

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

**DISCUSSION ON STRATEGIES FOR UNWINDING THE PURCHASE OF THE
APPLE VALLEY COUNTRY CLUB**

Summary Statement:

BACKGROUND

On November 18, 2008, following a series of discussions with the Apple Valley Country Club, the Town Council authorized the Town Manager to execute the purchase of the Apple Valley Country Club (AVCC) contingent upon receiving clear title to AVCC's disputed water rights. Until the water rights issue was resolved, clear title was produced, and the purchase closed, it was agreed by Council that upon execution of a purchase agreement, the AVCC would have to turn over operations to the Town, the membership would relinquish control, and the AVCC would be open to the public and operate as a public facility. The decision to purchase AVCC was in response to a request from AVCC's Board of Directors to save the club from foreclosure and the Council's desire to preserve a community icon, protect property values, and develop the Country Club as a destination for public enjoyment, including conference facilities and public meeting spaces supporting Vision 2010 and 2020 goals adopted by the Council.

The AVCC was no longer financially viable and the country club was facing foreclosure at the end of January 2009 by Desert Community Bank (DCB) and possible bankruptcy. The AVCC was behind on note payments to the bank, unable to pay vendors, could not pay its property taxes, and was unable to pay attorney fees in addition to other expenses. On November 25, 2008, the Town and AVCC executed a purchase agreement in accordance with the conditions set by Council, and AVCC re-opened on December 10, 2008, as a public golf course. In the months to follow the Rotary Club and the Chamber of Commerce chose AVCC for its monthly meetings and other organizations began booking events at the clubhouse facility.

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Recommended Action:

Provide staff direction.

Proposed by: William Pattison, Asst. Town Manager
Frank Robinson, Town Manager

Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A

Concurrent with the purchase agreement, the Town was in negotiations with the High Desert Community Foundation which claimed ownership of the AVCC water rights, although this claim was not recognized by the Water Master. The Town made several offers to the Foundation to end their alleged claim; however, the offers were rejected and the Town filed a quiet title action against the Foundation after learning that the Foundation was attempting to sell the water rights on the open market. Town Council was advised not to close on the AVCC purchase until this legal matter was resolved.

Following a recent attempt to mediate with the High Desert Community Foundation which proved unsuccessful, a court hearing took place on September 21, 2009, and the presiding judge set a trial date for December 2010. A report on the status of the litigation was presented to Council on September 22, 2009, and Council unanimously directed staff and legal counsel to review strategies necessary for unwinding the purchase of the AVCC should Council choose to do so. Council concerns include cost of operations, extraordinary expenses, and legal costs.

COSTS SINCE EXECUTION OF PUCHASE AGREEMENT

Upon execution of the agreement, the Town paid \$220,000 in accounts payable that were outstanding at AVCC prior to the Town taking over operations on December 10, 2008. Some of these payables included debt service payments on the note with Desert Community Bank (DCB), outstanding invoices for legal services, and outstanding property taxes due to the County. Within the purchase contract it was agreed between AVCC and the Town that any outstanding accounts payable and the existing note with DCB would be paid by the Town in an amount not to exceed \$2,000,000.

The Town began collecting revenues December 10, 2008, upon opening AVCC to the public. Audited revenue for the first 6.5 months of operations at the golf course were \$529,951, while during the same period, expenditures for contract services at the golf course through Landmark Golf which include food and beverage, golf course maintenance, clubhouse maintenance, and golf course operations for the same period were \$795,449. Those expenditures are considered ordinary and would be expected on a month to month basis. Shortly after taking over operations of AVCC the Town was made aware that the 60 year old water well at the golf course had failed and was in need of repair, Town Council approved the expenditure of funds to repair the well. During this time, the Town reimbursed Landmark \$56,000 for that repair. Due to the failure of a replacement pump and delays in the completion of the project, the Town also spent \$90,000 for water purchases from Apple Valley Ranchos to maintain the greens at the course. Before the Town took over operations at the golf course it was necessary to have our legal team prepare contracts for the purchase of AVCC and for the interim operation of AVCC while the Town was in the process of perfecting the water rights. The Town has spent \$145,523 in legal fees on the

purchase agreement, the management contract of AVCC, and escrow. The Town has also incurred legal costs to perfect the water rights challenged by the High Desert Community Foundation. For the fiscal year ending June 30, 2009, the Town spent \$70,419 to secure the water rights to complete the purchase of AVCC.

The total funds expended at AVCC for the fiscal year ended June 30, 2009, were \$962,911. However this is not a true picture of ordinary operations at AVCC. If the extraordinary items are excluded from the calculation of total expenditures the total expected loss from operations is \$265,498 or \$40,846 per month which is consistent with the budget adopted by Council.

