



Serrano's Mello Roos refund request heats up

By Mike Roberts | Village Life staff writer | July 27, 2010 12:15

Bill Parker, accompanied by a power-team of lawyers, accountants and tax consultants, took his case for a Mello Roos tax refund to the El Dorado County Board of Supervisors July 20 and argued that he overpaid roughly \$1.9 million on the Community Facilities District bonds that fund infrastructure in Serrano.

The hearing is the latest step in an August 2009 claim that alleges the county overcollected the special taxes over the last 10 years, through three rounds of bond issuance, resulting in a bloated surplus well beyond the required reserve or the district's administrative costs. "We'd like to try to find a way to get it back," said Parker.

County Auditor-Controller Joe Harn is responsible for administering the 1992 bond "indenture," its resulting tax rates and the funds that flow into it. He agrees that the surplus is growing, but not on its disposition under the terms of the indenture.

"Mello Roos" may sound like a gooey nougat confection covered in waxy chocolate. In reality, it's every bit as sticky, and much more expensive.

The Community Facilities District Act was created in the wake of Proposition 13 to allow local government to issue bonds to fund infrastructure, schools and public services, resulting in streetscapes and libraries like those found in Serrano. The community's CFD was the first in the county, and costs its residents \$1,000 to \$2,000 per year.

All parcels are taxed. Unimproved parcels, typically owned by the developer, pay a lower rate. Serrano's formula requires the homeowners to pay first each year, with the developer paying the balance.

Parker's claim is that since he pays last, any over payment should be returned from whence it came.

Harn is not convinced. In an April 13 letter to Kirk Bone, Serrano's government affairs director, Harn writes, "The (Mello Roos bond) indenture does not provide for using money in the CFD Fund for property owner refunds or for property tax refunds."

County Counsel Lou Green, who represented Harn's side of the dispute until April, has now recused himself, citing a potential conflict of interest representing both the board and Harn. The board has since hired bond counsel John Christy. Harn had his attorney, Chris Konwinski, present at the July hearing. Neither lawyer gave testimony.

First Bill Parker then bond counsel John Murphy told the board the district has not been administered properly and the tax has not been levied consistent with its formation documents. Murphy reminded

the supervisors that they are empowered to interpret the fairness of the rate of apportionment, and order a refund if Serrano's claim has merit.

"The Auditor-Controller is obviously an honest and well-intended public official who's done the best he can to administer a very complicated set of facts," said Murphy. "But even honest and well-intended people make mistakes and we think mistakes have been made here."

The indenture has long been a source of contention between Parker's organization and the Auditor-Controller's Office. Parker's team has argued successfully for more than \$1 million in refunds over the last several years, including a recent interest refund, an oversight Harn readily admitted.

But the most glaring recent mistake was from Parker's team. Murphy's last memo to the board, dated July 16, pegged the surplus at \$3.4 million. In the July board meeting Murphy admitted he'd missed the \$1.5 million interest payment from Harn, which lowers the \$3.4 million claim to \$1.9 million.

Tim Youmans, founding partner of public sector consulting firm Economic Planning Systems, helped craft the Serrano Mello Roos indenture in the 1990s. He was on hand at Parker's behest last week, explaining the background of the indenture - that it was created "at a time before e-mail or the Internet" and had to be flexible enough to handle multiple bond issuances.

"In the last few years - there were errors in the application of the principles in the formula," he said, "resulting in an over levy of taxes far beyond the needs of the district."

He outlined the specific accounts over-funded, and stated in broad terms that over-collections should be used to offset the following year's tax burden.

The largest culprit, he asserted, is an account where delinquent Mello Roos payments, late fees and interest pile up.

Back in April, that last time Harn spoke publicly on the matter, he confirmed the indenture's rules for setting the delinquency rate have resulted in the current surplus. Harn said he's simply administering those rules, which also make no provision for refunding the surplus once it's collected or for using the surplus to offset the following year's taxes.

Instead, he said, the terms of the bond indenture state that any surpluses be used to pay off the bond early, and the bonds in question are "callable," meaning that they can be paid early.

Reached by phone after the recent hearing, Harn stood by those statements.

Serrano Attorney Mike Scott addressed the lingering question of the four-year statute of limitations for a refund request, or a possible annual cutoff date to file a tax appeal, concluding, "We'd ask you to waive that limitation anyway. It's not like this money is coming out of the general fund."

During last week's hearing both District 2 Supervisor Ray Nutting and District 4 Supervisor Ron Briggs indicated they were willing to hear Harn and county bond counsel John Christy's responses to the Parker's claims in open session, and try to reach a decision that day. But District 3 Supervisor Jack Sweeney and District 5 Supervisor Norma Santiago balked, opting to take the matter into closed session due to the possibility of a law suit.

The public hearing will resume on Aug. 10.

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