DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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RE: **$57,250,000 Village Center Community Development District Recreational Revenue Bonds, Series 2003A, and $7,005,000 Village Center Community Development District Recreational Revenue Bonds, Series 2003B**

Mr. Charles H. Smith:

This letter is written in regard to the correspondence from your Power of Attorney, Perry Israel, dated April 14, 2009 in which he responds on behalf of the Village Center Community Development District (the "District") to the Forms 5701-TEB (the "5701s") issued to the District January 20, 2009. The 5701s requested a written response if the District is not in agreement to the issues raised therein, and Mr. Israel's letter outlines the District's position in regard to the federal tax compliance aspects of the issues discussed in the 5701s. The response also included a letter from Mr. Archie O. Lowry, Jr. which discusses state law issues. I will respond to that in a separate letter.

My letter only addresses some points raised in Mr. Israel's letter that I believe warrant clarification. My position on the federal tax compliance issues are outlined in detail in the Forms 5701s and will only be revisited here in part as necessary for clarification. Mr. Israel's letter is divided into four sections, a

"Background" section, and three additional sections outlining the District's position in regard to the issues raised in the three Forms 5701. My letter follows that format also.

**Background**

Mr. Israel's letter is 22 pages in length. Pages 1 through most of page 6 consist of background information on the District and The Villages. On page 5 Mr. Israel discusses the formation of the Amenity Authority Committee in April 2008 pursuant to an Interlocal Agreement. Mr. Israel would have you believe that this was a Developer initiated move and includes a copy of a letter dated approximately two years earlier, April 2006, to bolster that position. What Mr. Israel fails to mention is that the Amenity Authority Committee was created pursuant to the terms of a settlement agreement in March 2008 to settle a class action lawsuit brought against the District and the Developer by residents of The Villages who complained that the amenity fees were being misused by the Developer. Under the terms of the settlement agreement reached in March 2008 the Developer is required to pay $40 million over 13 years. The Amenity Authority Committee was formed under the terms of the settlement agreement to oversee how the $40 million is spent. **See Exhibit A.**

The letter from the Developer was likely initiated by this lawsuit which was in process several years. In addition to failing to mention that the Amenity Authority Committee was formed a one of the conditions to settle a lawsuit against the District and Developer, and not out of a desire on the part of the Developer to have residents participate in the District's government, Mr. Israel's discussion contains another misleading statement. He states that the Interlocal Agreement was between "the District . . . and the Numbered Districts." This would lead the reader to assume it includes all the numbered districts. In fact the Agreement only includes the numbered districts 1 through 4, although The Villages 12 districts include 10 numbered districts.

The second area covered in this section warranting comment is Mr. Israel's discussion of the prior IRS examination of the Districts 1998 and 1999 Bonds. Mr. Israel states they were closed with "no change" letters. He states that "the District was advised by the examiner that it should obtain at least two appraisals with respect to future acquisitions of facilities." In fact the examination was closed with "no change advisory" letters that stated that "Our closing of these cases, however, should not be construed as an approval of your method of operations. We have concerns regarding: The amount of control the developer has over the issuer; the questions of value of the assets sold by the developer to the issuer as these are not arms length transactions; the treatment of income and expenses (whether income is properly reported and expenses deducted only once); compliance with state law." **See Exhibit B.**

There is no mention or recommendation in the IRS advisory letters that the District obtain two or more appraisals for future transactions. When examining valuation issues the IRS is generally interested in the *quality* of appraisals that purport to support the transactions in question, not the *quantity* of the appraisals. The prior examiner and the examiner's manager are no longer with the IRS so I have not been able to discuss those examinations with them. I would assume that if the prior Agent referred to "a least two appraisals" it was probably in regard to the fact that most valuation consultants reports include the results of all three generally accepted appraisal methods in their reports, no matter which method they choose as the best method for the property under consideration. The valuation reports prepared for the Series 2003 Bonds fail to value the assets in question using two of the three methods available. [1]

This Agent finds it curious that the District would once again want to bring up the subject of these prior examinations for a couple of reasons: The first is that despite the two advisory letters that were issued January 20, 2003, just two months later, March 31, 2003 the District issued the Series 2003 Bonds which are the subject of this examination and this examination has identified issues identical to those the District was advised against in the no change advisory letters. And since then the District issued another $55.5M in Recreational Revenue Bonds, and the other central district, Sumter Landing Community Development District, issued $65M in Recreational Revenue Bonds, both bonds contain similar characteristics identified in the Forms 5701 for the Series 2003 Bonds. Obviously the District did not take those advisory letters seriously.

The second reason I'm surprised that the District keeps bringing up this matter is that the District in its Official Statement (OS) for the Series 2003 Bonds makes a misleading and incomplete disclosure regarding the prior examinations. The OS disclosure only states that the examinations were closed "no change to the position that interest received by bondholders is excludable from gross income under section 103 of the Internal Revenue Code." The disclosure then states that the closing letters also state that "evidence of noncompliance revealed through a state audit or other means could result in the need to open another examination on this issue." This is the standard language that is contained in all no change letters, including no change advisory letters. The "disclosure" totally ignores the advisory paragraphs in both of those letters. The District not only repeats this same partial disclosure in its OS for their Series 2004 Bonds, but also includes it in the OS for bonds issued by another district in The Villages. [2]

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[1] More on this subject in the section on Form 5701-TEB for Issue # 2. Additionally, Mr. Israel's footnote # 18 discloses that the reports are missing key calculations and therefore fail to even correctly execute the Income methodology, which is my position outlined in the Form 5701.

[2] The District repeats the same disclosure in the Official Statement for their Series 2004 Recreational Revenue Bonds, and also includes it in the Official Statement for bonds issued by another district in The Villages, Sumter Landing Community Development District, stating the bonds are structured similarly to the District's bonds that were examined.

So, similar to OS disclosure which fails to include the advisory aspects of the examination or the paragraph which outlined the issues in the letters, Mr. Israel repeats this omission in his letter. This "half truth" treatment of the OS no-change disclosure is very similar to the "half truth" described above in regard to Mr. Israel's description of the history of the formation of the Amenity Advisory Committee. This causes this Agent to wonder how or why Bond Counsel would approve or overlook the omission of the advisory aspects of the prior examinations in the OS disclosure, or more accurately the OS "partial disclosure." There appears to have been, at the very least, an obvious lack of due diligence on the part of Bond Counsel, Underwriters Counsel, and Issuer's Counsel in regard to this misleading OS disclosure.

On final comment in regard to the "Background" section of Mr. Israel's letter. In footnote 3 Mr. Israel references the validation process with respect to bonds issued by the District. This validation process is required for all bonds issued by community development districts under Florida Statutes Chapter 190. This process is not much different than the type of validation or certification required for all tax-exempt bonds issued by any type of issuer. This doesn't mean that an IRS examination won't uncover federal tax compliance problems that in some cases determine that the bonds do not meet the requirements under section 103 and that the interest on the bonds is not excludable from income. A review of bond transcript documents regarding this validation process by the circuit court shows that the court basically reviews the districts approving Ordinance for the formation of a district, and the governing board's Resolution approving the amount of bonds.

**Form 5701 Issue # 1 - Is the Village Center Community Development District a Qualified Issuer of tax-exempt bonds?**

Mr. Israel's section addressing this issue is contained on slightly more than three pages of his 22 page letter. The Form 5701-TEB discussing this issue is 45 pages long. Mr. Israel chose to focus on just one of the three sovereign powers of a political subdivision, eminent domain, apparently conceding the District does not possess the other two powers. In addition, he makes no reference at all to the requirements for a "on behalf of" issuer. His entire argument that the District qualifies as a political subdivision hinges on his contention that the District's power of eminent domain is substantial, and therefore qualifies as a political subdivision under the Internal Revenue Code and applicable federal tax law.

Florida Statutes Chapter 190 in section 190.011(11) gives a community development district the power of eminent domain within the district, or beyond the district with prior approval by resolution of the governing body where the property is located for the "purposes of the district relating solely to water, sewer, district roads and water management."

