

**PARKWAY COMMUNITY FACILITIES DISTRICT NO. 1
REQUEST FOR BOARD ACTION**

Date: July 25, 2013

SUBJECT: Issues Re Non-Taxable Property and 2006 Bonds

SUBMITTING DEPARTMENT: District Manager

PREPARED BY: Larry Tarkowski, District Manager

AGENDA LOCATION: Comments/Communications , Consent , Work/Study ,
New Business , Public Hearing , Second Reading

ATTACHMENTS: a) Resolution No. 17

SUMMARY/BACKGROUND: On March 23, 2006 (after receiving a petition from the required number of property owners), the Town Council adopted Resolution No. 1414 declaring its intent to form Parkway CFD No. 1 on 28.23 acres in two locations along the SR 69 corridor. On April 27, 2006 (after a public hearing), the Council adopted Resolution No. 1427 calling an election for property owners to decide whether to form the District, issue ad valorem tax bonds in an amount up to \$3,425,000.00, and agree to pay \$0.30 per \$100.00 annually for maintenance and operations. At the election, 16 out of 21 eligible properties were voted and 69% of those were in favor of all three propositions. Thus, on June 29, 2006, the Council adopted Resolution No. 1446 ordering formation of PCFD No. 1.

The Board issued \$3,425,000.00 in General Obligation Bonds (Series 2006) on October 25, 2006. The Bond debt service requirements run until July 15, 2031.

An issue which developed shortly after the election (and has become more acute over time) has been reclassification from time to time of parcels in the District as “non-taxable” for ad valorem tax purposes. These are typically charter schools or other non-profit uses. Since 2006, approximately 20% of the original secondary assessed value of the property in the District (against which tax rates would have been applied) has been lost. The inevitable result has been that the properties which remain taxable must pay an additional amount in approximately the same percentage. As additional properties are bought by one of the charter schools, this percentage is expected to eventually be about 23% (nearly ¼). The financial advisors who assisted the Town in setting up PCFD No. 1 have acknowledged that they did not anticipate this issue (at least to this extent).

The Feasibility Report approved on September 28, 2006 as part of the Bond issue process anticipated tax rates between \$3.35 and \$7.52 per \$100.00 secondary assessed value. Unfortunately, the very first year (2007) it became necessary for the rate to be \$6.67 because 10% of the value had been lost. After a brief hiatus (because unused Bond proceeds were available to keep rates low), the rate was back up to \$7.36 in 2009. One reason for the increase was precipitous drops in assessed valuation due to the worldwide recession. But, another significant reason was the steady loss of taxable property. In 2010, the rate went to

\$9.66. In 2011, the rate went to \$11.40. In 2012, the rate went to \$13.69. And now, in 2013, the rate is \$16.24.

Over the years, property owners in PCFD No. 1 have expressed concern about the significant discrepancy between the typical tax payments anticipated in the Feasibility Report and the actual payments that have been required. Litigation filed by some of the owners back in 2008 attempted to undo the formation of PCFD No. 1. That litigation was unsuccessful and was dismissed by mutual agreement in 2010. Since then, staff, financial consultants, and the property owners have discussed various options available but none of them have developed any consensus.

At this juncture, staff believes it is time to propose two options that might be implemented in early 2014 as part of the budget process. Neither may ultimately be desirable, but at least the Board might give itself (and staff) the necessary authority and then begin dialogue both internally and externally.

One option would be for PCFD No. 1 to make direct contributions towards Bond payments. Such direct payments are expressly authorized by statute but must still comply with limitations in the Arizona Constitution. A rationale would need to be found in the limited economic development options available to municipalities after recent case law, and/or in an argument that services for the public at-large were being provided.

A second option would be based on the shared responsibility the Town and PCFD No. 1 have (as independent municipalities) to provide and regulate off-street parking and would involve application of an alternate “fee” to businesses which are classified as non-taxable. In 2006, the Town Council determined that the two public parking facilities proposed (one north and the other south of SR 69) mostly benefited adjacent businesses. Therefore, it formed a CFD to issue bonds to construct the facilities and then pay them off by imposing an ad valorem tax on the businesses. A smaller tax was also imposed to help maintain the facilities. Staff then designated a certain number of the parking spaces to each business (based on its square footage) as the underpinning for present and future uses. Unexpectedly, however, businesses classified as “taxable” began paying significantly higher amounts for the same spaces while others classified as “non-taxable” never paid (or have ceased to pay) anything for their spaces. This creates a legal risk that the benefit for the taxable properties will no longer equal what they are paying, and an economic risk that the taxable businesses will eventually no longer be viable and able to help pay off the Bonds. Looking at the Bond documents, there is language which suggests that PCFD No. 1 may seek the remedies needed to ensure the Bonds are paid. And, looking at the CFD statute, there is broad authority for CFDs to establish, charge and collect fees for use of infrastructure, enter into agreements with municipalities to collect fees from landowners for infrastructure purposes, and finance infrastructure from user, landowner and “other” fees. If and when the two facilities are transferred back to the District for operation, it appears PCFD No. 1 may have the authority to limit use of the spaces unless businesses are either paying an ad valorem tax for them or are paying an equivalent “fee” for them.

Staff proposes that the PCFD No. 1 Board consider adopting Resolution No. 17 which provides for potential exercise of either or both of these options beginning in 2014 with the budget process. It is proposed that the Board consider authorizing the options at this early point in order to encourage both internal staff and external public dialogue about these (or any other) options.

OPTIONS ANALYSIS: The Board may adopt Resolution No. 17 as drafted and begin discussion about the two identified options, modify the Resolution prior to adoption, table the matter for further discussion, or decline to adopt Resolution No. 17.

ACTION OPTION: Motion to authorize the Chairman (or, in his absence, the Vice Chairman) to sign Resolution No. 17 establishing options beginning in 2014 for resolving ongoing issues related to non-taxable property in PCFD No. 1 and payment of the 2006 Bonds, **OR** Motion not to approve Resolution No. 17. **VOTE.**

RECOMMENDATION: Staff recommends authorizing the Chairman to sign Resolution No. 17.

FISCAL ANALYSIS: On September 28, 2006, the PCFD No. 1 Board approved an IGA with the Town for the Town to provide a) design, bidding, contract administration, and inspection services needed construct the parking improvements, b) operation and maintenance of the improvements, and c) general operation and administration of PCFD No. 1 itself (including office administration, engineering services, legal services, accounting services, and management services). Under this IGA, the Town would provide to PCFD No. 1 any funds needed for any direct payments towards the 2006 Bonds. Any “fee” revenues would presumably be paid by owners of property classified as non-taxable for ad valorem tax purposes.

REVIEWED BY:

Parkway CFD No. 1 Treasurer _____

Parkway CFD No. 1 Clerk _____

Parkway CFD No. 1 Legal Counsel _____

Parkway CFD No. 1 Manager _____

BOARD ACTION:

Approved Denied Tabled/Deferred Assigned to _____

