

**ARROWHEAD GOLF COURSE  
SPECIAL MEETING  
SEPTEMBER 14, 2011**

**1. PLEDGE OF ALLEGIANCE**

The meeting was called to order at 12:33 p.m. and was followed by the Pledge of Allegiance.

**2. ROLL CALL**

Present at the meeting were Mayor Paul, Vice-Mayor Hattan and Councilmembers Caletka, Luis and Starkey. Also present were Town Administrator Lemack, Town Attorney Rayson and Assistant Town Clerk Roig recording the meeting.

**3. ARROWHEAD GOLF COURSE CONTRACT**

Mr. Lemack reported that in pursuit of negotiating with AGG regarding the Arrowhead Golf Course, the percentage of the ownership had changed which allowed AGG to acquire the necessary start-up capital investments to open Arrowhead Golf Course. MJS was now 100% owner, with Greenway as their business partner to perform maintenance only.

Intergovernmental Affairs Manager Phil Holste pointed out that the presentation would include pictures of Arrowhead Golf Course in its current condition. He stated that he believed that the site was in great condition and there had been progress in the last months. In April 2011 the Town of Davie put out for bid the management contract for the Arrowhead Golf Course. The Town received several responses. In June 2011, AGG was selected as the most responsive and responsible bidder by the Town Council. From June to September 2011, staff and AGG had at least four face to face meetings and numerous teleconferences negotiating this agreement; during the negotiations, the Town Attorney's Office and the Town's Golf Course Consultant National Golf Foundation participated.

The contract for consideration was originally scheduled to be heard on August 17<sup>th</sup> but at that time the contract had not been completed and it was tabled to September 7<sup>th</sup>. At the September 7<sup>th</sup> Town Council meeting the item was tabled to the September 14<sup>th</sup> Council meeting at the request of AGG to provide them additional time to obtain funding for the upfront cost.

Phil Holste ~~described~~ highlighted key the operations and management contract points issues:

- The contract covers a 10 year period with a 5-year extension renewal at the Town's optional;
- There would be an annual capital contribution of \$805,000 ~~\$415,000~~, which will begin in year 4 through year 10, October 1<sup>st</sup> of every at \$115,000 per year;
- In the first 18 months of the contract, gross revenue would be 1.5% and NOI would be 10%
- After 18 months, the gross revenue would be 2.5% and the NOI would be 20%;
- Gross revenue would increase to 4% and the NOI would be 20%
- For years 9 and 10, the gross revenue would be 5% and the NOI would be 25%
- The contract included language that AGG would follow all Town ordinances, and they would be required to obtain special events permits; the Town Administrator could require Council approval for permits
- AGG would post a \$250,000 fidelity bond to cover fraudulent, dishonest or willful acts or conduct by AGG that injured the facility or the Town's interest

TOWN COUNCIL MINUTES  
SEPTEMBER 14, 2011

- Per a Florida Attorney General's opinion and the Town Attorney, property taxes would not be owed on the facility, but the contract contained language to adjust the agreement if taxes were owed in the future
- Resident discounts were included in the contract
- The agreement included junior golf programs for all Davie public schools to be provided at the facility
- The Town would have use of the clubhouse at no cost for Town functions; community groups could use it on an as-available basis
- The Town would have the right to audit the facility's financial records, which must be maintained on site.
- The Town had the right to terminate the agreement under certain conditions; AGG must give the Town 120 days notice to terminate the agreement
- The Town retained naming rights for the facility, and use of the Town's name and logo in any literature pertaining to the golf course
- Maintenance standards for the golf course were included in the contract

Mr. Holste stated that if the contract was approved today, the Town would continue the clubhouse set-up, the restroom, the parking lot renovations, as well as begin the design process for the clubhouse. AGG would begin purchasing capital items, including golf carts, maintenance and course preparation equipment, staffing, marketing, and merchandising. It is anticipated the driving range would open in early October and the course would open approximately October 15<sup>th</sup>.

Mr. Lemack stated that in the backup there was a letter that stated that AGG had acquired the necessary start up cost which indicated the accounts in the amount of \$215,404.42 met the necessary finance requirements.

Councilmember Starkey asked for clarification of MJS and AGG. Mr. Rayson explained that MJS is comprised of the AGG partners, Mitch Osceola, Jayson Ray and Steve McDonald.