Mr. Israel begins his discussion of the eminent domain issue by referring to my observation in the 5701 that since the District is non-residential and a major portion of the District was already owned by the District or the Developer (88%) it is unlikely that the need to exercise the power of eminent domain would occur. He states: "From this it is concluded that there is no substantial power to exercise eminent domain within the District."

Again, Mr. Israel is only telling part of the story. My conclusion in the Form 5701 that the District's power of eminent domain is not substantial is based on a number of factors and relevant law cites. The nature of the District and ownership of land within the District itself is only one factor I considered in concluding that the District's specific and limited eminent domain power *within* the District was not substantial. He fails to mention that I requested the history of the use of eminent domain by the District via an Information Document Request (IDR) issued to the District. The response from the District was that they have never exercised the power of eminent domain either within or without the District. Therefore to date in it's 17 year history none of the land owned by the District has been acquired by eminent domain. To me this is an important point as one might potentially have a different view of this issue if a majority of the land, or at least a good portion of it been acquired in that manner. The fact that none of the land has been acquired by eminent domain, and only a small percentage remains to be potentially acquired in that manner, and then only for the specific limited purposes granted in Chapter 190, is in my opinion a valid consideration when attempting to quantify "substantial" vs. "not substantial."

One area where there is guidance in deciding if the eminent domain power is substantial is the scope or limitations placed on that power. Mr. Israel also fails to discuss the very specific limited purposes for which the District can exercise eminent domain as outlined in Chapter 190.011(11) that I cited above. In Rev. Rul. 77-165 [3] where state law only delegated limited and specific powers of eminent domain the power was deemed not substantial. In PLR 8152063 [4] by contrast a county health board was held to possess the power of eminent domain because the state legislation provided the board with the same power of eminent domain as counties and municipalities.

On the subject of exercising eminent domain power outside the District only with approval by another jurisdiction, in Philadelphia Nat'l Bank v. United States [5] a University was held not to possess eminent domain because it needed the consent of another political authority to condemn a property. In Rev Rul 77-164 [6], which is the law cite that is most on point for the issue under consideration because the subject is a community development authority similar to the District, it was concluded that the authority having to enter into agreements with the

[3] Law cited in the "Power of Eminent Domain" section of Form 5701-TEB for Issue # 1.
[4] Law cited in the "Power of Eminent Domain" section of Form 5701-TEB for Issue # 1.
[5] Law cited in the "Power of Eminent Domain" section of Form 5701-TEB for Issue # 1.
[6] Law cited in the "Power of Eminent Domain" section of Form 5701-TEB for Issue # 1.

county to acquire property "is not analogous to the possession of the power of eminent domain."

Mr. Israel spends a good portion of the space devoted in his letter to this issue discussing the Commissioner vs. White's Estate 1944 court case and he states I cite this case in my 5701. I do cite it in the general law section of my 5701, but I don't even refer to it in the eminent domain section of my 5701, and I do not rely on it for concluding the District has only a limited non-substantial power of eminent domain, or that the District does not qualify as a political subdivision. The subject of the White's Estate case is the Triborough Bridge Authority, a public benefit corporation created under state law. Comparing the District with a public benefit corporation is not applicable for this political subdivision discussion, since a public benefit corporation would qualify as a "on behalf of" issuer, assuming the other requirements are met.

A reading of the full text of Commissioner vs. White's Estate shows it contains no analysis of the three sovereign powers of a political subdivision, and the term "eminent domain" is not even mentioned. The court describes the Authority as an "instrumentality of the City of New York as a body corporate and politic constituting a public benefit corporation." In the National Association of Bond Lawyer's (NABL) Fundamentals of Municipal Bond Law-2007 chapter on "Issuers of Tax-Exempt Bonds" they only cite Commissioner vs. White's Estate in their discussion of "On Behalf Of Issuers", specifically those that qualify as "63-20 Corporations."

If you were to buy Mr. Israel's arguments that the District possesses a substantial power of eminent domain, which I clearly do not, he then offers no further analysis to support the fact that he believes the District should still be considered a political subdivision for purposes of issuing tax-exempt bonds even though the District is totally lacking in the other two sovereign powers of a political subdivision.

It is also noteworthy that Mr. Israel's discussion makes no reference at all to the requirements for a "on behalf of" issuer, which is the only way the District could qualify if they fail to meet the requirements as a political subdivision. My conclusion is that he avoids this issue because a discussion of the applicable requirements for this type of issuer does not put the District in a very favorable light, as outlined in detail in my Form 5701-TEB. Examples of those requirements are: 1) The authority is a public benefit corporation; 2) The bond issuance must have public purpose; 3) Governing body must be controlled by the political subdivision; and 4) Earning cannot inure to the benefit of private persons.

In summary, as stated in my Form 5701-TEB, the District is not a qualified issuer of tax-exempt bonds. The technical federal tax law aspects are covered in much greater detail there. However, when considering this issue I think it's also useful to step back for a moment from the technical federal tax law aspects of that issue

and take a reality check. What is the "District" in terms of the issuance of tax-exempt bonds? It's really nothing more than a five member governing board populated with Developer employees or related parties that have a history of approving an unlimited amount of tax-exempt bonds to purchase assets from the Developer in transactions that in the real world would never pass scrutiny as arms length transactions. This doesn't sound like an entity that the Service wants to be considered a valid issuer of "tax-exempt bonds."

All community development districts go through an initial period of "government by developer" where until property is sold and sufficient residents move in (qualified electors) the landowners control the district. The District is this case was designed to perpetuate this "government by developer" phase indefinitely. Chapter 190 gives community development districts the authority to issue bonds but nowhere does it specify "tax exempt bonds." The ability to issue qualified tax-exempt bonds stems from compliance with the requirements pursuant to federal tax law, not Florida State law. The same transactions whereby the Developer is selling facilities to the District could have been accomplished through the use of taxable bonds or other taxable financing.

**Form 5701 Issue # 2 - Did the District purchase the Series 2003 Facilities from the Developer, a related party that controls the governing board of the District, at their fair market value? and, Do the two "Opinions of Value" support the purchase price of the Series 2003 Facilities, and correspondingly the sizing of the Bond Issue?**

The recurring theme in any communications with the District regarding the valuation of the Series 2003 Facilities and the valuation consultants or appraisers hired to value the Series 2003 Facilities is that the companies are "well know and highly respected appraisal businesses in the State of Florida." [7] To further impress the reader Mr. Israel included copies of the valuation companies' lengthy resumes as Exhibits B-1 and B-2 to his response letter.[8] These two exhibits total 17 pages, and Mr. Henry Fishkind's resume alone is 13 pages. Jumping ahead to Mr. Israel's conclusion for this section he states that the valuations of the Series 2003 Facilities are "fair and sophisticated estimates." However, all this is quickly undermined once the reader reads footnote 18 in Mr. Israel's letter in which he discloses that the valuation reports included in the bond transcript were missing key schedules that would have shown the correct valuation using the Income Method - had they been included. As it is, the reports just show "one step of preparing the valuations . . . the ability of the District to pay the additional cost"

[7] Mr. Israel's April 14, 2009 letter to the IRS, page 15.
[8] Mr. Israel's letter also references Exhibits C & D which include comments from the appraisers in regard issues discussed in the Form 5701. It should be noted that both companies were contacted by this Agent as third-party contacts in July 2008 in which I requested additional information on their valuations. Their responses were considered, and in some cases quoted in the Form 5701.

meaning the debt service on the Series 2003 Bonds. [9] And then he tells us that these "well know and highly respected appraisal businesses", as he described them previously, can't seem to locate these missing schedules.

The District's contention has always been that the appraisers used a very sophisticated appraisal methodology that of course the average person has no chance of understanding. Their Income Method valuation using the discounted cash flows methodology results in $53M of the bond proceeds paid to the Developer being assigned to the "discounted value of amenities" intangible asset on the District's books. Coincidentally, this is the same amount, $53M, reported by the Developer as a gain on the transaction on his Federal 1120S tax return for 2003, the amount by which the $60M sales price exceeded the Developer's cost of $7.5M. This apparently very valuable intangible asset didn't even appear on the Developer's books and no tax basis was allocated to it when calculating his gain on the transaction for federal tax purposes.

