

RESOLUTION NO. 22
SOUTHSIDE COMMUNITY FACILITIES DISTRICT NO. 1

A RESOLUTION OF THE DISTRICT BOARD OF THE SOUTHSIDE COMMUNITY FACILITIES DISTRICT NO. 1, A COMMUNITY FACILITIES DISTRICT OF ARIZONA, ADOPTING A POLICY IN ACCORDANCE WITH ARS §48-721(B) FOR COLLECTION OF DELINQUENT ASSESSMENTS, SALE OF DELINQUENT PROPERTY AND ISSUANCE AND EFFECT OF THE SUPERINTENDENT'S DEED PRESCRIBED BY §§48-601 THROUGH 48-607 WHICH PROVIDES FOR VOLUNTARY PAYMENTS BY THE DISTRICT TO PURCHASE THE DELINQUENT LAND AT SALE IF THERE IS NO OTHER PURCHASER; SAID LAND SHALL BE STRUCK OFF TO THE DISTRICT AS THE PURCHASER BASED ON (AT ITS OPTION) PAYMENT OF THE REMAINDER OF THE FULL ASSESSMENT OR THE AMOUNT REQUIRED TO PAY THE INSTALLMENT THEN DUE (OR TO BECOME DUE) UPON THE BONDS ISSUED FOR THE ASSESSMENT (AND THEREAFTER TO PAY THE SUCCEEDING INSTALLMENTS AND INTEREST ON THE BONDS AS ARE PAYABLE); PROVIDING THAT IF ANY PROVISION IN THIS RESOLUTION IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, on March 23, 2006, the Town Council approved Resolution No. 1417 declaring its intention to form the Southside Community Facilities District (SCFD) No. 1 within Sections 27, 28 and 34, R1E, T14N, and Section 3, R1E, T13N, G&SRM, in accordance with ARS §48-701 et seq. (based on a General Plan filed with the Town Clerk and a petition signed by the owners of substantially more than 25% of land area within SCFD No. 1); and

WHEREAS, after a public hearing, the Council adopted Resolution No. 1425 (April 27, 2006) calling an election for June 27, 2006 by the registered voters and landowners within SCFD No. 1, asking whether to a) form SCFD No. I, b) issue bonds and levy ad valorem taxes therefor, and c) levy ad valorem taxes for operation and maintenance expenses; and

WHEREAS, at the election, a majority of the votes equal to the number of acres cast by qualified electors and a majority of the votes cast by qualified electors were in favor of each proposition, and the Council approved Resolution No. 1447 (June 29, 2006) ordering formation of SCFD No. 1 and indicating (among other things) that SCFD No. 1 would be governed by a Board comprised of the Mayor and Common Council acting "ex officio"; and

WHEREAS, soon after formation of SCFD No. 1, discussions with property owners led to re-evaluation of the proposal to issue bonds based on ad valorem taxes and a determination was made to switch to a fixed assessment to avoid potential risks related to future changes in property valuation; and

WHEREAS, ARS §48-721(A) authorizes community facilities districts to levy such assessments using the procedures in ARS §§48-576 thru 48-589 as adopted by resolution “or such other procedures as the district board provides”; and

WHEREAS, in accordance with ARS §§48-576 thru 48-589 the SCFD No. 1 Board approved Resolution No. 1 (October 11, 2007) which, among other things, declared the Board's intention to improve property by constructing sanitary sewer mains and water distribution mains (Improvements) financed through an assessment levied on said property and sale of assessment bonds; and

WHEREAS, at the same time the SCFD No. 1 Board approved Resolution No. 2 (October 11, 2007) establishing interim procedures and approving an Intergovernmental Agreement (IGA) with the Town whereby the Town would (a) pay certain SCFD No. 1 expenses in anticipation of SCFD No. 1 selling bonds and reimbursing the expenses from bond proceeds, (b) providing for on-going operation of SCFD No. 1, and (c) making a contribution towards upsizing the Improvements in anticipation of (i) possible future annexation of a portion of the Prescott Country Club, and (ii) connection to nearby commercial properties; and

WHEREAS, on November 8, 2007, the SCFD No. 1 Board held a public hearing on a Feasibility Report related to the Improvements then approved Resolution No. 3 adopting said Report and ordering construction of the Improvements; and

WHEREAS, on November 29, 2007, the SCFD No. 1 Board approved Resolution No. 5 adopting a development agreement with the Town and Willow Lake Partnership by which SCFD No. 1 would arrange for construction of an extension of the Improvements to the Willow Lake Partnership property, the Town would ensure payment towards that extension (separate from any assessments of SCFD No. 1 owners), and Willow Lake Partnership would reimburse the Town for any such payments; and

