

Memorandum

City of Las Vegas Office of the City Attorney

To: Virginia Valentine, City Manager
From: Thomas R. Green, Chief Deputy City Attorney, Transactions Section
CC:
Date: January 8, 1999
Re: Sale of the Links Golf Course Property to the Walters Group

This memorandum is in response to your request for a written summary of a legal analysis concerning negotiations being conducted by David Roark, Real Estate and Asset Management Division, regarding the sale of the Links Golf Course property to the Walters Group. The legal analysis of the negotiations does not include any analysis of the fair market value of the property which has been determined. Such figure, which is approximately \$800,000, is a separate matter and is beyond the scope of this legal analysis. Other appraisers and experts must be responsible for arriving at a correct market value figure, and the City Attorney's Office has no input with respect to such issue. Any proposed sale of the Links Golf Course property, however, involves numerous legal issues which are summarized as follows:

1. The City currently has three separate contracts related to the Links Golf Course, and each of such contracts has had numerous amendments thereto. Such contracts include:
 - A. Lease and Management Agreement dated July 14, 1997, together with the First and Second Amendments to such Agreement.
 - B. Water Provision Agreement dated December 8, 1997, together with the First Amendment thereto dated April 13, 1998.
 - C. License and Maintenance Agreement between the City and Clark County, and a Restrictive Covenant Running With the Land granted to Clark County on April 13, 1998. (These were assigned to the Walters Group pursuant to the First Amendment to the Lease and Management Agreement.)
2. When the Walters Group financed the construction of the golf course, the Lease and Management Agreement together with the Water Provision Agreement were assigned to US Bank as collateral for the loan. At that time, the City agreed not to alter any of the contractual documents without the express written consent of the bank. Any sales contract for the sale of the Links property must therefore also be signed off by US Bank.
3. Any sale of the Links Golf Course property must take into account the provisions of all of the foregoing agreements and the amendments thereto and must end up with a correlated sales package resolving all issues in such agreements.

4. The City's negotiations to date with the Walters Group have undergone various changes and numerous trade-offs have been made. The first stage of the negotiations involved the lease of the Links property to the Walters Group for the construction of a golf course which would serve residents of Las Vegas. The lease contained provisions giving priority and reduced rates to residents of the City. The lease was for a term of 50 years, and the City was going to end up owning the completed and maintained golf course at the end of such term. The Water Provision Agreement was also negotiated at approximately the same time, and since the Links Golf Course was going to be a quasi-municipal golf course, with tee time priority and reduced rates for residents, the City entered into an agreement to provide certain water facilities for the golf course at a substantial cost to the City. Subsequently, the Walters Group elected to construct its own and more extensive and expensive water facilities rather than the lesser facilities originally envisioned, and so the Water Provision Agreement was amended. The Walters Group agreed to provide the facilities, which would also become the City's property at the end of the 50-year lease period, and the City was relieved of its original obligation to provide the water facilities. Since the City was relieved of such obligation, the monetary value of such obligation was calculated and agreed upon between the parties at the figure of \$1.7 million. In the amendment to the Water Provision Agreement, the Walters Group was given a credit of \$1.7 million to be applied against its initial water bills once the facilities were constructed. The License and Maintenance Agreement between the City and Clark County gave the City a revocable license to construct and maintain certain improvements within the County's street rights-of-way, in order to construct and maintain the waterworks for the golf course. This Agreement was assigned to the Walters Group who assumed the responsibility for the performance of such Agreement, but the City remains liable in the event the Walters Group fails to perform.

5. The latest request from the Walters Group to purchase the property will change the status of the project from a quasi-municipal golf course with priority given to local residents to a totally private golf course. The situation could, therefore, be viewed as canceling out everything the City and the Walters Group has done to date and going back to the original starting point where land is simply being sold to a developer for the construction of a golf course. Under normal circumstances, it would be expected that the land would simply be sold to the developer at an established market value, and then any water provision agreement by the City would also be renegotiated so that water would also be provided to the golf course at the market rate.

6. The negotiations entered into by the Real Estate and Asset Management Division have arrived at a market value for the golf course property but have ignored the remaining provisions in the foregoing agreements. For example, under the current negotiations, the Walters Group would receive the property for approximately \$800,000 but would continue to receive the benefits of the Water Provision Agreement which would extend to the Walters Group the \$1.7 million water credit. The net result of this proposed transaction would be that the City would receive the \$800,000 purchase price but would lose \$1.7 million in water fees. The situation can also be viewed as the Walters Group receiving the property free from the City, together with an additional \$900,000 in free water.

7. The negotiations as currently proposed do not confer any benefit to the City and, therefore, there is a substantial argument that such a transaction would violate the public purpose doctrine. NRS 268.008 requires that any city hold, use and dispose of its personal and real property "for the common benefit" of its citizens. The City Charter, in Section 2.140, also requires that the City must hold, sell and dispose of

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all real and personal property "for the benefit of the City." If the golf course property is simply sold for its market value to the developer, there is an equal exchange for the property and the transaction has no detriment to the City. Such a transaction would never violate the public purpose doctrine. In any proposed sale of the property therefore, it is recommended that the sale be conducted for an equal return at market value and that the Water Provision Agreement be amended to delete the water credit which would be a windfall to the developer without benefit to the City.

/jca