


ANNE ARUNDEL COUNTY
Annapolis, Maryland
Auditor's Office

INTER-OFFICE CORRESPONDENCE

To: The Honorable Members of the County Council
The Honorable County Executive John R. Leopold
Mr. John Hammond, Chief Administrative Officer

From: Teresa Sutherland, County Auditor 

Date: August 23, 2012

Subject: Riviera Beach Shore Erosion Control District Improper Procedures

From March 2009 to the present, the County has disbursed \$100,948 of expenditures for legal fees from the Riviera Beach Shore Erosion Control District (SECD). SECD funds may be expended for legal fees if the legal services rendered relate solely to the purposes of the SECD. In this case, the County disbursed the funds upon certification from the Riviera Beach Community Association that the expenditures were related solely to SECD purposes.

We reviewed the disbursements to determine whether the legal expenses were related solely to SECD purposes, and we determined that some were not. Further, we found that many of the invoices supporting the expenditures were too vague to determine whether the services rendered were related solely to SECD purposes. Accordingly, I am calling to your attention and taking exception to the improper procedures noted in the attached document in accordance with § 311 of the County Charter.

Please call if you have any questions on my findings.



**ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY AUDITOR**

August 23, 2012

The Honorable Members of the County Council
The Honorable County Executive John R. Leopold
Mr. John Hammond, Chief Administrative Officer
Anne Arundel County, Maryland
44 Calvert Street
Annapolis, Maryland 21401

Dear Members, Mr. Leopold, and Mr. Hammond:

The County disbursed \$100,948 for legal fees from the Riviera Beach Shore Erosion Control District (SECD) from March 2009 to the present. SECD funds may be expended for legal fees if the legal services rendered relate solely to the purposes of the SECD. In this case, the County disbursed the funds upon certification from the Riviera Beach Community Improvement Association (RCIA) that the expenditures were related solely to SECD purposes.

In March 2012 I received a complaint that SECD funds may have been expended for legal expenses that were not related solely to SECD purposes. Consequently, I reviewed the invoices for legal fees paid from the Riviera Beach SECD, and, in accordance with § 311 of the County Charter, I am calling to your attention and taking exception to the following improper procedures.

My review of the invoices was limited to invoices for legal expenses. It was not an evaluation made in accordance with generally accepted auditing standards or standards issued by the American Institute of Certified Public Accountants and was more limited than would be necessary to express an opinion on the financial transactions of the Riviera Beach Shore Erosion Control District. Accordingly, I express no opinion or form of assurance on the financial transactions of the Riviera Beach Shore Erosion Control District.

This letter communicating the results of my review is intended solely for the use of the County Council and management of Anne Arundel County. However, this report is a public document that may be obtained from the Office of the County Auditor. My findings represent the results as of the completion of my fieldwork on August 2, 2012. Management's response to my findings and recommendations are shown in italics.

BACKGROUND

RCIA administers the Riviera Beach Shore Erosion Control District. In 2007, RCIA and Riverbea Corporation, a non-stock corporation created to hold title to community property in the Riviera Beach subdivision, entered into a \$365,000 contract with C.A. Norris Construction, Inc. for shore erosion control work and used SECD funds to pay for the project.

In January 2009, RCIA contacted the County Budget Office to ask whether they could use SECD funds for legal expenses. The Budget Office advised RCIA that they could use SCBD funds for legal fees and expenses "solely related to pursuing remedies with respect to the project that was paid for with shore erosion control district funds." In April 2011, the Budget Office advised RCIA again that SECD funds may be used for legal expenses

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related to the SECD project and cautioned RCIA that the expenditures for legal fees could be subject to scrutiny. From March 2009 to the present, the County disbursed \$100,948.28 of SECD funds to three law firms for legal fees incurred by RCIA.

The legal fees incurred by RCIA relate to two complaints filed in Circuit Court and the Maryland Court of Special Appeals. In 2011, RCIA, Paul T. Buddock, Karin T. Buddock, Eric D. Etzel, Floyd C. Culhane, Judith Culhane, and Michael B. Young (RCIA et. al.) filed suit against Riverbea Corporation, the Riviera Beach Yacht Club, Inc., Robert Snyder, William Guizzardi, Brett Scheibe, Edward Patrick Kiley, C.A. Norris Construction Company, and John Barry Tiernan (Riverbea et. al.). The lawsuit (Circuit Court Case No. 02C09146110 and the First Amended Complaint) comprises 13 counts as follows:

- Count I: Declaratory Judgment against Riverbea Corporation and Mr. Tiernan related to the sale of a community property known as "the Triangle" that Riverbea sold to Tiernan in 2007.
- Count II: Declaratory Judgment against Riverbea Corporation related to the control of community property.
- Count III: Declaratory Judgment against Riverbea Corporation and the Riviera Beach Yacht Club, Inc. related to the operation of the Yacht Club.
- Count IV: Breach of Fiduciary Duty and Negligence against Riverbea Corporation, Mr. Snyder, Mr. Guizzardi, Mr. Scheibe, Mr. Kiley, Mr. Tiernan, and C.A. Norris Construction, including allegations related to the improper use of shore erosion control funds.
- Count V: Breach of Fiduciary Duty and Fraud against Riverbea Corporation, Mr. Snyder, Mr. Guizzardi, Mr. Scheibe, Mr. Kiley, Mr. Tiernan, and C.A. Norris Construction, including allegations related to the improper use of shore control funds.
- Count VI: Breach of Contract against Riverbea Corporation, Mr. Tiernan, and Riviera Beach Yacht Club related to the Triangle property and the Yacht Club.
- Count VII: Unjust Enrichment and Constructive Trust against Riverbea Corporation, Mr. Tiernan, and C.A. Norris Construction related to the shore erosion control project.
- Count VIII: Accounting against Riverbea Corporation related to funds obtained, spent, or loaned by Riverbea Corporation since its formation.
- Count IX: Injunctive Relief against Riverbea Corporation related to the demolition and removal of any piers located on community property.
- Count X: Breach of Contract - Shore Erosion against Mr. Tiernan and C.A. Norris Construction.
- Count XI: Breach of Warranty against Mr. Tiernan and C. A. Norris Construction.
- Count XII: Negligent Construction against Mr. Tiernan and C. A. Norris Construction.
- Count XII: Statutory Violations - Racketeer Influence and Corrupt Organizations Act against the defendants. (Note: The Circuit Court filing shows two "Count XII's.")

