

RESOLUTION NO. 19
PARKWAY COMMUNITY FACILITIES DISTRICT NO. 1

A RESOLUTION OF THE DISTRICT BOARD OF THE PARKWAY COMMUNITY FACILITIES DISTRICT NO. 1, A COMMUNITY FACILITIES DISTRICT OF ARIZONA, APPROVING A FINAL BUDGET FOR FISCAL YEAR 2014-2015 PURSUANT TO ARS §48-716; ORDERING THAT AN AD VALOREM TAX BE FIXED, LEVIED AND ASSESSED ON THE ASSESSED VALUE OF ALL THE REAL AND PERSONAL PROPERTY WITHIN THE BOUNDARIES OF THE DISTRICT IN AMOUNTS SPECIFIED IN THE FILED STATEMENTS AND ESTIMATES; PROVIDING FURTHER FOR APPLICATION OF AN ANNUAL COMPENSATING FEE (ACF) AGAINST PROPERTY WITHIN THE DISTRICT WHICH IS CLASSIFIED AS NON-TAXABLE FOR AD VALOREM TAX PURPOSES AS SET FORTH IN THE BUDGET FOR EACH OF THE PROPERTIES; PROVIDING FOR CERTIFIED COPIES OF THIS RESOLUTION AND ORDER TO BE DELIVERED TO THE YAVAPAI COUNTY BOARD OF SUPERVISORS AND THE ARIZONA DEPARTMENT OF REVENUE; 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 April 27, 2006, the Common Council of the Town of Prescott Valley ("Town") adopted Resolution No. 1427 creating within Section 22, T14N, R1W G&SRB&M of the Town the Parkway Community Facilities District No. 1 (PCFD No. 1), a community facilities district in accordance with ARS §48-701 et seq. (see Exhibit "A" attached hereto and expressly made a part hereof); and

WHEREAS, PCFD No. 1 is a special purpose district for purposes of Article IX, Section 19, Constitution of Arizona, a tax-levying public improvement district for the purposes of Article XIII, Section 7, Constitution of Arizona, and a municipal corporation for all purposes of Title 35, Chapter 3, Articles 3, 3.1., 3.2, 4 and 5, Arizona Revised Statutes, as amended, and [except as otherwise provided in §48-708(B), as amended] is considered to be a municipal corporation and political subdivision of the State of Arizona, separate and apart from the Town; and

WHEREAS, a primary purpose for creating PCFD No. 1 was to finance construction and maintenance of certain public improvements along State Route 69 and adjacent to certain commercial property through assessment of ad valorem taxes on said property; and

WHEREAS, in accordance with ARS §§48-719 and 48-723, a special election was held on June 27, 2006 wherein the qualified electors of PCFD No.1 voted to issue general obligation bonds in the maximum amount of three million four hundred twenty-five thousand dollars (\$3,425,000) to cover costs of constructing the public improvements and to levy and collect an annual ad valorem tax at a rate not to exceed thirty cents (30¢) per one hundred dollars (\$100) of assessed valuation for PCFD No. 1 operation and maintenance expenses; and

WHEREAS, by Resolution No. 1 (dated September 28, 2006) the PCFD No. 1 Board authorized the sale of up to \$3,425,000 aggregate principal amount of general obligation bonds, Series 2006 (2006 Bonds) to fund the public improvements (including a reserve fund); and

WHEREAS, on October 25, 2006, the PCFD No. 1 Board approved the sale of \$3,425,000 in 2006 Bonds; and

WHEREAS, on October 3, 2008, certain owners of property in PCFD No. 1 filed a Complaint and Notice of Appeal in the Arizona Tax Court related to a ruling on June 2, 2008 by the Yavapai County Board of Supervisors about certain ad valorem tax issues (*Tri-Bar LLC, et al. v. Prescott Valley Parkway Community Facilities District No. 1, et al. TX2008-000413*). The County had mistakenly applied a tax rate less than the six dollars and sixty-seven cents (\$6.67) per \$100 which had actually been assessed by the PCFD No. 1 Board. Said tax rate had been applied by the PCFD No. 1 Board primarily because about 10% of the value of the property in PCFD No. 1 had been reclassified as tax exempt. When the County adjusted the rate, the remaining property owners asserted that the County used an incorrect procedure. An arrangement by the PCFD No. 1 Manager to apply \$106,698.34 in excess construction funds to reduce the effective Fiscal Year 2007-2008 tax rate to below three dollars and thirty cents (\$3.30) per \$100 (said funds otherwise being slated for application the following tax year to reduce the tax levy) was unavailing. The PCFD No. 1 Treasurer applied \$75,000 more in unused construction funds to the Fiscal Year 2008-2009 budget, but further reclassifications of approximately 9% of property in the district resulted in a tax rate of \$3.42. In their legal action, the property owners sought a Declaratory Judgment that PCFD No. 1 had been illegally formed, that misrepresentations had been made to induce the owners to approve the public improvements, that the improvements were improperly implemented and constructed, that the tax rate applied to PCFD No. 1 was improperly calculated, and that individual taxpayers in PCFD No. 1 had been discriminated against in the application of taxes. Counsel for the Town and PCFD No. 1 eventually moved for summary judgment and the Court granted that motion on April 3, 2009 (but allowed plaintiffs to conduct discovery about any PCFD No. 1 costs, tax assessments or fees for activities that might not have involved repayment of bonds). In the meantime, the remaining unused construction funds of \$48,040.37 were applied to the FY 2009-2010 budget, but declines in assessed valuations of the commercial property within PCFD No. 1 (due to the worldwide recession) resulted in a Fiscal Year 2009-2010 tax rate of \$7.36. After some attempts by plaintiffs to conduct broad discovery were thwarted, the plaintiffs eventually agreed to dismiss their Complaint and Appeal in return for all parties paying their own costs. This was accomplished by Court order dated March 11, 2010; and