In it's simplest terms: The problem faced by the District for this Issue # 2 is trying to convince the examiner, or any reasonable disinterested third party, that the Developer's selling assets that cost $7.5M to the District for $60M (a profit of **700%)** in a transaction approved by the District's governing board that he controls, was indeed an arms length transaction, and that the assets were sold at their Fair Market Value (FMV). (See Official Statement disclosure regarding relationship between Developer and governing board members, **Exhibit C.**)

To put this transaction in perspective, the Developer files a Form 1120S for Federal Tax purposes and classifies its business as "Residential Building Construction." For the 2003 tax year the Statistics of Income[10] data shows that for all S Corporation returns filed that year in that industry the average Gross Profit on business receipts was 16%. For all corporate returns for S and C Corporations in the construction industry, which includes both commercial and residential, for 2003 the average Gross Profit from business receipts was 26%.

If I was a resident of The Villages I would be outraged by the transaction. The Developer sold two golf courses that cost $4.7M to the District for $37.5M, a nice profit of $33.2M on property that had only been placed in service 16 months prior to the sale.[11] The purchase was financed with tax-exempt bonds, which is where I enter the picture. However, it's the residents' amenity fees that are paying the interest on those bonds. It obvious that the residents amenity fees could be much lower, or there would be a lot more of the fees available for maintenance of the facilities if these were arm's length transactions, i.e. had the Series 2003 Facilities been purchased for $10M instead of $60M. The way I see it The

[9] This sounds exactly like what I said in my Form 5701, the valuation reports do nothing but show the District's threshold for additional debt service.
[10] Available at www.irs.gov
[11] Information provided via a third-party contact with the Developer.

Villages residents let the District and Developer off easy with that $40M lawsuit settlement.

Unlike the appraisers, this Agent has not provided the District with a copy of his resume, nor does he intend to do so. And it's not anywhere near as impressive as the resumes provided to me in Exhibits B-1 and B-2. But here's a little background on my qualifications in regard to related party transactions and valuation issues: I've been a CPA for 25 years, a Revenue Agent for 22. The first 18 years of my career as a Revenue Agent I spent examining corporations, mostly small and mid-sized entities where related party transactions involving closely held corporations were the norm, not the exception. One of my areas of expertise was the construction industry, in particular long-term methods of accounting for construction contracts (completed contact and percentage of completion methods). On corporate exams valuation issues were also commonplace involving for example valuations of closely held stock, acquisitions and merger transaction stock or asset valuations, intangible valuation issues for assets such as goodwill, customer lists and going concern, as well as contribution issue valuations for easements, etc.

These issues encountered on corporate examinations involved the use of one of the three generally accepted valuation methods, many of these issues involved the use of the same Income Methodology claimed to have been used by the appraisers employed by the District for the Series 2003 Bonds. I'm very familiar with this valuation method. Additionally, as a Tax-Exempt Bond Revenue Agent the last four years I routinely use a similar discounted cash flows methodology to calculate "tax exposure" for bond issues that have been determined to be taxable. This involves present valuing the projected debt service on the bonds for their remaining maturity as of a settlement agreement date. This discussion of my professional background is simply to demonstrate that I do understand the methodology purportedly utilized by the appraisers in their valuation reports, and this is not first time I have encountered it.

My analysis of the appraisers' opinions of value is discussed in detail in the Form 5701-TEB for Issue # 2. I don't intend to recreate that again here. The only additional point I want to add here that I neglected to mention in the 5701 is that in my experience in reviewing appraisals and valuation reports the reports typically address the valuation from the standpoint of all three methods: cost, comparative sales, and the income method. Whatever method the appraiser might ultimately choose as the best method for the intended purpose, there is at least an attempted valuation presented based on the other methods. This may be what the prior examiner was referring to if she indeed suggested "at least two appraisals." The appraisals used for the Series 2003 Bonds dismiss the other methods and don't offer any alternative valuations using those methods. I think the reason why they didn't is obvious. It would be difficult to explain the wide gap between cost of $7.5M and the sales price of $60M for assets that generally were only completed a year and a half before their sale.

Probably the most interesting aspect of Mr. Israel's discussion of Issue # 2 is found in footnote 18 on page 15 of his letter. Throughout this examination the Agent has taken the position that the appraisals accomplish nothing more than calculate the amount of revenue, mostly in the form of amenities fees, that was available to pay debt service at the time the Series 2003 Bonds were issued. These reports were the tool used by the District for determining how large they could size the bonds, or more accurately, how much they could pay the Developer for the Series 2003 Facilities. I pointed out in my 5701 that it was not, in my opinion a correct or complete application of the Income methodology, and that no attempt was even made by the appraisers to relate their results to the valuation of the Series 2003 Facilities. For the last year and a half I was told by the District and the appraisers that I was wrong, but now finally, they are admitting I was right, although you have to read footnote 18 to get that important bit of information:

*"As one step of preparing the valuations, the appraisers calculated the ability of the District to pay the additional cost by taking into account all Amenities Fees, including those the right to which was previously acquired by the District, and all costs of the District for its related activities. In part, this was done to insure that the coverage requirements relating to the Bonds would be met. It appears that the appraisals included in the transcript may not have included the separate calculations of the value of the particular tangible and intangible assets acquired with the proceeds of the Series 2003 Bonds. Because the previous calculations have not been able to be located at this date, the District has requested the two appraisers to recreate their calculations . . ."*[12]

So if you are to accept Mr. Israel's explanation, these two "well known and highly respected appraisal businesses" used by the District did do a complete income method valuation and assign values to the individual Series 2003 Facilities assets, however failed to include these versions of the appraisals in the bond transcript. Again this begs the question, where was the oversight and due diligence expected to be provided by the Bond Counsel, Issuer's Counsel, and Underwriters Counsel, and what was their role in this process? Why did it take an IRS examination to alert them to this obvious oversight?

Mr. Israel's explanation in footnote 18 leaves the reader to make one of two possible conclusions, neither one very flattering for the parties involved: Alternative one is that this explanation is a fabrication designed to save face, these schedules in fact never existed. Alternative two is that all parties concerned are apparently incompetent, their explanation that we did the calculations but forgot to include the schedules in the bond transcript and we can't find them now is sort of a sophisticated version of the "I did the homework but my dog ate it" excuse. Along with the examples of the misleading and incomplete "no-change" disclosure in the Official Statement for the Series 2003 Bonds, and the District's

[12] Footnote 18 in Perry Israel's April 14, 2009 correspondence to the Service

version of the formation of the Amenity Authority Committee omitting the rather important detail about the class–action lawsuit settlement, the District and its representative, or the Appraisers, don't have any credibility with this Agent in regard to this valuation issue.

In his footnote 18 Mr. Israel states "Because those previous calculations have not been able to be located at this date, the District has requested the two appraisers to recreate their calculations . . ." This examination has been in progress for 20 months as of the writing of this letter. During this examination this Agent has been told repeatedly that the 2 appraisals included with the Bond Transcript clearly supported the price paid for the Series 2003 facilities, I apparently didn't understand them. Now they tell me the appraisals were incomplete and don't support the valuations and want to submit "recreated" appraisals 6 years after the Issue Date of the Bonds. Perhaps they would also like to "recreate" the disclosure regarding the prior examinations in the Official Statement, and maybe also "recreate the description of the Guard Houses and take out that "designed to limit access to residents" language. Maybe they should also consider a recreation of Sales Price in the "2003 Agreement for Purchase and Sale."

Issuers of tax-exempt bonds don't get "do-overs." They are expected to get it right the first time. Transaction participants such as Bond Counsels, Underwriters Counsels, Issuers' Counsels, Underwriters and various other consultants such as appraisal companies are expected to be independent, competent professionals who should perform due diligence when bond deals are put together. There are various opinions and certifications included in the Series 2003 Bond Transcript to that effect. Bondholders rely on these representations. Qualified issuers of tax exempt bonds are responsible for insuring that due diligence is performed in all of these areas.

I don't think I need to offer any additional analysis on this issue, I believe I've covered it sufficiently in my Form 5701-TEB for Issue # 2. I repeat what I said above: The problem faced by the District for this Issue # 2 is trying to convince the examiner, or any reasonable disinterested third party, that the Developer's selling assets that cost $7.5M to the District for $60M (a profit of **700%)** in a transaction approved by the District's governing board that he controls, was indeed an arms length transaction, and that the assets were sold at their Fair Market Value (FMV). I don't think Mr. Israel's explanations in his letter do anything to help them overcome this problem.