For the fiscal year that began July 1, 2009, revenue collected for the first two months (July and August, 2009) was \$156,821. Ordinary expenses for contract services provided by Landmark are \$226,317. Extraordinary expenses for water purchases from Apple Valley Ranchos were \$120,850. The water purchases continue because it has been determined that the existing well no longer has the capacity to produce the quantity of water necessary to satisfy the irrigation requirements of the golf course. In addition, legal fees incurred for the continued litigation between the Town and the High Desert Community Foundation is \$30,290. Legal fees incurred for additional work by the attorney on the AVCC purchase agreement is \$4,228. Debt service payments to Desert Community Bank are \$26,501 for interest and \$5,815 for principle.

Total expenditures for the first two months of the 2009-2010 fiscal year are \$414,001. As discussed earlier, if extraordinary items are excluded from the calculation of total expenses the total expected cost from operations is \$69,496 or \$34,748 per month which is consistent with the budget adopted by the Council.

In total, since taking over operations December 10, 2008, through August 2009, the Town has collected \$686,772 in revenue and expended \$1,906,863 for ordinary and extraordinary expenses. The net cost to the Town is \$1,220,091.

In addition to the actual revenue and expenses stated above, there are projected revenue and expenses for continuing to operate the AVCC through December 2010. Over the next 15 months, additional revenues are projected at \$1,084,377. Ordinary expenses are projected at \$1,613,315 for a net cost to the Town of \$528,937. There are projected extraordinary expenses which include the following: pool demolition \$20,000; A/C repairs or replacement \$125,000; new water well \$350,000; and legal fees concerning water rights of \$500,000, for a total of \$995,000. The total expected investment in AVCC through December 2010 including actual and projected revenues and expenses is \$2,724,028. These figures are stated in two attached spread sheets to this report.

TOTAL FISCAL IMPACT TO THE TOWN

PERIOD DECEMBER 2008 TO DECEMBER 2010

Actual and Projected Revenues		\$1,771,149
Actual and Projected Ordinary Expenditures		(\$2,635,081)
Actual and Projected Extraordinary Expenditures		(\$1,880,097)
Total Cost to Town		(\$2,744,028)
2009-2010 Adopted Budget * <i>Golf Course Enterprise Fund</i>		
	Revenue	\$1,410,000
	Expenses	\$1,892,850
	Net Cost	(\$482,850)

*The appropriation ends June 30, 2010.

LEGAL ANALYSIS OF CONTRACT TERMINATIONS

Our legal counsel, Best, Best and Krieger, provides the following legal analysis with respect to termination of the purchase agreement and transition of management:

(a) Purchase and Sale Agreement

The Town has the right to terminate the purchase of the Golf Course without cause if the Town determines, in its sole discretion, that it is not satisfied with the physical, legal, economic or operational condition of the Golf Course. Notice of termination can be given at any time prior to a final judgment by the court with respect to the ownership and transferability of the water rights. There is no notice period for a termination without cause and termination would become effective immediately, subject to the transition period set forth in the Interim Management Agreement.

(b) Transition of Golf Course Management

The termination of the Purchase and Sale Agreement triggers an automatic termination of (i) the Interim Management Agreement for the Golf Course between the Town and AVCC; and (ii) the Interim Addendum to Management Agreement between the Town, AVCC and LGM Apple Valley ("Landmark"). No notice of termination is necessary; however, the notice of termination of the Purchase and Sale should reference its effect on the Interim Management Agreement and the Interim Addendum. Following termination of the Interim Management Agreement and the Interim Addendum, there is an obligation of the

Town, AVCC and Landmark to cooperate to transition management of the Golf Course back to AVCC over a period of thirty days.

(c) Post Termination Obligations of Town as Interim Manager

The Town will remain liable for all obligations of the Town under the Interim Management Agreement up to the date of termination and shall be entitled to all revenue. The obligations of the Town include (i) the defense of any third party claims arising from the operation of the Golf Course by Town up to the termination date; (ii) the payment of costs and expenses related to the operation of the Golf Course up to the termination date; (iii) the payment of any draws taken by the Town under the line of credit with Desert Community Bank; and (iv) any debt service payments.

Finally, the Town is obligated to provide insurance coverage for the Golf Course through the thirty day transition period.

(d) Effect of Termination on the Golf Course

Following termination of the purchase of the Golf Course by Town, AVCC will have the right to revert the Golf Course to a private course and country club. Landmark will remain the manager of the Golf Course under the original management agreement between Landmark and AVCC and AVCC will not be able to terminate Landmark without paying a substantial termination penalty.