Additionally, in March 2011, RCIA et. al. filed an appeal in the Maryland Court of Special Appeals (No. 1897) against Riverbea Corporation, et. al., after the Circuit Court for Anne Arundel County denied a motion for preliminary injunction seeking to prevent Riverbea from demolishing three piers located in the Riviera Beach subdivision.

FINDINGS

I segregated the complaints and counts into what I believed were those solely related to pursuing remedies on the SECD project constructed by C.A. Norris Construction and those that were not. I asked the Office of Law to review my determinations, and they agreed with the following:

Complaints and Counts related to the SECD:

- Circuit Court Case No. 02C09146110 and the First Amended Complaint:
 - Count X: Breach of Contract - Shore Erosion against Mr. Tiernan and C.A. Norris Construction.
 - Count XI: Breach of Warranty against Mr. Tiernan and C. A. Norris Construction.
 - Count VIII: Accounting against Riverbea Corporation related to funds obtained, spent, or loaned by Riverbea Corporation since its formation. (The Office of Law advised me that this could be SECD-related if the accounting includes SECD funds.)
 - Count XII: Negligent Construction against Mr. Tiernan and C. A. Norris Construction (Note: This is the first "Count XII" in the Circuit Court First Amended Complaint.)
 - Count XII: Statutory Violations - Racketeer Influence and Corrupt Organizations Act against the defendants. (Note: This is the second "Count XII in the Circuit Court First Amended Complaint.)

Counts and Complaints that may be related to the SECD:

- Circuit Court Case No. 02C09146110 and the First Amended Complaint:
 - Count IV: Breach of Fiduciary Duty and Negligence against Riverbea et. al.
 - Count V: Breach of Fiduciary Duty and Fraud against Riverbea et. al.
 - Count VII: Unjust Enrichment and Constructive Trust against Riverbea Corporation, Mr. Tiernan, and C.A. Norris Construction.

Counts and Complaints not related to the SECD:

- Circuit Court Case No. 02C09146110 and the First Amended Complaint:
 - Count I: Sale of the Triangle Property.
 - Count II: Control of community property.
 - Count III: Operation of the Yacht Club.
 - Count VI: Breach of Contract against Riverbea Corporation, Mr. Tiernan, and Riviera Beach Yacht Club related to the Triangle property and the Yacht Club.
 - Count IX: Injunctive Relief against Riverbea Corporation related to the demolition and removal of any piers located on community property.
- Court of Special Appeals No. 1879: Appeal related to pier permits.

I reviewed the invoices submitted that RCIA certified were for legal expenses related solely to the purposes of the SECD. I found that many of the invoices received before May 2012 were too vague to determine whether the legal services rendered related solely to SECD matters. Many did not differentiate between legal services for those counts related to the SECD and those related to the sale of the Triangle property, the operations of the Yacht Club, or pier issues. Further, some described legal services specifically related to the sale of the Triangle property, the operations of the Yacht Club, and pier demolitions, matters that the Office of Law concurred were not related to the SECD. Finally, I found a duplicate payment for \$4,067.50 and one invoice for \$200 that clearly was not related to the SECD.

In response to my findings, the Administration advised me that they were *not* going to ask RCIA to provide detail on invoices already paid, but that they would ask for more detail on invoices submitted for payment in the future. The Administration also recouped the \$4,067.50 duplicate payment and the \$200 that the Administration and RCIA agreed was not for SECD purposes.

RCIA submitted five additional invoices totaling \$5,336 that the County paid in June 2012. I reviewed

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these invoices and found that they, too, are too vague to determine whether the services relate solely to SECD matters or whether the services relate to the sale of the Triangle property, Yacht Club operations, and pier demolitions.

CONCLUSION

I believe it was improper for the County to disburse SECD funds for legal expenses related to the sale of the Triangle property, the operation of the Yacht Club, and demolitions. Further, in my opinion, the Administration has not obtained sufficient documentation to ensure SECD funds for legal expenses are for legal services solely related to shore erosion control projects.

I recommend that the Administration require RCIA to submit documentation sufficient to determine which amounts are related solely to SECD purposes. Further, I recommend that the Administration recoup any amounts paid that were not for SECD purposes, including the sale of the Triangle property, Yacht Club operations, and pier demolitions.

MANAGEMENT'S RESPONSE

County law enacted by the County Council requires that the expenditure of these revenues be administered by a civic or community association that is an incorporated association and that provides for membership of each property owner in the district. Consequently, neither the Office of Budget nor the Office of Finance has the authority to substitute its judgment for the judgment of the association regarding the propriety of the expenditures.

In the case of RCIA and the litigation against Riverbea, County employees have reviewed documents and discussed matters with the management of RCIA. RCIA management has determined the litigation and the legal expenses are related to the shore erosion control district's projects. The County has no reason or ability to second guess those determinations.

Please call if you have any questions regarding my findings.

Sincerely,



Teresa Sutherland, CPA
County Auditor