



Agenda Item VII. D.

Meeting Date: August 1, 2017

Department: County Administration

Topic: **Removing Cloud on Winton CC Property**

Board Action: the Board is being asked to authorize counsel to proceed with legal action.

Attachment: H. Sam Darby letter dated July 25, 2017

Summary: The Board has directed development of a Request for Proposals and other actions to pursue development opportunities at WCC. Legal counsel has determined the issues surrounding the original gift to the County create a "cloud" on the title that would impede the ability of a developer to borrow money and/or obtain a clear, insurable title in a real estate transaction. The solution is to obtain Circuit Court rulings regarding the status of the gifts restrictions, the existence of a trust, the state of the trust and/or restrictions regarding the use of Winton's assets. Counsel is prepared to obtain such a ruling but needs Board direction to begin.

Recommendation: That the Board direct Mr. Darby to proceed with a lawsuit in Circuit Court with the goal of removing or clarifying any impediments to the transfer of title of Winton assets.

July 25, 2017

BY EMAIL - dcerodgers@countyofamherst.com

Board of Supervisors Amherst County, Virginia
153 Washington Street
Amherst, Virginia 24521

Re: Report of Special Counsel on Winton Country Club and Golf Course, Inc.

Gentlemen and Lady:

I have been tasked by you with representing the Economic Development Authority of Amherst County, Virginia in its quest for a commercially favorable resolution to the issues posed by the fiscal stress on the Winton Country Club and Golf Course, Inc., lessee of the County's 286 acre farm (the "Property") purchased in 1967 with funds made available to the County by a citizen.

The EDA needs to be able to offer the property free of legal constraints (though of course not free of prudent fiscal management). There is a perception in the County that has existed for many years that the Property is subject to certain restrictions generally in the nature of a trust. That perception has created a "cloud" on the title that impedes the County's ability to pursue development options that could help overcome Winton's fiscal challenges.

MY ADVICE

The only way to resolve the issue is to bring a suit in the Circuit Court of Amherst County to make a binding legal determination. As a practical matter, no commercial lender would advance funds on property with a legal impediment such as exists here, and no title insurance company would issue title insurance unless and until this issue is resolved.

MY INVESTIGATION

I have reviewed your documents that pertain to the issue; met with the Executive Committee of Winton; and, met with the EDA Board.

I have consulted with the Attorney General of Virginia and provided the basic information on the legal status of the Property. As you know, the Attorney General is charged with the responsibility to defend and protect the interest of "the public" with regard to so-called "charitable trusts." The Senior Assistant Attorney General responsible for defending the interests

of the public in charitable trusts has declined at this time to take a position, and likely will not take a position unless and until a petition is filed asking the Circuit Court for clarification of the legal status of the Property.

THE COUNTY'S LEGAL POSITION

There was no trust document. There is no other clarification or elucidation nor any further expression of intention on the part of the then anonymous donor. If there had been a trust created, it could only have been an oral trust. We will attempt to convince the court that because there is not clear and convincing evidence of an oral trust, there never was a trust established in the first place.

The County would seek from the Court the answer to three basic questions. Is the establishment of an oral trust supported by clear and convincing evidence? If so, and if an oral trust was formed, may the County terminate the trust pursuant to Va. Code § 64.2-728 as the County has fulfilled, for nearly fifty (50) years now, the ends of the trust and either "no purpose of the trust remains to be achieved" or "the purposes of the trust have become impossible to achieve." May the County have a conventional cy prés ruling under §64.2-731 allowing it to use assets of the farm to further the purposes of the trust? While in a perfect world the County would dispose of the property to a fiscally responsible developer who would covenant to operate and maintain the country club and golf course in perpetuity, we are not confident that can be achieved in negotiations that will ensue. We do anticipate, however, that the County will "make its best deal" and will retain as many of the purposes of the gift as possible.

CONCLUSION

And so my recommendation to you is to bring a proceeding in the Circuit Court asking for the most flexible legal result we think we can legally obtain. This will bring eliminate the cloud on title that impedes your ability to develop the property into a sustainable fiscal condition.

Very truly yours,



Harwell M. Darby, Jr.

HMDJr.:wmj:8345000