WHEREAS, further declines in assessed valuations of the property in PCFD No. 1 led to a FY 2010-2011 tax rate of \$9.66, and a FY 2011-2012 tax rate of \$11.40; and

WHEREAS, despite the efforts of the PCFD No. 1 Board to apply tax rates sufficient to make bond payments when due, on July 15, 2011, a Material Event Notice was issued because actual property values were slightly less than the County had reported at budget time and \$36,206.63 from the reserve was needed to fully pay the July 15, 2011 bond payment (reducing said reserve to \$232,573.37); and

WHEREAS, further declines in assessed valuations of the property in PCFD No. 1 led to a Fiscal Year 2012-2013 tax rate of \$13.69; and

WHEREAS, on July 16, 2012, a Material Event Notice was issued because actual property values were slightly less than the County had reported at budget time and \$2,164.07 from the reserve was needed to fully pay the July 15, 2012 bond payment (reducing said reserve to \$230,409.30); and

WHEREAS, further declines in assessed valuations of the property in PCFD No. 1 led to a FY 2013-2014 tax rate of \$16.24; and

WHEREAS, actual property values were slightly less than the County had reported at budget time and \$10,265.74 from the reserve was needed to fully pay the July 15, 2013 bond payment (reducing said reserve to \$220,143.56); and

WHEREAS, property values within PCFD No. 1 were reported by Yavapai County in February 2014 to have dropped an additional 4% (unlike the other CFDs which levied property taxes whose values are now increasing); and

WHEREAS, the County also recently reported settling with a PCFD No. 1 taxpayer for alleged overpayment of taxes in 2011 and 2012 in the total amount of approximately \$29,000.00; and

WHEREAS, purchase of additional property within PCFD No. 1 by a tax-exempt entity is expected to result in further reclassification which may mean further loss of taxable value of approximately 3.5%; and

WHEREAS, in anticipation of these issues, on July 15, 2013, the PCFD No. 1 Board adopted Resolution No. 17 which proposed options to resolve the issue of non-payment by tax-exempt entities. One option was for PCFD No. 1 to make an annual payment from its general fund towards bond payments and maintenance costs (pro rata) as a contribution for economic development purposes and/or as a provision of general services to the motoring public. The other option was to apply an annual compensating fee (ACF) against property within PCFD No. 1 which is classified as non-taxable for ad valorem tax purposes, in relation to the property's designated parking spaces. The fee revenue would then be applied to the 2006 Bonds and maintenance costs (pro rata). Either or both options would be applied during the budget process beginning in FY 2014-15; and

WHEREAS, on October 22, 2013 (and, again, on November 4, 2013) the PCFD No. 1 Manager sent letters to the owners of the tax-exempt entities in PCFD No. 1 notifying them of an intent to impose an ACF against each of them in 2014 and requesting a voluntary, interim payment; and

WHEREAS, no such payments have been received (despite some preliminary indications of willingness to make such payments); and

WHEREAS, by Resolution No. 18 (dated June 5, 2014), the PCFD No. 1 Board (a) approved a Tentative Budget for Fiscal Year 2014-2015, (b) filed required statements and estimates of PCFD No. 1's operation and maintenance expenses, and the amount of all other expenditures for public infrastructure and enhanced municipal services proposed to be paid from the tax levy and of the amount to be raised to pay PCFD No. 1 general obligation bonds, (c) set a date of July 10, 2014 for a public hearing on the Tentative Budget and particularly, on the portions of the statements and estimates not relating to debt service on general obligation bonds, and (d) provided for notice of the filing and of the public hearing date; and

WHEREAS, said proposed budget included an ACF applied to each of the exempt properties in accordance with Resolution No. 17; and

WHEREAS, at the conclusion of the public hearing, the PCFD No. 1 Board voted to adopt the Final Budget for Fiscal Year 2014-2015 by this Resolution No. 19, and ordered the fixing, levying and assessment of the amounts to be raised by ad valorem taxes and the amount of the ACFs to be applied to each of the exempt properties;

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

1. That that certain proposed PCFD No. 1 budget prepared by the PCFD No. 1 Treasurer for Fiscal Year 2014-2015, attached hereto and expressly made a part hereof as Exhibit "B", is hereby finally adopted.

2. That it is hereby ORDERED that, in Fiscal Year 2014-2015, an ad valorem tax be fixed, levied and assessed on the assessed value of all the real and personal property within the boundaries of PCFD No. 1 in the amounts set forth in the statements and estimates attached hereto and expressly made a part hereof as Exhibit "C".

3. That the ACFs set forth in Exhibit "B" for each of the exempt properties also be hereby applied in accordance with Resolution No. 17.

4. That certified copies of this Resolution No. 19 and Order be delivered by U.S. Mail to the Yavapai County Board of Supervisors and to the Arizona Department of Revenue on or about July 14, 2014 (inasmuch as the tax levy must be filed by the Yavapai County Board of Supervisors on or before the third Monday in August).

5. 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.

6. That this Resolution shall be effective after its passage and approval according to law.

RESOLVED by the District Board of the Parkway Community Facilities District No. 1 this 10th day of July 2014.

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

ATTEST:

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

APPROVED AS TO FORM:

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

EXHIBIT "A"

PCFD No. 1 Map and Legal Description

EXHIBIT "B"

FY 2014-2015 PCFD No. 1 Budget

EXHIBIT "C"

PCFD No. 1 Statements and Estimates on Auditor General Forms