

MEMORANDUM

Date: December 2, 2016

To: Shirley Lamonna, Research Analyst
District 1

From: Chris Cawein, Director

Chris Cawein

Subject: Mike Jacob Sportspark Questions

In response to your email dated November 30, 2016 (attached), please see the attached information pertaining to your three questions below:

1. Pima County NRPR completes winter overseeding of rye each year at the Sportspark ballfields. This is the only County park at which such overseeding is presently completed and is paid for by the County. Canoa Preserve Park ballfields are also presently overseeded but the costs for such overseeding are borne solely by the BAJA group who partners with us at this facility.

County has regularly requested that no play occur on the fields for an establishment period of 3 to 4 weeks at the beginning of October when germination of seed occurs and roots are properly set; however, the Operator has typically begun play on the fields less than 3 days after overseeding. This compromises turf health.

2. During my tenure here since July 2013, I have seen three "proposals" from Mr. Cieurca. The most recent was in October of this year when he proposed to take over the concessions at Mike Jacob Sportspark. Certain stipulations, including accessing and using the Pima County Beer license for the site (where one does not exist) and receiving fee reductions during park upgrades, were part of this proposal, in addition to his stated willingness to complete some limited contributions to upgrade the pubs and contribute to some site costs related to material purchase. Although we believe this type of unified approach may be prudent in order to increase efficiencies and reduce the number of entities involved at the site, the significant difference in the scope of services that would be provided, certainly suggested that it would be unreasonable and not necessarily in the best interests of the taxpayers to amend a contract and add on this additional service as a sole source without pre-qualifying this contracted league and tournament operator as a food vendor and also without allowing other viable vendors of concessions within the area to propose to conduct such services. Thus this proposal was best deemed to be left for future discussions after Board decision on the future of the park.

Before that, in 2015, we had engaged in discussions with Mr. Cieurca to allow them to take over the maintenance of the facility. Based on those discussions, we had prepared an amendment to the Contract to allow this to occur but once the amendment was drafted and sent for his signature, he elected not to pursue this effort further.

In 2014, Mr. Cieurca proposed that: 1) the County re-set the field rates for all organizations at Sportspark \$7.50 per hour for lights and \$0 for youth league and tournaments daily use (from the contracted rate structure of \$12.50 lighted/\$10.00 unlighted) which would have required another contract amendment; or, 2) eliminate the (regional) practice of giving out free fields and charge all organizations the same fee

structure (including non-profit youth organizations), which would have required an action on NRPR fee structure by the BOS. This proposal was not deemed to be in the best interests of the County at that time although we do concur that fee structures should be examined in the future.

Discussion with staff and a search of Departmental files indicated several other “proposals” had been brought forth by Mr. Ciurca.

- One proposal in 2013 was a general request to purchase Sportspark; that request was denied by County Administration.
 - A proposal in 2012 indicated a request for a rate freeze on certain charges, a requested reduction in adult use softball fees by 50%, a request to get Pinnacle Concessions to charge lower rates for beer, an increase in field use per hour charges from \$10 to \$12.50 per hour day use and 12.50 to \$15 per hour for lighted fields.
 - Another proposal earlier in 2012 when the original base term of the Contract was close to expiration, was to have the County agree to a 4-year block rather than an individual one year option period with a promise of certain upgrades; the base term of the contract was ultimately extended by 3 years.
 - The other proposal in our files was from April 2011 which requested that Championship Sports be allowed to take over all business operations at the site affording them a new 10-year contract with additional 5-year extension. Numerous conditions were listed for this to occur as well but no formal response to this proposal was found in our Departmental files.
3. The contract simply requires under Section 8.2 that the *“County Administrator shall submit the Operator’s request to extend the term for the Option Period to the Board of Supervisors.”* The contract further stipulates that the *“Operator shall have the right to extend the term for the option period unless: the Operator is in default of this Agreement, or the Board of Supervisors determines for good cause including but not limited to Operator’s past performance and the condition of the premises, that such renewal is not in the best interests of the County.”*

The renewal request is being presented to the Board as required by contract for consideration (originally on November 22 and now continued to December 13), accompanied by the NRPR report, even though the attorney for the Operator did not submit for the defined one-year Option Period. Rather he submitted for all four potentially available option periods at once. Even though the operating agreement speaks in terms of one-year renewal option periods, the existing infrastructure conditions at the park have led NRPR staff to propose an interim month-to-month operating arrangement for a maximum of six months to allow needed infrastructure repairs and improvements to occur. The parties to the agreement are certainly free to agree to this arrangement, or to any other arrangement that they wish, although to date the attorney for the Operator has rejected this six-month interim proposal.