Councilmember Caletka asked if the Town would be entitled to fidelity bond funds if AGG did not provide 120 days' notice. Mr. Rayson stated that if that were not to occur that this would be a breach of the contractual terms. He added that the fidelity bond covered fraud and malfeasance. Councilmember Caletka confirmed that in order to collect any insurance money that AGG would have to do something illegal and that simply going out of business would not qualify. Mr. Rayson added that the fidelity bond would not cover simple negligence. He stated it was coverage against pilferage. AGG also had a \$1 million insurance policy. He noted that given AGG's contractual requirements and investment, he doubted there would be a breach of the 120-day cancellation term. Mayor Paul had thought that the fidelity bond would cover non-performance. Mr. Lemack said the Town would monitor maintenance and operations. He explained they had investigated another type of bond, but this was cost prohibitive. Mr. Rayson said the liability insurance covered waste, so the Town would have recourse.

Councilmember Starkey wanted proof that MJS and AGG were one and the same, and that AGG, with whom the Town had the contract, had sufficient funds to proceed. Mr. Lemack said the Town could require this proof as a condition of the contract.

Councilmember Caletka asked if the Town would be entitled to any of the insurance funds if AGG went out of business. Mr. Rayson said this would depend on the circumstances, and reminded Council of the capital investment that AGG would make.

Mr. Lemack said the original letter the Town had received from AGG included different terms, and indicated that if they could not come to an agreement, the letter could be considered a withdrawal. AGG had then changed ownership in order to obtain the start-up costs. Councilmember Caletka said it appeared that MJS was responsible for a golf course the group owned outside of Tampa, so the letter of credit from

TOWN COUNCIL MINUTES  
SEPTEMBER 14, 2011

the bank indicated MJS had the money, not AGG. He felt there was potential for MJS to “run out” prior to the 120-day notice if things did not work out.

Councilmember Luis pointed out that many municipal golf courses were losing money, and he felt this was a strong contract that would leave the Town better off than if they put up all of the money and just found someone to manage the golf course. He believed it was a good deal for the Town, albeit imperfect, that would allow the Town to make money.

Mayor Paul said she had never wanted the Town to be in the golf course business, but now that they owned it, they must ensure the Town got the best possible deal. Accepting this deal would stop the Town’s maintenance payments and get the golf course running. Mayor Paul wanted to add language to the contract to determine how the Town could recoup losses if something was not done. Mayor Paul said she needed to leave the meeting, and feared they would need to table the item again, but said if that happened, hopefully all of Council’s concerns would be addressed when they discussed it again.

Councilmember Caletka wanted residents to get discounts even during peak times, which was currently not in the contract. He also wanted to postpone the new clubhouse until they determined business was good.

Mayor Paul left the meeting at 1:07 p.m.

Councilmember Luis stated the Town was now in the golf course business and it needed a clubhouse. He felt this was a good contract that favored the Town.

Mitch Osceola said he understood Councilmember Caletka’s position and felt it was very negative towards them. Mr. Osceola wasn’t sure what his position was in regards to providing a performance bond. Councilmember Caletka stated that he wanted the Town Attorney’s legal opinion should AGG go out of business that the Town had some reassurance. Mr. Osceola remarked that there was no guarantee that either the Town or AGG would make money. He said the Town could take out insurance if they wished. He stated the Town was in the golf business now. Mr. Lemack clarified that only AGG could buy a surety bond. He noted that the pro forma did not include any money for a clubhouse, and there would be a challenge to anyone running the course because they could not offer banquet facilities for tournaments without a clubhouse. Mr. Lemack said the issue in front of Council was that AGG was prepared to assume all of the risk for a golf course that no one was sure would be successful.

Councilmember Starkey appreciated everyone’s effort in trying to resolve many of these issues. She wanted to be in the golf course business as a recreational activity for the residents. She did not have any concerns using open space funds on this project. Her concerns centered from a management standpoint on the maintenance of the golf course. She asked how the \$215,404.42 in the Native American Bank in the name of MJS would be tied to AGG. Mr. Osceola said AGG was intact, and owned entirely by Mr. McDonald, Mr. Ray and himself. He said their investor had dropped out, followed by AGG, who would remain as maintenance contractor. Mr. Osceola said the money had not been transferred into the AGG account, but they planned to draw down as much as they needed. He said they were “kind of lending our selves the money...” Councilmember Starkey said she was not comfortable moving forward with AGG under the circumstances. She added the problem is that the investor dropped out and that the money hasn’t been transferred to AGG. She said the contract resulted from the procurement bid process in place and the amount of money which was supposed to be there for start up costs. Mr. Osceola stated the procurement process was bid out for a cash injection and that none of the other bidders had that in there. He added that if the Council was not comfortable that they could put it out to bid again. Councilmember Starkey stated that it was not a true statement as the Town solicited proposals. Mr. Osceola stated they would object.