**Form 5701 Issue # 3 - Were the Bond proceeds used for an essential governmental function or do the nature of the Facilities acquired with the Bonds result in private business use? And hence the Bonds are Private Activity Bonds.**

Mr. Israel leads off his discussion of this Issue # 3 by once again misstating the basis for my conclusion. He did the same thing in his discussion of Issue # 1. He states "the Form 5701 reasons that the use of the golf courses by the residents" is "in the trade or business of the residents." That is just an incorrect and misleading statement as I don't make that statement in the Form 5701. He later states: "There is no evidence that the residents use the golf course for anything other than personal recreation, which is not in a trade or business." I agree, and if you read my 5701 that clearly is not my position for saying the use of bond proceeds for the executive golf courses constitutes private business use.

Through these statements Mr. Israel demonstrates his lack of understanding of the issue and the applicable tax law. Use of bond financed facilities by private individuals or entities in their trade or business could result in private business use, but that's not the case here and it is not the issue discussed in my Form 5701. There are many definitions of private business use in the Internal Revenue Code and applicable regulations. An arrangement that gives priority rights or preferential benefits to a class of users on a basis not available to the general public is an example of private business use, and that is the issue present for the executive golf courses financed with the Series 2003 Bonds.

The definition of private business use in IRC § 1.141-3(b)(7) which I do cite in my Form 5701 Conclusion is: *"Any other arrangements that conveys special legal entitlements for beneficial use of bond proceeds or of financed property . . . results in private business use. For example, an arrangement that conveys priority rights to the use or capacity of a facility generally results in private business use."* It continues *"In the case of financed property that is not available for use by the general public (within the meaning of paragraph (c) of this section), private business use may be established solely on the basis of a special economic benefit to one or more nongovernmental persons . . ."*

Mr. Israel further exhibits his lack of familiarity with applicable bond law in his discussion of "available to the general public" by comparing the executive golf courses, which are recreational facilities, with sewage and water facilities utilities. I don't think there is any dispute that providing utilities is an essential government function. There is an exception for those types of facilities even when they are owned and used by non-governmental users. The exception states they "will be treated in all events as serving a general public use although they may be part of a nonpublic facility such as a manufacturing facility used in the trade or business of a nonexempt user." [13]

[13] Treas. Reg. sec. 1.103-8(a)(2)

Mr. Israel's discourse takes a rather amusing turn when he attempts to re-characterize the 7 Guard Houses financed with these Bonds as really nothing more than information booths. He states: "The Villages does maintain gates and guardhouses at certain locations, but these security features do not stop anyone from entering The Villages. The guards are there to provide help, such as directions, if needed. . . The purpose . . . is not to make access more difficult for non-residents, but to make The Villages a safer place for everyone . . . limiting access of The Villages to residents only would not make sense: there are restaurants, stores, and other commercial activities within The Villages." Mr. Israel's account is vastly different from the description of these same Guard Houses in the Bond Transcript where the description says: "This facility . . . consists of a security guardhouse, entry wall structures, and **an electronic arm designed to limit access to residents."[14] See Exhibit D.** This seems pretty clear to me – "designed to limit access to residents" would appear to mean the Guard Houses were "designed to limit access to residents." I guess the guards are there to give directions to residents' homes because the only way a non-resident can use the executive golf courses are as guest of a resident. And his contention that it would not make sense because "there are restaurants, stores, and other commercial activities within The Villages" is misleading because these are principally located in the centralized non-residential commercial districts, for example the "District", while the recreational facilities, including all the Executive golf courses, are all located in the numbered districts.

The 7 Guard Houses acquired with the Series 2003 Bonds are not unique. A review of the Official Statements for other recreational bonds issued by the District show approximately 20 additional bond financed similar facilities. The various names used are Guard Houses, Security Gates, Security Facilities, and Entry Facilities. Once again the reader has to decide what to believe, the Bond Transcript which clearly describes the purpose of the Guard Houses is to limit access to residents, or the District's/Mr. Israel's interpretation of facts. As I've demonstrated previously, both are suspect, and both are often incomplete and misleading.

Mr. Israel takes issue with my description of The Villages as a "gated community." Maybe a more appropriate description would be that The Villages is a residential community that has, by my count, at least 27 tax-exempt bond financed gates or guardhouses "designed to limit access to residents." Information I have secured from residents of The Villages describe the operation of the gates/guardhouses as the following: There are entrance gates or guardhouses in every "Village." Residents have gate cards which allow them access through the electronic gates if they are unmanned. Many gates are manned at times, and if they are the guards generally just wave vehicles through. The streets are public streets, supported by county taxpayers so the guards cannot legally stop anyone from entering.

[14] Bond Transcript, Tab 17 "Proposed Acquisition of Certain Recreational, Security and Maintenance Facilities" – Attachment C "Assets Acquired", emphasis added. Exhibit D edited to show "Guard House" assets only.

There real question pertinent to the issue under consideration here is could a non-resident use the tax-exempt bond financed recreational facilities if they managed to get through the guardhouses? The fact is that the Executive Golf courses are available for use by the residents of The Villages only, and could be used by a member of the general public only if that person happens to also be a guest of a Villages resident, and *then only if* that person lives outside of the three counties (Lake, Sumter & Marion) in which The Villages is located. This is well documented on the "GolfTheVillages" website, and in particular the "Good Golf Guide."

On the GolfTheVillages website under the list of Executive Courses it states: "Reminder: Non-residents of The Villages, residing in Lake, Sumter or Marion counties are not permitted to play on the executive courses, with the exception of resident's children/grandchildren who have obtained an appropriate pass. Please refer to the Good Golf Guide for more information." – **Exhibit E.** The Good Golf Guide states: "Guests of Village residents whose home address is outside of Lake, Sumter, and Marion counties are eligible to use selected Villages resident amenity supported recreation facilities which includes the executive golf courses." – **Exhibit F.**

One of the primary reasons Residents move to The Villages and pay monthly amenity fees is the benefit provided by the executive golf courses.[15] An indication of how serious The Villages residents are about their golf is that among the provisions of the settlement agreement for the lawsuit against the District, which Mr. Israel conveniently failed to mention in his "Background" section, is a provision that limits the number of tee times that can be reserved by the Developer's sales staff for entertaining prospective clients. This doesn't sound like the general public is welcome on these courses, and the facts show that they are not (Exhibits E & F).

In his response to this Form 5701 Mr. Israel separated his discussion into parts A. & B., with A. devoted to the "private activity bonds" issue discussed above. Part B. is devoted to the "related party" side issue discussed in the Form 5701 for Issue # 3 which in retrospect should probably have been presented in a separate Form 5701 as Issue # 4. The issue is that pursuant to § 1.148-6(d)(7) any payment of gross proceeds of the issue to a related party of the payor is not an expenditure of those gross proceeds. Since this it is not related to my conclusion

[15] Despite trying to downplay the significance of these Executive Golf courses (see Mr. Lowry's letter) the fact is they are the key marketing tool for The Villages. The www.TheVillages.com web site's home page logo is a golf course, the home page slide show has 8 photos, 4 of which feature golfers or golf courses, The Villages main marketing pitch is "As a Villages resident you'll enjoy free golf for the rest of your life!", The Villages theme song contains the lyrics "It's a slice of life with sunshine and golf galore.", there's a companion web site www.golfthevillages.com which lists the 24 Executive Golf courses and 9 Championship courses, the site is also the source of Exhibits E & F referenced above.

that the Bonds are private activity bonds, the issue raised in the Form 5701 # 3, it should not have been included in that discussion.

I don't take issue with any of the technical analysis Mr. Israel applies to the related party relationship between the District and the Developer. I think the degree of control exerted by the Developer over the Board of Supervisors is a matter that is more pertinent to, and has already been covered by me in the discussions of the other issues, and will not be pursued as a separate Issue # 4.