NRPR and Risk Management staff believe that several recent (2016) infrastructure failures at the site, some of which were articulated in the report, including the metal roof sheathing blowing off, one of the safety netting poles snapping and falling onto the volleyball courts shortly after it was vacated by park patrons, and the recent unsolved electrical fire at the office and light failures, coupled with the utility issues with respect to electric, gas lines and water well condition, and the chronic deterioration of certain elements such as asphalt pathways, certainly indicate that the *condition of the premises* may present an unsafe and unreliable environment for park patrons. The past failure of the Operator to heed the advice of our Risk Management staff regarding not using the site when metal sheathing was hanging and when the safety netting was down due to pole failure certainly compounds an increased potential liability to the County from aging infrastructure. Although the report did not dwell on *“Operator past performance issues,”* the relationship challenges (which speaks to performance in a partnership) at this site were embedded in the report to a limited degree and are evident based on

several items including the stated desire of the other Operator for Concessions to not request his option period under the same circumstances with the current league contractor.

As stated in the report, Option 3 to repair some of the most critical elements at the facility would require closing the facility for an estimated period of 3 to 6 months to complete the implementation of significant safety and infrastructure improvements. Ideally that temporary closure would be completed with no play allowed during that time to allow Contractors to complete facility auditing and construction in a safe and timely manner. However, the proposed month-to-month (maximum 6-month bridge period) approach with the current vendor was in response to concerns expressed by some patrons of the facility who contacted NRPR who expressed their desire for us to try to keep the facility open. Provided monies are approved by the Board to complete these critical facility repairs, we were willing to try this to see if we could manage to keep portions of the site open to allow park patrons to continue to use portions of the facility as construction proceeds and the best way to try to continue those league and tournament operations was believed to be utilizing the existing operator.

That bridge period would allow for us to craft a more formal request for proposals for a unitary site operator in order to gauge the interest of other parties and evaluate what potential private investment into the site they could offer. Certainly the existing Operator(s) could also propose on that as well. Completing this process would allow us to select the most qualified vendor to operate the facility for the benefit of the public at the least cost to the County.

In addition to the answers provided to your questions, please find attached the County Administrator's letter to Louis Ciarca, President/CEO of Championship Sports, requesting follow up information on the letter that was submitted to the Board at the November 22 meeting.

Please let me know if further questions arise.

Attachments

C: The Honorable Chair and Members, Pima County Board of Supervisors
CH Huckelberry, County Administrator
John Bernal, Deputy County Administrator
Thomas Weaver, Chief Civil Deputy County Attorney

Chris Cawein

From: Shirley Lamonna
Sent: Wednesday, November 30, 2016 2:46 PM
To: Chris Cawein
Subject: Mike Jacob Sportspark

Good afternoon Mr. Cawein,

In preparation for this continued item which will be addressed at the December 13th BOS meeting:

- Please advise what the County's decision was regarding overseeding methodology after the April 2011 rye grass-growing season.
- Please provide details of the "10 proposals" presented by Mr. Ciurca during the past 7 years, as mentioned at the Nov 22 BOS meeting.
- Given the Court ruling that Section 8.2 gives plaintiff the right to renew the contract for a maximum of four one-year periods, on what grounds are we pursuing a "month-to-month operating agreement for a period of up to six months?"

Thanks in advance for your assistance.

Shirl Lamonna
Research Analyst

Supervisor Ally Miller, District 1
Pima County Board of



Supervisors
130 W Congress St 11th Floor
Tucson, AZ 85701

P: (520) 724-8599
F: (520) 724-8489

www.allymillerdistrict1.com

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COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

November 29, 2016

Louis Ciorca, President/CEO
Championship Sports
c/o Edward J. Laber, Esq., CPA
33 N. Tucson Boulevard
Tucson, Arizona 85716

Re: **Mike Jacob Sportspark Operating Agreement**

Dear Mr. Ciorca:

As you know, the Board of Supervisors, at their November 22, 2016 meeting, deferred action regarding staff's recommendation for a six-month operating agreement extension for operation of Mike Jacob Sportspark. The matter will again be considered on December 13 at the Board Meeting.