WHEREAS, on December 20, 2007, the SCFD No. 1 Board approved Resolution No. 6 adopting a development agreement with the Town and Lynx Creek Villages, LLC and Chino Dental, LLC by which SCFD No. 1 would arrange for construction of a portion of the Improvements on and for the benefit of the Lynx Creek Villages, LLC and Chino Dental, LLC property, the Town would ensure payment towards said construction (separate from any assessments of SCFD No.1 owners), and Lynx Creek Villages, LLC and Chino Dental, LLC would reimburse the Town for such payments; and

WHEREAS, on January 10, 2008, the SCFD No. 1 Board approved Resolution No. 4 adopting a construction contract for the Improvements based on the low bid of \$1,988,571.50; and

WHEREAS, Exhibit “A” attached hereto and expressly made a party hereof shows SCFD No. 1, the anticipated improvements, and the other properties benefited thereby; and

WHEREAS, on February 14, 2008, the SCFD No. 1 Board adopted Resolution No. 7 which, among other things, approved an Assessment Diagram and Method of Assessment

provided by the SCFD No. 1 Engineer, and authorized assessment bonds up to \$3,500,000.00 aggregate principal amount to cover assessments not paid in cash by SCFD No. 1 property owners during the 30-day cash collection period; and

WHEREAS, a Limited Offering Memorandum was subsequently approved for issuing \$3,025,000.00 in SCFD No. 1 assessment bonds. The proceeds were then used to construct the Improvements and to create a reserve fund. After the Improvements were completed, the SCFD No. 1 Board adopted Resolution No. 12 setting a December 3, 2009 hearing to recapitulate the assessment. After statutory notice, the hearing was held and Resolution No. 13 was adopted recapitulating the assessment and providing for cash reimbursements/assessment payment reductions based on surplus funds; and

WHEREAS, in 2010 (because of reduced values for undeveloped commercial property as a result of the worldwide economic recession) one or more land owners indicated they might not make their annual assessment payments. One such owner of a larger parcel attempted to sell the parcel (in whole or in part) but was unsuccessful. As a result of the owner subsequently not making the assessment payment, a draw of \$33,515.14 became necessary from the \$267,587.50 reserve fund to make the July 1, 2010 bond payment. This, in turn, resulted in the Dissemination Agent filing a Reporting of Material Event on July 13, 2010. Since then, this owner has continued not to make the annual assessment payment and draws on the reserve have continued to be made. A draw on the reserve in the amount of \$18,442.50 was necessary for the January 1, 2011 bond payment (resulting in a Reporting of Material Event on January 7, 2011). A draw on the reserve in the amount of \$35,725.78 was necessary for the July 1, 2011 bond payment (resulting in a Reporting of Material Event on July 18, 2011). A draw on the reserve in the amount of \$20,982.62 was needed for the January 1, 2012 bond payment (resulting in a Reporting of Material Event on January 18, 2012). A draw in the amount of \$34,390.28 was needed for the July 1, 2012 bond payment (resulting in a Reporting of Material Event on July 3, 2012). A draw in the amount of \$19,964.66 was needed for the January 1, 2013 payment (resulting in a Reporting of Material Event on June 18, 2013). And, a draw on the reserve in the amount of \$34,375.57 was needed for the July 1, 2013 bond payment (and a Reporting of Material Event by the Dissemination Agent is expected); and

WHEREAS, partial defeasance of bonds in approximate amounts of \$55,000.00 in 2010 and \$418,000.00 in 2012 have also resulted in credits against the reserve fund which have further reduced the reserve. Today, the total remaining reserve amount is \$13,211.41 (below what is expected to be needed as a draw to make the January 1, 2014 bond payment if the same property owner again does not make the assessment payment); and

WHEREAS, ARS §48-721(B) provides that the assessments are first liens on the property assessed (subject only to general property taxes and prior special assessments). In the event assessment payments are delinquent, ARS §§48-601 through 48-607 provide collection procedures (including sale of delinquent land). Beginning in March 2011 (and each year thereafter at the same time), the delinquent land in question has been offered for sale at auctions held per established procedures for the amount of cumulative delinquent assessment payments, but there have been no purchasers; and

WHEREAS, ARS §48-721(B) indicates that neither SCFD No. 1 nor the Town is required to purchase the delinquent land at the sale if there is no other purchaser. Nevertheless, the collection procedures of ARS §§48-601 through 48-607 apply “as nearly as practicable” and SCFD No. 1 may, therefore, exercise the option of having the land “struck off” to it as the purchaser and appropriate either the full amount of the remaining assessment or just the amount required to pay the installment then due (or to become due) upon the bonds and, thereupon, become obligated to pay the succeeding installments and interest as are payable. If the land is not redeemed prior to the time specified in ARS §48-606 (after the full remaining assessment has been paid), SCFD No. 1 may apply for a superintendent’s deed and sell the land as otherwise provided by law; and

