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IRS Examining Arborwood CDD Board, Land Purchase.

WASHINGTON – The Internal Revenue Service is stepping up its audit of $80 million of Arborwood Community Development District's 2006 bonds and appears to be focusing in part on the Florida CDD's board and land
possibly purchased at too high a price.

IRS tax-exempt bond revenue agent Debbie Arceneaux asked for nine items from the CDD last month, including whether any members of the board of supervisors have been elected by CDD residents as well as a list of landowners along with the number of acres they owned and voting units they held when the bonds were issued.

She also asked for the status of the bonds, including how many are outstanding and if any defaulted or were refunded. Arceneaux wanted the sources and amounts of revenues being used to pay debt service and copies of sales or acquisition agreements between the CDD and developers for any transfer of assets using the bond proceeds.

She made the requests in a Dec. 8, 2015 letter that was included in documents recently posted on the Municipal Securities Rulemaking Board's EMMA website. The letter asked for the information to be provided by Dec. 31.

The Arborwood CDD, located near Fort Myers, has been under audit since 2012. This is the IRS' fourth request for information, according to Michael McElligott, who works in finance at Special District Services, Inc., which manages the CDD. The audit is one of a number IRS investigations of CDDs in Florida, one in particular of which is being closely watched by the bond law community. The IRS has claimed the Village Center Community Development District, in Lady Lake, Fla., is not a political subdivision and therefore can't issue tax-exempt bonds because its board is tied to the developer and isn't made up of any elected CDD residents.

Bond lawyers have complained the agency is trying to set new standards for political subdivisions through enforcement cases rather than rulemaking. They typically have defined a political subdivision as one that has been delegated the right to exercise sovereign powers, such as eminent domain or taxation. As a result of the controversy, the Treasury Department and IRS are working on new rules for defining a political subdivision that they say will be subject to public comment and will be prospectively effective.

Wes Habor, a shareholder at Hopping Green & Sams, counsel to the Arborwood CDD, said it differs from the Village Center CDD in that it has more than 250 residents and its board is elected by residents.

But the website of the Arborwood Homeowners Association, Inc. showed 151 units at the end of 2015, with each charged $115.50 per month for a total of $17,440.50 per month and $209,286 per year. Association officials could not be reached for comment.

Kathleen Dailey, who joined SDS last year and manages the CDD, said the board has been made up

entirely of residents since 2014. She didn't have information on the number of residents but said it could be obtained from the homeowners association.

Dailey said the CDD only oversees the lakes and stormwater system, the acquisition of which was financed with the bonds. The CDD oversees the assessments on property owners used to pay the bonds and obtains permits for the preserved lands and wetlands. Those include a panther reserve and a bat habitat, she said.

There is very little descriptive information about the Arborwood CDD on its website, though its key officials and financial documents are posted. A 2004 engineer's report provided to the CDD and posted on its website said Arborwood was a proposed 2,467 acre master planned community in Fort Myers, Fla. that was to be approved for 4,050 single family homes, 2,450 multi-family units, 36 holes of golf, commercial space, wetland preserves infrastructure, landscaped roadways and gated entries. Dailey doesn't know if that's changed.

McElligott said at least three major developers are currently building homes in the CDD, including PulteGroup, which acquired Centex in 2009. The documents posted on EMMA show the IRS is particularly interested in roughly 561 acres of preserves and wetlands, which the CDD acquired from the developer (under contract at that time to Centex Homes) with proceeds from $67.34 million of bond anticipation notes issued in 2005. The land was used as collateral for $80 million of capital improvement revenue bonds issued in 2006 to refund the 2005 notes.

The documents posted on EMMA include an assessment of the value of the land by senior IRS appraiser Howard Kanter that was sent to IRS officials in September. Kantor said the 561 acres were part of 1,826 acre parcel that was purchased at $67,167 per acre for a total purchase price of $122.65 million in 2003. Kanter said the 561 acres can't be commercially developed. He estimated their value at $2,500 per acre or $1.4 million.

Vanessa Albert Lowry, a shareholder at Greenberg Traurig in Philadelphia who appears to be representing the CDD in the IRS audit, could not be reached for comment.

The Bond Buyer

by Lynn Hume

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