

Fiddler's Creek Bankruptcy Activity Update

- The morning of the Fiddler's Creek CDD Board Meetings on 2/24/10, we were advised that the developer filed for Chapter 11 bankruptcy protection. The board authorized Weiss Serota to expand its representation to take such actions as necessary to preserve the districts' interest in O&M assessment payments. We were also instructed to coordinate with counsel for the bondholders, Greenberg Traurig, as to actions they requested we take to preserve the lien interests related to debt service and past due debt assessments under the various bond issues.
- Our Firm commenced immediate actions to obtain and review the bankruptcy filings (a total of 28 debtors jointly administered) to determine any immediate actions to be taken. In particular, we reviewed a filing of more than 150 pages related to the joint Debtors' request to approve debtor in possession financing from a developer-related entity. Of immediate concern was whether the Debtors would seek to "prime" the superior lien of the districts and whether the financing proposed to make payments related to O&M and/or debt assessments of the districts.
- Our Firm analyzed and evaluated the complex financing scheme proposed by the Debtors, including the investigation of budget items and various assumptions related thereto. Coordinating with bondholders counsel, we convened a conference to review the budget and related detail to discern whether O&M payments were comprised therein. We consulted with the districts' manager and lien roll preparer to confirm amounts due the districts, on roll and off roll, and to preserve all appropriate objections. We learned that the amount budgeted appeared sufficient to cover only off roll assessments and no debt assessments.
- In reviewing the financing package, we learned that on roll assessments and debt assessments would be financed by the Debtors, *only if* certain sales targets were first met. We investigated and discovered from interviewing Debtors counsel that those targets were largely speculative and did not comport with past sales history during the economic downturn, thus minimizing the chance for the districts to be fully protected for ongoing operations of the districts and the capital infrastructure to be undertaken by them.
- After review of the financing package and objections thereto with the bondholders' and Debtors' counsel, the Firm researched and prepared in a very short time frame a comprehensive objection to the DIP financing package. Therein, we focused on the shortcomings of the budget and the proposed diversion of funds otherwise better utilized to pay the districts. The Objection focused upon a) the speculative nature of the Debtors plans to reorganize, b) the failure to properly reserve adequate funds to pay both on roll and off roll O&M, c) the lack of adequate protection by failing to allocate for debt service payments, d) the need to further review projected expenses to ensure the funds were utilized in the best interest of all creditors. We also urged the court to be cautious in approving expenditures, given the uncertainty of the

Debtors' ability to reorganize and the opportunity cost to the districts of not being able to more quickly resort to their foreclosure remedy.

- **After preparing the comprehensive objection and reviewing its terms with bondholders' counsel, the objection was filed and actions taken to prepare for an emergency evidentiary hearing held in Tampa on Thursday, March 3d. The evidentiary hearing was an all day event whereat the Debtors presented a handful of expert witnesses relative to the budget, the Debtors' expenses, the Debtors' efforts to secure funding on alternative terms, the use and purpose for the funds and other matters salient to approval of the financing package.**
- **We cross examined the Debtors' financial expert, Mr. Kapila, on the grounds that the amounts budgeted for the districts' O&M assessments were not sufficient to cover both on roll and off roll assessments. We established that the financing package was deficient in that it did not even reserve for the payment of the on roll assessments. We established that it was inconsistent to deem the amounts for off roll assessments essential to the preservation of the property, but not include the on roll amounts. We further established that the budget allotted for payment of executive benefits (insurance premiums) in an amount that otherwise would be sufficient to pay the on roll O&M. We attempted to pin down the Debtors' principal Mr. Ferrao, who also is the principal shareholder in the related lender entity, as to whether he would approve financing for on roll O&M. He indicated that he did not know how to answer the question, and the court emphasized that it, not the Debtors, would make that determination.**
- **In closing argument, we advised the court that we did not, in principle, object to the DIP financing, but only to its shortcomings. We urged the court to not permit the Debtors to provide only for the off roll assessments, but also to pay (or at least reserve) for the on roll assessments also. We indicated that DIP financing should benefit the property and the community, as argued by the Debtors, and that there was room (or the Debtors could find room) in the budget to pay all the O&M payments, which benefitted all creditors. In doing so, we pointed to the Debtors' impromptu request to increase the budget to pay non-Debtor expenses related to Club operations, the inclusion of certain interest payments related to the Club & Spa, and the executive benefit package included within the budget (which did not appear to be "emergent").**
- **Following hearing, the court ruled that the financing package would be granted, on an interim 6-week basis, subject to certain limitations. The court specifically approved the O&M assessments, as budgeted (the lower off roll amounts), but did not go beyond what the Debtors set forth therein. Upon the Debtors' circulation of a 30+- page draft Interim Order, we reviewed its terms and provided comments directed to ensuring the payment of the O&M assessments, as ordered. We insisted upon plain and clear statements to that effect and plain and clear assurances that nothing within the Order would in any way permit the Debtors to prime the**

districts' priority liens. We coordinated with counsel for the bondholders and debtors in the process, also reviewing the comments of other creditors to ensure they proposed nothing to the detriment of the districts.

- **A hearing to consider further extension of the financing on a second interim or final basis is scheduled to be heard in Tampa on April 14, 2010. We recommend that in this interim period we appeal to the Debtors and to an ad hoc committee of homeowners to include increased amounts in the budget to ensure all O&M payments, on roll and off roll, are paid or at least reserved. We further recommend that we meet with bondholders to develop a unified, comprehensive strategy for the case, and gaining an understanding of future activities they will request be taken by the districts, as fiduciaries under the bond documents. We want to confirm which actions the bondholders will undertake for their own protection and which ones they will ask be taken on their behalf by the districts' counsel, and to ensure that the cost of such activities will be borne by them.**