WHEREAS, the IGA provides at Subsection 3(C) that the Town is responsible for paying all costs, expenses and expenditures of any kind or nature whatsoever incurred in connection with operating SRCFD No. 1 (including providing funds needed for payments when land is struck off to SCFD No. 1 for delinquent assessments), for which the Town will be reimbursed per Subsection 4(C) from unobligated SCFD No. 1 funds (including any funds which become available through redemption or sale of the land); and

WHEREAS, the SCFD No. 1 Board finds that it is in the interest of all property owners in SCFD No. 1 for the Board to hereby exercise the option of having land for which there is no purchaser at auction per ARS §§48-601 to 48-607 struck off to SCFD No. 1 in return for payment of (at its option) the remainder of the full assessment or the amount of the installment then due (or to become due) upon the bonds (and, thereupon, to become obligated to pay the succeeding installments and interest as are payable);

NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF THE SOUTHSIDE COMMUNITY FACILITIES DISTRICT NO. 1, AS FOLLOWS:

1. Per ARS §48-603(C), if a parcel of land subject to a delinquent SCFD No. 1 assessment is offered for sale at a duly-held auction (and there is otherwise no purchaser), the District Manager is hereby authorized to direct that said parcel be “struck off” to SCFD No. 1. Thereupon, the District Manager shall have the option of directing that either the remainder of the full assessment be paid or that only the installment then due (or to become due) upon the current or any refunding bonds in relation to said parcel be paid (and, thereupon, to become obligated to pay the succeeding installments and interest as are payable). This authorization shall extend back to (and begin with) the most recent auction held in March 2013 and shall continue forward to any subsequent auction involving parcels subject to delinquent SCFD No. 1 assessments until such time as the Southside Community Facilities District No. 1 (Prescott Valley, Arizona) Special Assessment Revenue Bonds (2008) (or any related refunding bonds) have been paid in full.

a. It is understood that, if the remaining portion of the full assessment is not paid, by operation of law the lien of any remaining assessment will remain on any such parcel after the assessment and parcel have been struck off to SCFD No. 1. In such case, the Board hereby accepts the obligation to pay succeeding installments subject to its legal right to sell the parcel (or agree to remove the lien created when the parcel is struck off to SCFD No. 1, as the

case may be) under whatever process is consistent with ARS §48-709, for at least the amount it has paid in assessments. It is further understood that, if the parcel is at some point sold for general taxes, SCFD No. 1 will share pro rata in the proceeds of that sale by operation of law.

2. In accordance with the IGA, the District Manager is further authorized to request from the Town under Subsection 3(C) thereof that the necessary funds be transferred to SCFD No. 1 to timely make the required payments when the Manager has directed that a parcel be struck off to SCFD No. 1.

a. In accordance with ARS §48-603(D), any payments made by SCFD No. 1 when a parcel has been struck off to SCFD No. 1 (or received when a parcel is sold or when the lien created by a parcel being struck off to SCFD No. 1 is released) shall be available for payment of the 2008 Bonds (or any related refunding bonds) until said bonds are paid in full. Thereafter, any remaining unobligated funds shall be available, at the end of the fiscal year, for transfer back to Town accounts as reimbursement for the Town's documented costs of operating and administering SCFD No. 1. It is understood that, if the bonds have been paid in full and SCFD No. 1 continues to hold title to any parcel struck off to it, then SCFD No. 1 shall diligently endeavor to dispose of said property at a reasonable price (in consultation with the Town) in order to fully reimburse the Town. Any balance of funds held by SCFD No. 1 may be transferred to the Town when no longer needed by SCFD No. 1.

b. In accordance with Section 5 of the IGA, it is understood that revenue transfers from the Town and related SCFD No. 1 payments for parcels struck off to SCFD No. 1 cannot typically be anticipated or budgeted for. This is similar to revenues received from time to time in the past from property owners for purposes of defeasing bonds. Therefore, it is understood that the revenue transfers and expenditures contemplated hereunder may be made notwithstanding they have not specifically been budgeted for per ARS §48-716.

3. If any provision in this Resolution is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

4. This Resolution shall be effective after its passage and approval according to law.

RESOLVED by the District Board of the Southside Community Facilities District No. 1 this 25th day of July, 2013.

Harvey C. Skoog, Chairman, District Board
Southside Community Facilities District No. 1

ATTEST:

Diane Russell, District Clerk
Southside Community Facilities District No. 1

APPROVED AS TO FORM:

Ivan Legler, District Counsel
Southside Community Facilities District No. 1