In summary, when I review responses I receive from taxpayers to Forms 5701 and 886-A my primary focus is on the factual aspects of the issue. The question is whether the taxpayer has provided any additional information, or disputes the facts as outlined by me, to the extent it would have a material effect on my conclusions. I fully expect that taxpayers will likely dispute my interpretation and application of tax law to the facts on which I base my conclusions when it results in an adverse determination for them. However, I see nothing in Mr. Israel's response which challenges the basic facts presented in my Forms 5701 and Forms 886-As and the conclusions reached in them. Instead, as I have described in this rebuttal to his response, I have noted several instances of inaccurate, misleading and questionable statements made by him on behalf of the District in his response to my Forms 5701.

Accordingly, I stand by the analysis and conclusions as presented in my three Forms 5701-TEB and supporting Forms 886-A. My conclusion is the interest on the Series 2003 Bonds is not excludable from gross income under section 103(a). The Agent is also recommending that the Service give consideration to at least expanding this examination to the other Recreational Revenue Bonds issued by the District and another central non-residential district in The Villages. Additionally, in my opinion the misleading "no-change" disclosure in the Official Statement, the repetition of that same disclosure in subsequent bond issuances, and the inclusion in the Bond Transcript of incomplete and inaccurate appraisals that do not support the sales price of Series 2003 Facilities and the sizing of the Series 2003 Bonds, are all items that may warrant sanctions against several of the participants in this Bond issuance.

The District seems to think it would be helpful for me to tour the facilities. I personally don't see what impact that would have on the issues under consideration with the possible exception of Issue # 3, the private activity bonds issue. Based on Mr. Israel's letter I would think they would want to impress on me that the general public can move freely about The Villages streets. However even if the guard houses were taken out of the mix, the two executive golf courses themselves cause the Series 2003 Bonds to meet the private activity tests. In light of the fact that the issues under consideration here potentially impact all of the outstanding tax-exempt bonds issued by the District, I would instead encourage the District to consider the most expeditious and efficient way

to structure a possible settlement agreement that would encompass not just the Series 2003 Bonds, but the other bonds as well.

Sincerely,

Dominick Servadio, Jr.
Revenue Agent, Tax Exempt Bonds

Attachments: Exhibits A – F

Cc: Perry Israel, POA
Tanya S. Kryah

# Exhibit A

## Villages settles lawsuit, will fund $40 million in recreation upgrades

Article Courtesy of The Orlando Sentinel
By Stephen Hudak
Published Match 9, 2008

**THE VILLAGES** - The powerful developer and corporations behind The Villages have agreed in a civil court settlement to pay $40 million over 13 years to cover improvements and repairs to recreation centers, swimming pools and other facilities that make the retirement community alluring.

The class-action lawsuit contended monthly amenity fees paid by every homeowner in the sprawling community of 70,000 residents had been misused by The Villages of Lake-Sumter Inc., the Village Center Community Development District and developer H. Gary Morse.

Under the settlement, the money will replenish depleted accounts used to finance facility improvements and pay pool monitors, after-hours golf ambassadors and Neighborhood Watch staff.

The lawsuit was prompted by residents like Elaine Dreidame, 64, who complained about mildew and mold in the ceiling tiles of the Paradise Recreation Center, where she played bridge twice a week.

Dreidame, who moved to the retirement community in 1999, figured "Florida's Friendliest Hometown" had money set aside to improve its oldest recreational facility.

Well, not enough, she found out.

The retired university administrator from Dayton, Ohio, grew more concerned as she began noting similar, subtle drop-offs in other services throughout the community that she affectionately calls "year-round adult summer camp."

The money is supposed to be used to maintain the golf courses, swimming pools and other comforts that make The Villages a desirable home for active, older adults.

**Long-shot lawsuit**

The lawsuit seemed unlikely to succeed, according to court records showing that a retired judge and six major law firms from Tallahassee to Miami declined to take it.

But the case concluded last week in Lake County, where Circuit Judge Lawrence Semento approved a settlement agreement that requires the developer to pay about $40 million over the next 13 years to replenish maintenance accounts.

The settlement also requires the defendants to pay $50,000 each to Dreidame and four other named plaintiffs and $6.7 million to the plaintiffs' brother-sister legal team, Dougald McMillan and Carol McMillan Anderson.

Carol Anderson said she took the case because she lives in The Villages.

Her brother, a practicing lawyer for 50 years, was best known for prosecuting organized crime figure Meyer Lansky.

Through their defense lawyers, Stephen Johnson and Archie Lowery, Morse and the other defendants denied any wrongdoing or misappropriation.

"[The developer] has looked at the settlement as an issue of what's good for the community," Johnson said Wednesday in court.

The settlement includes confidentiality and nondisparagement clauses, which prevent the parties from discussing the case or criticizing Morse or The Villages.

**'David and Goliath'**

Donald Maciejewski, a Jacksonville lawyer who has handled mass-plaintiff air-disaster cases, called the lawsuit a "true David and Goliath" case, citing the defendants' financial strength.

In an affidavit submitted to the judge to justify attorney fees, Maciejewski said the novelty and complexity of the case suggested that the plaintiffs' chances for success were "virtually zero."

He also pointed out that McMillan and Anderson were "a last resort."

Dreidame had said that if the siblings wouldn't take their case, "she was going to drop the issue . . . and get back to enjoying retirement," Maciejewski said.

Anderson praised Morse and his lawyers, saying the settlement proves they have the community's best interest at heart.

**Tee-time limits**

The settlement also includes other provisions that can be classified as uniquely The Villages, including limits on the number of tee times that can be reserved by the developer's sales staff for prospective customers.

The developer also will provide money to widen six miles of golf-cart paths to better accommodate bicyclists, joggers and roller-skaters.

The agreement also creates a resident-controlled "Amenity Authority Committee" that will have a louder voice in the use of amenity fees.

# Exhibit B

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

January 29, 2003

Village Center Community
Development District
Attn: Chairperson
3231 Wedgewood Lane
The Villages, FL 32162

Person to Contact:
Elizabeth Combs
Employee No:
59-01155
Telephone:
727-570-5526 Ext. 441

Re: $60,175,000 Village Center Community Development District Recreational Revenue Refunding Bonds, Series 1998A

Dear Sir or Madam:

We have recently completed our examination of the bond issues named above. As a result, we have decided to close the examination with no change to the position that interest received by bondholders is excludable from gross income under section 103 of the Internal Revenue Code.

Our closing of these cases, however, should not be construed as an approval of your method of operations. We have concerns regarding: the amount of control the developer has over the issuer; the questions of value of the assets sold by the developer to the issuer as these are not arm's length transactions; the treatment of income and expenses (whether income is properly reported and expenses deducted only once); compliance with state law. While we are closing this examination, evidence of noncompliance revealed through a state audit or by other means could result in a need to open another examination on this bond issue.

Please note that if the need to open another examination arises on this bond issue, any change resulting from that future examination may affect all open years of bondholders from the issue date of the bonds.

Thank you for your cooperation in this matter.

Sincerely,

W. Mark Scott
Director, Tax Exempt Bonds

Cc: Elliot M. Stern
Neil P. Arkuss

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

January 29, 2003

Village Center Community
Development District
Attn: Chairperson
3231 Wedgewood Lane
The Villages, FL 32162

Person to Contact:
Elizabeth Combs
Employee No:
59-01155
Telephone:
727-570-5526 Ext. 441

Re: $21,885,000 Village Center Community Development District Recreational Bonds, Series 1999A and Subordinate Recreational Revenue Bonds, Series 1999B

Dear Sir or Madam:

We have recently completed our examination of the bond issues named above. As a result, we have decided to close the examination with no change to the position that interest received by bondholders is excludable from gross income under section 103 of the Internal Revenue Code.

Our closing of these cases, however, should not be construed as an approval of your method of operations. We have concerns regarding: the amount of control the developer has over the issuer; the questions of value of the assets sold by the developer to the issuer as these are not arm's length transactions; the treatment of income and expenses (whether income is properly reported and expenses deducted only once); compliance with state law. While we are closing this examination, evidence of noncompliance revealed through a state audit or by other means could result in a need to open another examination on this bond issue.

Please note that if the need to open another examination arises on this bond issue, any change resulting from that future examination may affect all open years of bondholders from the issue date of the bonds.