In your Call to the Audience materials, you indicated you would be able to provide more information with additional time, which was provided by the Board's continuation. You also indicate you would like to "bring to light numerous misstatements and inaccuracies of material facts in the NRPR memorandum, which result in false conclusions." Please provide detailed, factual information to substantiate these "misstatements and inaccuracies."

If you have any specific, compelling proposals to make regarding why you believe you should be afforded the time extension you have requested, it would be appropriate to make that proposal in writing so the Board may properly consider such. The information should address the issues and concerns outlined in the November 8, 2016 Natural Resources, Parks and Recreation (NRPR) report to me including, but not limited to, the provision of concessions, tournament scheduling and management, as well as overall field maintenance of the facilities that has been provided by NRPR. A capital investment schedule should also be included to indicate major repairs and/or maintenance costs that would be performed by Championship Sports if your lease were extended based on your request.

Mr. Ciorca
Re: **Mike Jacob Sportspark Operating Agreement**
November 29, 2016
Page 2

I look forward to your response at your earliest convenience.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/anc

Enclosure

c: The Honorable Chair and Members, Pima County Board of Supervisors
Thomas Weaver, Chief Civil Deputy County Attorney
John Bernal, Deputy County Administrator for Public Works
Chris Cawein, Director, Natural Resources, Parks and Recreation

Good Afternoon,

My name is Lou Ciorca. I am the owner of Championship Sports, and the League and Tournament Coordinator of Mike Jacob Sports Park. I am here today to address the Memorandum concerning the future of MJSP.

I would like to first start by stating I have legal representation, that could not be here today concerning the current contract. I must bring to your attention that the NRPR Memorandum fails to address the court ruling regarding Championship Sports current contract with Pima County. Originally NRPR tried to assert that Championship Sports contract, together with all option periods, would be expiring at the end of the year. This matter was litigated and the Superior Court ruled that Championship Sports still retains 4 one-year option periods. (Exhibit A, Declaratory Judgment). The NRPR Memorandum fails to acknowledge this fact in its report and thus is misleading in its conclusions. Now NRPR has changed its position and believes a month to month arrangement is appropriate contrary to Championship Sports' expectancy under the contract. I am respectfully asking for a delay in the decision and judgment regarding the park until I have an opportunity to present with counsel.

Secondly, we would like to put together important information for you in a meaningful, but we were only just informed of this memorandum on Thursday November 17th. My legal counsel submitted a memorandum, dated November 18, in which we formally requested a hearing before a vote is taken to:

1. bring to light numerous misstatements and inaccuracies of material facts in the NRPR Memorandum, which result in false conclusions and,
2. present to you a series of compelling proposals that provide substantially better options than those presented in the NRPR Memorandum.

Lastly, I would like to bring to light that over the past 7 years I have presented 10 proposals that would have solved most of the issues that have been mentioned in the report. As an expert in this field, who has studied sports parks in the southwestern United States, I strongly believe that these practical proposals can substantially meet the County's current and future needs. Championship Sports wishes to work together with NRPR. My legal counsel and I have requested prior meetings with NRPR to address issues and solutions regarding the park for our mutual benefit. Those requests to discuss an amiable resolution have been essentially ignored.

I want to encourage you to revisit these proposals. I firmly believe together we can create a better option than the four options that are currently being presented. I look forward to the opportunity to work together with you for the greater benefit of our Tucson community.



Louis A. Ciorca
President/CEO
Championship Sports



Edward Jerome Laber, Esq., CPA

33 North Tucson Blvd. • Tucson, Arizona 85716
(520) 624-3000 • ejl@edwardlaber.com

November 18, 2016

The Honorable Chair and Members, Pima County Board of Supervisors
Re: Mike Jacob Sportspark Operating Agreement
130 W. Congress Street, 11th Floor
Tucson, AZ 85701

Re: Championship Sports, LLC

Dear Pima County Board of Supervisors,

I represent Championship Sports, LLC and I am in receipt of the Board of Supervisor's Memorandum dated November 22, 2016 prepared by the County Administrator and the Memorandum dated November 8, 2016 prepared by Natural Resources Parks and Recreation.

After reviewing the memoranda with my client, we believe there are numerous misstatements and inaccuracies of material facts being reported by NRPR. We believe that a deliberate attempt is being made to cast Championship Sports in a false light to mislead the Board of Supervisors.