SUMMARY COMMENTS

The Town Council chose to purchase the AVCC to preserve a community icon and provide an amenity to the public for all to enjoy with the vision of creating a destination attraction and further promote the local economy, meeting the goals of Vision 2010 and 2020 adopted by the Council. The legal dispute over water rights has delayed the closing of the purchase and created extraordinary expenses for the Town. The Town Council requested staff and legal counsel prepare this report following news that a trial date for the water rights litigation had been set for December 2010.

Considering the actual revenues and expenses since taking over operations December 10, 2008, through August 2009, the Town has collected \$686,772 in revenue and expended \$1,906,863 for ordinary and extraordinary expenses. The net cost to the Town is \$1,220,091.

In addition to the actual revenue and expenses stated above, the projected revenue and expenses for continuing to operate through December 2010 are projected revenues of \$1,084,377 and projected ordinary and extraordinary expenses of \$2,608,315, for a net projected cost to the Town of \$1,523,938.

The total expected investment in AVCC from December 2008 through December 2010 including actual and projected revenues and expenses is \$2,724,028.

The Town Council is within its right to terminate the purchase of AVCC. Doing so will require a minimum of 30 days to transition control back to the country club membership. The membership will need this time to reconstitute to assume responsibility for all financial obligations. If the country club membership is unable to sufficiently fund operations and meet their debt obligations, it is likely the AVCC will close.

COUNCIL ACTION

Conduct a public policy discussion and provide staff direction.

**Apple Valley Golf Club
Summary of Estimated Revenue and Expenditures
Fiscal Year 2008/09**

	6.5 mos ended 6/30/09	6.5 mos Monthly Average Actual Dec 10, 2008 - June 30, 2009	6.5 Monthly Total Less Extraordinary Exp
Revenue	529,951	81,531	529,951
Ordinary Expenses			
Contract Services	795,449		795,449
Extraordinary Expenses			
AVCC Payables pre 12/10/08	220,000	1	
Well Repair (Independent Well)	56,000	2	
Water Purchases (AV Ranchos)	90,000		
Legal - AVCC Purchase	145,523		
Legal - Water Rights	70,419	3	
Note Payable - Interest	93,581	4	
Note Payable - Principle	21,890	4	
Total Expenditures	1,492,862	229,671	795,449
Exp over Rev	(962,911)	(148,140)	(265,498)
Average Deficit			(40,846)

1. Past due accounts payable to vendors and Desert Community Bank owed by AVCC
2. Failure of the 60 year old well at AVCC
3. Legal costs incurred to secure the water rights with the High Desert Community Foundation
4. Debt service payments on the line of credit between Desert Community Bank and AVCC

Apple Valley Golf Club
Summary of Estimated Revenue and Expenditures
1st Two Months 09/10

	6.5 mos ended 6/30/09	6.5 mos Actual Dec 10, 2008 - June 30, 2009	6.5 mos Monthly Average	Estimates July	Estimates August	8.5 mos Total	8.5 Monthly Total Less Extraordinary Exp	15 Months Projected Ordinary Income/(Loss)
Revenue	529,951	81,531	74,757	82,064	686,772	686,772	1,084,377	
Ordinary Expenses								
Contract Services	795,449		110,375	115,942	1,021,766	1,021,766	1,613,315	
Extraordinary Expenses								
AVCC Payables Pre 12/10/08	220,000				220,000	220,000		
Well Repair (Independent Well)	56,000				56,000	56,000		
Water Purchases (AV Ranchos)	90,000		60,425	60,425	210,850	210,850		
Legal - AVCC Purchase	145,523		166	2,541	148,230	148,230		
Legal - Water Rights	70,419		4,062	27,749	102,230	102,230		
Note Payable - Interest	93,581		13,278	13,223	120,082	120,082		
Note Payable - Principle	21,890		2,880	2,935	27,705	27,705		
Expenditures	1,492,862	229,671	191,186	222,815	1,906,863	1,906,863	1,613,315	
Exp over Rev	(962,911)	(148,140)	(116,429)	(140,751)	(1,220,091)	(334,994)	(528,937)	
Average Deficit					(128,431)	(35,262)		
Extraordinary Expenditures Expected to December 2010								
Pool Demolition								(20,000)
A/C Repairs/Replacements								(125,000)
New Water Well								(350,000)
Legal/Water Rights								(500,000)
								(995,000)
Ordinary Expenditures Expected to December 2010								
Operations based on historic average for 15 months								(528,937)
Total Expected Deficit December 2010								(2,744,028)