Thank you for your cooperation in this matter.

Sincerely,

W. Mark Scott
Director, Tax Exempt Bonds

Cc: Elliot M. Stern
Neil P. Arkuss

# Exhibit C

| Name | Title | Member of the Board Since | Term Expires November |
|---|---|---|---|
| George McCabe* | Chairman | 09/92 | 2004 |
| Ronald G. Hess* | Vice-Chairman | 09/92 | 2006 |
| John Wise* | Supervisor | 12/93 | 2004 |
| Mike Killingsworth* | Supervisor | 01/01 | 2004 |
| Dodd McDowell* | Supervisor | 09/92 | 2006 |

* Employees of the Developer or its affiliates.

A majority of the Supervisors constitutes a quorum for the purposes of conducting the business of the District and exercising its powers and for all other purposes. Action taken by the District shall be upon a vote of the majority of the Supervisors present unless general law or a rule of the District requires a greater number. All meetings of the Board are open to the public under Florida's "sunshine" or open meetings law.

**The District Manager**

The Act authorizes the Board to hire a District Manager as the chief administrative official of the District. The Act provides that the District Manager shall have charge and supervision of the works of the District and shall be responsible for: (i) preserving and maintaining any improvement or facility constructed or erected pursuant to the provision of the Act; (ii) maintaining and operating the equipment owned by the District; and (iii) performing such other duties as may be prescribed by the Board. The District has hired Severn Trent Services, Inc., under the direction of Gary L. Moyer, to serve as District Manager. Mr. Moyer began his development career with Westinghouse Electric Corporation in 1973 after receiving a Bachelor of Science degree from Pennsylvania State University and a Master of Business Administration degree from the University of Notre Dame. He founded Gary L. Moyer, P.A. in 1982 for the purpose of providing professional managerial services to units of local government, specifically special purpose districts. Mr. Moyer is actively involved in the management of more than 61 special districts throughout the State of Florida, including community development districts, that have collectively issued in excess of $1 billion of bonds.

**Permanent Staff of the District**

The District Administrator has day-to-day operational control of the District. The District Administrator, under the general supervision of the District Manager, is responsible for oversight and supervision of all employees and contractors of the District. The District has hired Peter F. Wahl to serve as the District Administrator. Mr. Wahl has a Master's degree with emphasis on community planning and administration and more than 27 years experience in local government operations. He previously served as County Manager for Lake County, Florida.

In addition, the District has a full-time Chief Financial Officer, billing and accounting staff, an amenities director, and a paid staff (both full-time and part-time) of 379, including 21 members of

# Exhibit D

ATTACHMENT "C"

**VILLAGE CENTER COMMUNITY**

**DEVELOPMENT DISTRICT**

**PHYSICAL CONDITION OF ASSETS ACQUIRED**

**MARCH 26, 2003**

# VILLAGE CENTER COMMUNITY DEVELOPMENT DISTRICT LIST OF ASSETS, INCLUDING THE USED AND USEFUL LIFE CYCLES

## AREA 58 - BRIAR MEADOW SOUTH GUARD HOUSE

This facility, constructed in 2001, consists of a security guardhouse, entry wall structures, and electronic gate arm designed to limit access to residents. The building structure, which conforms to all applicable building codes, is comprised of a concrete slab, concrete block walls and pre-engineered wood trusses. Exterior finishes are cementitious siding, brick base and fiberglass shingle roofing.

The .02 acre island on which the guardhouse is situated has irrigation and landscaping.

Area 58 has an established useful life of 35 years; two years used with 33 years remaining prior to any required major renovations.

## AREA 59 - BRIAR MEADOW NORTH GUARD HOUSE

This facility, constructed in 2001, consists of a security guardhouse, entry wall structures, and electronic gate arm designed to limit access to residents. The building structure, which conforms to all applicable building codes, is comprised of a concrete slab, concrete block walls and pre-engineered wood trusses. Exterior finishes are cementitious siding, brick base and fiberglass shingle roofing.

The .02 acre island on which the guardhouse is situated has irrigation and landscaping.

Area 59 has an established useful life of 35 years; two years used with 33 years remaining prior to any required major renovations.

## AREA 64 - CALUMET GUARD HOUSE

This facility, constructed in 2001, consists of a security guardhouse, entry wall structures, and electronic gate arm designed to limit access to residents. The building structure, which conforms to all applicable building codes, is comprised of a concrete slab, concrete block walls and pre-engineered wood trusses. Exterior finishes are cementitious siding and lattice and standing seam metal roofing.

The .02 acre island on which this guardhouse is sited also includes irrigation and landscaping.

Area 64 has an established useful life of 35 years; two years used with 33 years remaining prior to any required major renovations.

## AREA 65 - CHATHAM GUARD HOUSE

This facility, constructed in 2001, consists of a security guardhouse, entry wall structures, and electronic gate arm designed to limit access to residents. The building structure, which conforms to all applicable building codes, is comprised of a concrete slab, concrete block walls and pre-engineered wood trusses. Exterior finishes are cementitious siding, brick base and wood shake roofing.

Related site improvements of the .02 acre island on which the guardhouse is site include irrigation and landscaping.

Area 65 has an established useful life of 35 years; two years used with 33 years remaining prior to any required major renovations.

## AREA 66 - PIEDMONT GUARD HOUSE

This facility, constructed in 2000, consists of a security guardhouse, entry wall structures, and electronic gate arm designed to limit access to residents. The building structure, which conforms to all applicable building codes, is comprised of a concrete slab, concrete block walls and pre-engineered wood trusses. Exterior finishes are brick veneer and fiberglass shingle roofing.

The .02 acre island on which the guardhouse is situated has irrigation and landscaping.

Area 66 has an established useful life of 35 years; two years used with 33years

## AREA 70 - SPRINGDALE GUARD HOUSE

This facility, constructed in 2000, consists of a security guardhouse, entry wall structures, and electronic gate arm designed to limit access to residents. The building structure, which conforms to all applicable building codes, is comprised of a concrete slab, concrete block walls and pre-engineered wood trusses. Exterior finishes are brick veneer and fiberglass shingle roofing.

The .02 acre island on which this guardhouse is sited also includes irrigation and landscaping.

Area 70 has an established useful life of 35 years; two years used with 33 years remaining prior to any required major renovations.

# Exhibit E

## Executive Courses

| | |
|---|---|
| 50 – Silverlake* | 753-5151 |
| 51 – Hilltop | 753-8276 |
| 52 – Chula Vista | 753-4170 |
| 53 – Mira Mesa* | 753-0436 |
| 54 – De La Vista* | 753-0977 |
| 55 – El Diablo | 750-6670 |
| 56 – El Santiago | 750-6670 |
| 57 – Saddlebrook | 753-8201 |
| 58 – Hawkes Bay | 753-8043 |
| 59 – Walnut Grove | 259-2967 |
| 60 – Briarwood | 259-2967 |
| 61 – Amberwood | 750-0423 |
| 62 – Oakleigh | 750-0423 |
| 63 – Pimlico | 750-2019 |
| 64 – Churchill Greens | 750-2019 |
| 65 – Belmont | 750-2019 |
| 66 – Heron | 205-7427 |
| 67 – Pelican | 205-7427 |
| 68 – Bogart | 430-3431 |
| 69 – Bacall | 430-3431 |
| 70 – Sandhill | 259-2128 |
| 71 – Turtle Mound | 750-6907 |
| 72 – Truman | 750-2374 |
| 73 – Roosevelt | 750-2374 |

*Residents only courses. Guests are not permitted.

**The Villages Tee Time/Membership Office 750-4558**

**Reminder: Non-residents of The Villages, residing in Lake, Sumter or Marion counties are not permitted to play on the executive courses, with the exception of resident's children/grandchildren who have obtained an appropriate pass. Please refer to the Good Golf Guide for more information.**

# Exhibit F

## Guest Play

As active residents of The Villages you will undoubtedly have guests visit you from time to time. We want you to be well informed of the guidelines for you and your guest to get your round off to a good start!