Originally NRPR tried to assert that Championship's contract, together with all options periods, would be expiring at the end of the year. This matter was litigated and the court ruled that Championship still retains 4 one-year option periods. (Exhibit A, Declaratory Judgment). Now NRPR has changed its position and believes a month to month arrangement is appropriate contrary to Championship's expectancy under the contract

Championship wishes to work together with NRPR and prepared a written proposal to NRPR to address issues at the park for their mutual benefit. NRPR has ignored Championship's invitations to discuss an amiable resolution of the dispute.

Championship respectfully requests a hearing to present the facts to the Board of Supervisors before decision.

Respectfully,

Edward J. Laber

EXHIBIT A



1
2 **Laber & Laber**

3 ATTORNEYS AT LAW

4 Edward Jerome Laber (Atty #031516 PC#66714)

5 33 N. Tucson Boulevard

6 Tucson, Arizona 85716

7 (520) 624-3000

8 (520) 624-3332 Fax

9 ejl@edwardlaber.com

10 Attorney for Plaintiff, Championship Sports, LLC

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF PIMA**

13 CHAMPIONSHIP SPORTS, LLC,
14 Plaintiff

Case No.: C20162075

15 vs.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

16 PIMA COUNTY,
17 Defendant

(Assigned to Hon. Catherine Woods)

18 Pending before the Court is Plaintiff's Motion for Judgment on the Pleadings and
19 Defendant's Cross-Motion for Judgment on the Pleadings. The Court has considered the
20 Cross-Motions and the related Oppositions and Replies, as well as the original contract
21 and amendments thereto, all of which were attached to the Plaintiff's Motion. Neither
22 party objected to the Court considering matters outside the pleadings (i.e. the contracts
23 and the amendments thereto). The Court finds it appropriate to consider the contracts and
24 amendments, and shall resolve the matter as provided in Rule 12(c) and Rule 56, ARCP.
25
26

27 The Court finds Amendment 5 to the contract is clear and unambiguous. In
28

1 entering the amendment, the parties specified the background and purpose of the
2 amendment as follows:

3
4 County, Operator desire to renew the Agreement for Operation and
5 Administration of Leagues and tournaments at Mike Jacob Sports Park, for
6 a period of four years as follows:

7 8.1 Base Term. The term of this Agreement shall be for four years
8 commencing on January 1, 2013 unless terminated sooner under the terms
9 and conditions. The date this agreement terminates is referred to as the
10 "*Termination Date*"

11 From: "...shall terminate on **December 31, 2012**

12 To: "...shall terminate on the **31st day of December, 2016**."

13 *See* Contract Amendment 5, at p. 1. Amendment 5 also changed a portion of
14 Section 3.3 of a prior amendment, which is not relevant to the issue pending before the
15 Court. Amendment 5 did nothing to change, remove, or modify any other provision of
16 the original contract. In fact, in Amendment 5, the parties agreed, "[e]xcept as modified
17 as provided in this Amendment, all of the terms and conditions of the Operating
18 Agreement as amended shall remain in full force and effect." Accordingly, Amendment
19 5 did nothing to change, remove, or modify Plaintiff's right under Section 8.2 to renew
20 the contract for a maximum of four one-year periods.
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23
24 Based upon the foregoing, the Court finds that there exists no genuine dispute
25 over the material facts and Plaintiff is entitled to Judgment on the Pleadings.

26 Accordingly, declaratory judgment is hereby **GRANTED** in favor of plaintiff,
27 Championship Sports, LLC. Specifically:
28

- 1 1. The Court finds that Plaintiff's options established under Section 8.2 of the
2 Agreement for Operation and Administration of Leagues and Tournaments at
3 Mike Jacob Sports Park (the "Agreement"), are in full force and effect and have
4 not lapsed or expired.
5
6 2. The Court finds that if Plaintiff desires to exercise the options, Plaintiff shall
7 submit to the County Administrator written notice in accordance with Section
8 8.2.1 of the Agreement.
9
10 3. Plaintiff is awarded its reasonable attorney's fees and costs which it may submit to
11 the Court for approval by separate motion.
12
13 4. Defendant's Cross-Motion for Judgment on the Pleadings is **DENIED**.
14
15 5. Pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure, this is a final
16 appealable Order.

17 IT IS SO ORDERED.

18 DATED: July 21, 2016

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21 
22 **HON. CATHERINE WOODS**
23 (LD. 56f067d5-d336-4d13-bf0b-ba9cd84060b0)
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Conformed copy e-mailed
June 6, 2016, to:

Tobin Rosen, Esq.
Deputy Pima County Attorney
Tobin.Rosen@pcao.pima.gov