsel should provide information regarding the statute of limitations. Mr. Johnson noted that it is difficult to develop a recommendation on the statute of limitations before investigating some of the facts and whether there are multiple causes of action, the types of action and the potential defendants.

It was suggested that the Districts could inform Bonita Bay of the issue and they might offer to pay what the Districts want.

THIRD ORDER OF BUSINESS

**Audience
Requests**

Comments/Supervisors'

There being no audience comments or Supervisors' requests, the next item followed.

FOURTH ORDER OF BUSINESS

NEXT MEETINGS:

- **Mediterra North CDD: May 15, 2013 at 1:30 P.M.**
- **Mediterra South CDD: May 15, 2013 at 11:30 A.M.**

The next meetings will be May 15, 2013 at 1:30 p.m., and 11:30 a.m., for Mediterra North and Mediterra South, respectively.


FIFTH ORDER OF BUSINESS

Adjournment

There being no further business to discuss, the meeting adjourned at 11:46 a.m.

MEDITERRA NORTH CDD

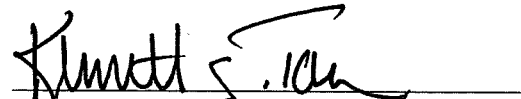

Secretary/Assistant Secretary


Chair/Vice Chair

MEDITERRA SOUTH CDD



Secretary/Assistant Secretary



Chair/Vice Chair