- Guests of Village residents whose home address is outside of Lake, Sumter, and Marion counties are eligible to use selected Village's resident amenity-supported recreation facilities, which includes the executive golf courses.
- A Villages Guest ID Card is required for all guests 10 years of age or older. They can be obtained at any of the Regional Recreation Centers. Please call 750-6084 or 751-7110 for questions regarding guest passes.
- Be sure to tell your guest to always carry their valid photo ID along with their Villages Guest ID Card.
- If your child or grandchild resides in Lake, Sumter, or Marion County, you may obtain a Guest "In Area" ID Card for them at Savannah or Laurel Manor Regional Recreation Center. The residents must accompany these child(ren) or grandchild(ren) to all recreation centers, including the executive golf courses.
- Children under the age of 10 wishing to play golf on The Villages golf courses must see one of the team professionals at a championship course for a proficiency approval before playing.
- Spectators under the age of 10 are not permitted.

### Executive Courses

- Guests under the age of 19 must be accompanied by a Villages resident or a Villages guest, 19 or over, with a valid guest and photo ID.

### Championship Courses

- Children 16 and older are allowed to play unaccompanied provided they have the appropriate guest pass
- If your guest does not qualify for a Villages guest pass they will pay the non-resident greens fee.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Mr. Charles H. Smith, Chairman
Village Center Community
Development District
3201 Wedgewood Lane
The Villages, FL 32162

Person to Contact:
Dominick Servadio, Jr.
Badge No.:
52-05413
Contact Address:
Internal Revenue Service
212 W. Main St., Suite 201
Salisbury, MD 21801
Telephone Number
443-523-1962
Date: May 4, 2009

RE: **$57,250,000 Village Center Community Development District Recreational Revenue Bonds, Series 2003A, and $7,005,000 Village Center Community Development District Recreational Revenue Bonds, Series 2003B**

Mr. Charles H. Smith:

This letter is written in regard to the correspondence from Mr. Archie O. Lowry, Jr. that was included with the District's response to my Forms 5701. It was referenced in the opening paragraph of Mr. Perry Israel's letter which addresses the federal tax aspects of the Forms 5701. I note that although Mr. Lowry's letter has the heading "NOTICE OF PROPOSED ISSUE # 1" Mr Israel never once referenced this letter in his discussion of that same issue, or any other issue, in his letter. He probably reached the same conclusion that I did after reading Mr. Lowry's letter. It has no relevance at all to the federal tax issues discussed in my Forms 5701. I am only taking the time to respond to Mr. Lowry's letter out of courtesy and to also respond to his charge that there are "factual misstatements in the Notices."

**On page 5, Form 5701 TEB:** His first statement is to point out that Section 190.002 of Chapter 190 contains no language regarding the intent that the

election of board members will transition from developer/landowner elections to election by "qualified electors." I agree that is not expressed in Section 190.002 but I think that anyone who spends time analyzing Chapter 190, in particular Sections 190.006 "Board of Supervisors, members and meetings" would get the impression that based on the 6 year and 10 year benchmarks that the drafters of the Chapter 190 expected there to be sufficient residents (either 250 or 500 qualified electors depending on the physical size of the district) in a district within those time frames and that transition would occur naturally as residents moved into a district as it developed. Hence the name "community development" district, and not "commercial development" district.

I believe the Village Center Community Development District (the "District") is an exception to how most of the 500 plus CDDs in Florida operate and have developed, possibly more accurately the District should be described as an aberration rather than an exception. If Mr. Lowry believes that the District is the norm rather than the exception then I would like to secure from him a list of other Florida CDDs that have similar characteristics: after 17 years of existence there are no residents, a developer controlled board, a district that is purchasing assets from a developer that are physically located in other districts.

**On page 5, Form 5701 TEB:** In this next section Mr. Lowry, apparently in an attempt to find something to criticize, resorts to misquoting me. He says that I state that there is an additional requirement on board members that they be qualified electors. He omits the end of that same sentence in the 5701 which is: "in three scenarios:" I go on to outline the scenarios provided in Chapter 190, the key one for the Issue # 1 is that in order to exercise ad valorem taxing power the board must both be elected by qualified electors and must be qualified electors themselves. Its right there in Chapter 190, see my footnote 13 in 5701 for Issue # 1.

**On page 7, Form 5701-TEB:** In this section Mr. Lowry expresses his displeasure at the fact that I "place great emphasis on the fact that the District's Board of Supervisors includes employees of the majority landowner." Mr. Lowry, just because it's permitted under Florida's Chapter 190 doesn't mean we don't consider such factors when applying federal tax law. The fact these same employees are also the ones with the authority to approve the bonds being issued to purchase assets from the majority landowner is the reason I "place great emphasis" on this fact. Sorry you don't like the emphasis I place on it Mr. Lowry, but the the control exerted over the board by the developer is a key factor.

**On page 8, Form 5701-TEB**: This one actually made me laugh out loud when I first read it. Now Mr. Lowry is apparently upset because I "state that The Villages is primarily a golf course community." He is also upset that I reached this conclusion "without benefit of a physical inspection of the property." Mr. Lowry did you check with the developer's sales staff before you wrote this letter? Have

you ever looked at the www.TheVillages.com website? Do you guys in Florida get the same TV ads that The Villages bombards us Northerners with? I'm not sure what this issue has to do with anything or why he even brings it up, but OK Mr. Lowry, here's how I reached the conclusion that The Villages is primarily a golf course community:

- Maybe it's the fact that when you go to www.TheVillages.com homepage the first thing you see is the logo which is a photo of a golf course.
- Maybe it's the fact that the next photo you see below that is a golfer ready to hit a ball. It's photo number one in a slide show where I count 4 golf related photos out of 8.
- Maybe it's The Villages theme song lyrics that is quoted on the home page that says ***"It's a slice of life with sunshine and golf galore . . . "***
- Maybe it's the main advertising catch phrase for The Villages in the hundreds of TV ads I've seen over the last 2 years "***The Villages is the only place in the world where you can play golf free for the rest of your life."*** This is also repeated on the web site.
- Maybe it's the 24 Executive golf courses and the 9 Championship golf courses located in The Villages.
- Maybe it's the separate www.golfthevillages.com website which touts ***"The Villages is one of the most unique golf communities in the world."***
- Maybe it's also the "World's Largest Golf Cart Parade" they had in The Villages back in September 2005 with 3,391 golf carts.

Not sure what the "physical inspection" part of his statement is all about. If I had taken a tour did he plan on telling me the golf courses were in fact something else, like maybe parks or vacant lots for sale? As for the use of all the other re-creation facilities listed on page 3 of the letter, my understanding based on information provided by Villages residents is that these are all residents only facilities available to the general public only as a guest of a resident with a visitors pass.

**On page 9, Form 5701-TEB:** "The Series 2003 Facilities also includes seven manned guard house gates to insure that the use of The Villages facilities is limited to residents only." Mr. Lowry states that my statement is "simply not true."

I've already covered this in my rebuttal to Mr. Israel's letter. Let me again quote the description of these same guard houses in the Bond Transcript: **"This facility . . . consists of a security guardhouse, entry wall structures, and an electronic arm designed to limit access to residents."** I also included as an Exhibit in my letter responding to Mr. Israel's letter the actual document containing that description. If my statement is "simply not true" it is based on a document in the Series 2003 Bond Transcript which also must be "simply not true." It's your call Mr. Lowry, if I'm wrong then you are saying the bond transcript document is also wrong. This examination has shown that it would not be the only one.

And the fact that the guard houses "are not geographically located near the District's facilities" is beside the point. None of the Series 2003 Facilities are located in the District. They are located in the residential gated districts, the commercial areas are all on non-gated main public roads. In Issue # 3 the key assets constituting private use are the executive golf courses, not the guard houses.

**On page 12, Form 5701-TEB:** "Consequently, in order to be a valid issuer of tax exempt bonds, an entity must be a political subdivision." Mr. Lowry's letter discusses the definition of a political subdivision under Florida Statutes. To be a valid issuer of tax-exempt bonds an entity must meet the requirements of a political subdivision under applicable federal tax law. I suggest he read my Form 5701-TEB for a discussion of that law and its application to the District.