Council took a five minute recess.

Councilmember Luis asked if MJS would transfer money onto an AGG account or show it as a line of credit. Mr. Lemack said the money would have to be tied to AGG before proceeding. Vice-Mayor

TOWN COUNCIL MINUTES  
SEPTEMBER 14, 2011

Hattan suggested transferring \$75,000 now. Mr. Osceola asked the Town to put all the issues in writing and arrange a meeting in order to have a single vote. Councilmember Luis said it could be resolved now. Mr. Osceola said they were willing to do whatever Council wanted.

Councilmember Caletka asked if the ownership had been changed on Sun Bids. He wanted the \$215,000 at AGG's disposal, and that balance maintained. Mr. Osceola said that was the operational cost as stated in the contract and they create the operational expense. Councilmember Caletka said it looked like it was a four month carry based on what it is currently costing the Town to maintain. Mr. Rayson pointed out that as soon as the golf course opened, revenue would begin to come in. Councilmember Caletka said if all of the money was used for start-up costs, there would be nothing left in the account. Mr. Rayson thought AGG was taking revenue into account as part of the ongoing operational costs of the golf course. Councilmember Caletka was concerned there would be no reserves after start-up costs. Mr. Osceola asked if Councilmember Caletka wanted them to maintain a reserve fund, which was not part of the contract. He said they needed to spend the money to make money. Councilmember Luis said he had signed multi-million dollar contracts and he had never had a client ask him how much money he had in the bank.

Mr. Osceola stated he and his partners needed to leave and asked Council to put all of their concerns in writing to be addressed at a later time. Vice-Mayor Hattan proposed tabling the item until September 21<sup>st</sup>.

Mr. Lemack summarized Council's concerns so far: clarification and representation of the change of ownership; more stringent bond requirements; a secured funding mechanism for AGG's account and a reserve account. He said if he could not resolve these issues by the next meeting, Council would terminate negotiations with AGG and direct Mr. Lemack's next action.

Mr. Rayson said Council could move to approve the contract, subject to whatever terms a majority of members wanted to impose. Mr. Lemack said he would rather Council not approve the contract now, but allow him to continue to negotiate.

Councilmember Luis made a motion, seconded by Vice-Mayor Hattan to table to September 21<sup>st</sup>, with direction for Mr. Lemack to go forward and let AGG know what Council's areas of concern were and to return on September 21<sup>st</sup> for a vote or to take Mr. Lemack's recommendation. The vote was never called, but Councilmember Caletka stated his vote was negative.

Councilmember Caletka said the ownership change must be reflected in Tallahassee. He stated the fidelity bond described to him was not the same as the one in the contract. There had also been a performance fidelity bond. He also wanted Davie residents to receive discounts at all times, not just off-peak as currently in the contract. Councilmember Caletka said he took exception to the fact that AGG could cancel the contract in 120 days while the Town was locked in. He stated they had never discussed the wetlands issue and they had never gone to the Central Broward Water Control District for a variance. Mr. Rayson stated this was included in the contract. Councilmember Caletka was concerned with Exhibit B regarding the description pertaining to the clubhouse which differs in the contract stating that it goes to the Town. He wanted the capital improvements that would become the property of the Town to be clearly delineated. He also wanted a letter of credit or some kind of guarantee that AGG would have some funds other than their capital improvement funds available.

Councilmember Luis was concerned that they would kill the deal, the Town would end up managing the golf course and it would cost them "an arm and a leg" every month.

Councilmember Starkey asked for clarification on the procurement process. Procurement Manager Herb Hyman said when staff put the RFP together Council had asked staff to screen to the top three choices to present to Council. When creating the RFP, staff understood this to be a lease arrangement, but had added that if the bidder wanted to contribute to rebuilding the clubhouse, this should be indicated. At the pre-bid meeting, someone asked if the Town would accept any proposal other than a lease

TOWN COUNCIL MINUTES  
SEPTEMBER 14, 2011

arrangement. Staff was uncertain they would get three bids for a lease arrangement and told the proposers to submit whatever type of agreement they wished and staff would evaluate them. They had received seven proposals: five were management proposals and two were lease arrangement proposals. Council had ultimately ranked AGG as the top bidder.

Councilmember Starkey said the AGG agreement was a combination management/lease agreement with additional capital investment.

**4. ADJOURNMENT**

There being no further business to discuss and no objections, the meeting was adjourned at 2:06 p.m.

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor/Councilmember

\_\_\_\_\_  
Town Clerk