**On page 18, Form 5701-TEB:** In this section Mr. Lowry argues that the District, although expressly lacking police power under Chapter 190, should be able to substitute "fire prevention and control" in place of police power as one of the sovereign powers. Jumping ahead to the next section Mr. Lowry accuses the IRS of attempting "modify or rewrite Florida statutory law". That's pretty amusing because here in this section Mr. Lowry is attempting to rewrite *both* Florida and federal tax law at the same time. For me it's a toss up whether this section or the "primarily a golf course community" section is the most entertaining.

**On page 28, Form 5701-TBA (TEB?):** Now for the grand finale. Mr, Lowry quotes a statement in the Form 5701-TEB where I am addressing one of the requirements for an "On Behalf Of' issuer of tax-exempt bonds. "The Community Development District that issued the bonds is authorized to do so by a specific state statute, in this case Chapter 190 of the Florida Statutes."

Mr. Lowry's response to that statement: is "The above statement is 100% accurate." But then in the next sentence he accuses the IRS of attempting to "modify or rewrite Florida statutory law." I'm just not sure what his point is here.

I respectfully disagree with Mr. Lowry's statement that there are any "factual misstatements in the Notices." There are none in the examples cited in Mr. Lowry's letter.

Mr, Lowry then finishes up his letter with a one and a half page "brief history of special purpose districts." He points out that the "Center District" has a supervisor who was one of the four people that participated in the drafting of Chapter 190 Florida Statutes." Mr. Lowry might be interested to know that in November 2008 I interviewed another of the original drafters of Chapter 190, a Mr. James C. Nicholas, who is now a Professor Emeritus with the University of Florida. He provided me with a lot of useful insight into the legislative intent of Chapter 190.

In this "brief history" section Mr. Lowry then abruptly switches into a discussion of The Villages and the three alternatives that were available to the developer for the

recreational facilities: 1) leave ownership with the developer, 2) sell the facilities to a third party, or 3) sell them to the "Center Development District. Although obvious to me, apparently the fourth alternative never occurred to the developer: 4) sell the facilities to the numbered Villages districts within which they are actually located. That seems like a logical approach, and I assume more in line with what occurs in the other 500 plus CDDs in Florida. Of course that would have meant selling them to a district with a board of supervisors he does not control.

Sincerely,

Dominick Servadio, Jr.
Revenue Agent, Tax Exempt Bonds

Cc: Perry Israel, POA
Tanya S. Kryah

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Mr. Charles H. Smith, Chairman
Village Center Community
Development District
3201 Wedgewood Lane
The Villages, FL 32162

Person to Contact:
Dominick Servadio, Jr.
Badge No.:
52-05413
Contact Address:
Internal Revenue Service
212 W. Main St., Suite 201
Salisbury, MD 21801
Telephone Number
443-523-1962
Date: May 18, 2009

RE: **$57,250,000 Village Center Community Development District Recreational Revenue Bonds, Series 2003A, and $7,005,000 Village Center Community Development District Recreational Revenue Bonds, Series 2003B**

Mr. Charles H. Smith:

In my recent correspondence to the District dated May 4, 2009, I responded to the District's position in regard to the issues raised in the Forms 5701-TEB. I concluded by encouraging the District "to consider the most expeditious and efficient way to structure a settlement agreement" that would encompass not just the Series 2003 Bonds, but also the District's other outstanding bonds, and similar revenue bonds in the other central district.

My purpose here is to outline the basic terms of a possible settlement agreement for your consideration. It would include all the outstanding bonds listed on the attachment. The total principal balance on these bonds is $355,354,000 as of May 15, 2009. The total estimated tax exposure[1] on these same bonds for the

[1] Tax Exposure is estimated using the debt service on the bonds for the years shown multiplied by 29%.

three currently open statute years, 2006, 2007 & 2008, is $16,458,454. The settlement agreement would include the following terms:

1) Redemption of all the outstanding VCCDD bonds and the one SLCDD bond, a total redemption of bonds totaling approximately $355,354,000. Tax exempt bond proceeds cannot be used for this purpose.
2) Pay the tax exposure for the Series 2003 Bonds calculated up until the date of redemption. That would include the $2,877,366 shown on the schedule for these Bonds plus any additional tax exposure subsequent to 2008 calculated up the date redemption occurs.
3) Agreement by the VCCDD and SLCDD to not issue any additional tax-exempt bonds in the future.

The above terms are dependent on the Service not having to expand the current examination of the Series 2003 Bonds to include the other bonds on the schedule. It is our position that the issues identified in the three Forms 5701-TEB are also present on the other bonds. Additionally, if it becomes necessary to send the current examination forward to Appeals we would want to do it as a package which would include all the bonds on the schedule. This would necessitate us formally picking them up for examination. Once that is done, we would have to include the additional tax exposure on all of those bonds in any future settlement agreement considerations.

As always, settlement agreements are ultimately approved by senior management and the terms outlined here are viewed as those that my immediate supervisor and myself feel would meet their minimum requirements at this point in time. Please advise us whether you have any interest in discussing the possibility of a settlement based on the terms outlined herein.

Sincerely,

Dominick Servadio, Jr.
Revenue Agent, Tax Exempt Bonds

Cc: Perry Israel, POA
Tanya S. Kryah

ISSUER: VCCDD
BONDS: SERIES 2003

AGENT: D. SERVADIO, JR.
DATE:5/18/2009

## TEB FUNDED ACQUISITIONS FROM THE VILLAGES DEVELOPER BY CENTRAL DISTRICTS

| | DATED DATE | ISSUER | TYPE | SERIES | AMOUNT | PROCEEDS USED FOR ACQUISITION | REFUNDING | PRINCIPAL BALANCE 05/15/2009 | TAX EXPOSURE 2006-2008 (all Series) |
|---|---|---|---|---|---|---|---|---|---|
| | 11/01/1993 | VCCDD | Utility Revenue | 1993 | $26,000,000 | $23,431,339 | | $0 | N/A |
| | 5/1/1996 | VCCDD | Recreational Revenue | 1996A | $19,085,000 | $16,976,187 | | $0 | N/A |
| | | | Subordinate Recreational Revenue | 1996B | $5,915,000 | $5,915,000 | | $0 | |
| | 1/1/1998 | VCCDD | Recreational Revenue & Refunding | 1998A | $60,175,000 | $26,513,105 | $29,754,662 | $41,240,000 | $2,607,545 |
| | | | Subordinate Recreational Revenue | 1998B | $5,575,000 | $5,575,000 | | $3,150,000 | |
| | | | Subordinate Recreational Revenue | 1998C | $5,340,000 | $4,986,250 | | $4,129,000 | |
| | 6/01/1999 | VCCDD | Recreational Revenue | 1999A | $14,220,000 | $12,722,314 | | $13,150,000 | $914,676 |
| | | | Subordinate Recreational Revenue | 1999B | $7,665,000 | $7,118,400 | | $3,380,000 | |
| | 3/1/2001 | VCCDD | Recreational Revenue | 2001A | $36,455,000 | $34,653,442 | | $31,440,000 | $1,487,690 |
| | | | Subordinate Recreational Revenue | 2001B | $2,010,000 | $1,866,360 | | $0 | |
| | 3/01/2003 | VCCDD | Recreational Revenue | 2003A | $57,250,000 | $53,328,250 | | $57,250,000 | $2,877,366 |
| | | | Subordinate Recreational Revenue | 2003B | $7,005,000 | $6,581,668 | | $7,005,000 | |
| | 10/01/2003 | VCCDD | Utility Revenue | 2003 | $86,400,000 | $80,837,005 | | $81,460,000 | $3,547,172 |
| | 6/01/2004 | VCCDD | Recreational Revenue | 2004A | $39,425,000 | $36,415,936 | | $39,425,000 | $2,353,464 |
| | | | Subordinate Recreational Revenue | 2004B | $11,160,000 | $10,434,760 | | $10,980,000 | |
| **Subtotal VCCDD** | | | | | | | | $292,609,000 | 13,787,913 |
| | 11/01/2005 | SLCDD | Recreational Revenue | 2005A | $53,085,000 | $49,316,417 | | $51,155,000 | $2,670,571 |
| | | | Subordinate Recreational Revenue | 2005B | $11,915,000 | $11,132,444 | | $11,590,000 | |
| **Grand Total** | | | | | | | | **$355,354,000** | **$16,458,484** |