

ATTORNEYS AND COUNSELORS AT L A W
RENTROP & MORRISON, P. C.

SUSAN E. MORRISON
(248) 644-6970, Ext. 306
E-mail: smorrison@rentropmorrison.com

40950 WOODWARD AVENUE, SUITE 300
BLOOMFIELD HILLS, MICHIGAN 48304

TELEPHONE (248) 644-6970
FACSIMILE (248) 644-7141

November 12, 2010

Mayor John Hieftje and City Council Members
City of Ann Arbor
100 N. Fifth Ave.
P.O. Box 8647
Ann Arbor, MI 48107

Subject: **Ann Arbor Parks Preservation Association / Huron Hills Parkland
City of Ann Arbor RFP No. 762
Our File Number 1123-000**

Dear Mayor Hieftje and Members of Council:

Our firm represents the Ann Arbor Parks Preservation Association (“A2P2”), whose members are concerned with preserving Huron Hills Golf Course as a public park and 18-hole golf course and preventing its commercialization.

On behalf of our client, and for reasons which include those addressed in this letter, we request that Council reject the Miles of Golf Proposal dated October 29, 2010 in response to the City’s RFP No. 762.

In addition to other construction proposed in Phase III, the Miles of Golf Proposal in its Phase II Plan would reduce the 18-hole course to a 9-hole course, calls for constructing a driving range and a building for its retail store in the middle of the front nine holes of the golf course and requires City assistance in financing the improvements.

The Ann Arbor Golf proposal, also submitted in response to RFP No. 762, would leave the 18-hole golf course intact and proposes operating Huron Hills under a non-profit Foundation on the model of the Leslie Science Center, thereby enabling the course to operate on a breakeven basis in contrast to the City’s projected loss of \$240,000 for fiscal year 2011. Ann Arbor Golf’s proposal does not require the City to incur any debt obligation or additional expenses in the form of depreciation for new structures.

A. The Miles of Golf Proposal

Miles of Golf (“MOG”) operates an outdoor driving range and offers golf lessons at its current location on Carpenter Road in Pittsfield Township. However, its golf retail operation is “the largest division” of the company as described at the end of the second page in Section 4 of the MOG Proposal. MOG in Section 5 of its Proposal describes its golf equipment retail store as “the 3rd largest in the state” and “the fastest growing golf shop in the state.” The MOG website notes that its golf retail shop is recognized by Golf World Business “as one of the top 100 golf shops in the country, the most prestigious award for golf shops.” MOG notes in Section 2.2 of its Proposal under the heading “The Golf Shop” that it is considered “one of the three best club fitting shops in the country.” The current staffing for the golf retail operation is 9 full time and 9 part time employees.

Appendix D to the MOG Proposal contains a Board of Directors resolution authorizing the company to make a proposal to “operate Huron Hills Golf Course and *move the golf business* at 3133 Carpenter Rd., Ypsilanti, MI to the Huron Hills Golf Course in Ann Arbor.”[emphasis added]. According to Section 2.2 of the MOG Proposal, the current retail operation of 9,000 square feet is proposed to be moved to Huron Hills and expanded by an additional club-fitting studio. Thus the new building of 11,000 square feet proposed by MOG for Phase II of its plan for Huron Hills would be primarily occupied by its retail operation. Although the financing portion of the Proposal has not yet been made available, MOG is apparently requesting City bond financing for its primarily retail structure according to Section 2.1, 3rd paragraph of its Proposal. (“The City will most likely need to make an investment in the project.”)

1. Miles of Golf’s Proposal For Its Retail Golf Store on Public Parkland Does Not Comply with the Zoning Ordinance or the RFP Requirements

Ann Arbor’s zoning ordinance (Chapter 55 of the City Code) at Section 5:10:13 provides, in relevant part as follows:

“5:10:13. PL Public Land District.

(1) Intent. This district is designed to classify publicly owned uses and land and permit the *normal principal and incidental uses required to carry out governmental functions and services.*

(2) Permitted principal uses.

(a) Outdoor public recreational uses, such as: playgrounds, playfields, golf courses, boating areas, fishing sites, camping sites, parkways and parks. *No structure shall be erected or maintained upon dedicated parkland which is not customarily incidental to the principal use of the land.*

* * * * *

[emphasis added]

While the City may take the position that the *City* is exempt from the terms of its zoning ordinance, a private party occupying public land in the manner MOG proposes is not. It would be difficult to make a credible argument that allowing a private party to build and operate the third largest golf retail store in Michigan on City parkland meets either of the ordinance provisions

italicized above. Such a large for-profit retail use is not a “normal principal [or] incidental use[] required to carry out governmental functions and services.” Nor is the primarily retail structure proposed one that is “customarily incidental” to the principal use of the land as a public golf course. In addition, RFP No. 672 requires in Section 2 (“Proposal Scope of Services”) at page 16, paragraph 15 that “[i]mprovements shall be held to all applicable code standards and require all applicable permits and licenses.”

Because the Miles of Golf proposal to move its retail operation and build a primarily retail structure on public parkland does not comply with the zoning ordinance, and thus also cannot meet that requirement of the RFP, we request that the City reject the MOG Proposal.

2. Miles of Golf’s Proposal to Build Its Retail Golf Store on Public Parkland Does Not Comply with the Concession Exemption Under the Lessee-User Tax Act as Required by the RFP

The RFP includes the following requirement at page 12:

“The City will not entertain requests to negotiation [sic] Agreement terms which . . . conflicts with or fails to meet the requirements for . . . the ‘concession exemption’ under the Michigan General Property Tax Act (Public Act 206 of 1893, as amended).”

The above requirement is referring to a portion of the state property tax statutes known as the Lessee–User Tax Act. That Act provides, in pertinent part at MCL 211.181(1), as follows:

“(1) Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, *the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.* [emphasis added].

The Act’s purpose is to eliminate the unfair advantage that private-sector users of tax-exempt property would otherwise brandish over their competitors who lease property that is privately owned. An exception to the above statutory provision has been carved out for property used as a concession at a public park (and other similar property). MCL 211.181(2)(b). However, whether a particular private use of public parkland qualifies to be deemed a “concession” and thus tax-exempt has been the subject of a number of court cases, including several involving golf course “concession” exemptions that have been denied. Tax exemptions are strictly construed, since, as Michigan courts have observed, “exemption is the antithesis of tax equality.” Golf Concepts v. City of Rochester Hills, 217 Mich. App. 21, 26 (1996). Among other standards that the private user of public property must meet is the requirement that the services offered must “bear a reasonable relationship to the purposes” of the public entity at issue. Seymour v. Dalton Township, 177 Mich. App. 403, 408 (1988).

Clearly, the City of Ann Arbor has no public purpose of building and operating the third largest golf equipment retail store in Michigan. Nor would it be equitable for the City to put itself in the business of unfairly competing with other sports equipment stores that pay property taxes. Because a key component of the Miles of Golf Proposal is moving its retail operation to public parkland, its Proposal does not meet the required “concession exemption” criteria of the RFP and must be rejected by the City.

3. Miles of Golf’s Proposal to Build Its Retail Golf Store on Public Parkland Does Not Comply with the City Council Resolution of October 22, 2007 Regarding Municipal Golf Courses

In 2007, after City Council hired a consultant to study golf course operations, Council set forth its policy in Resolution R-07-508 adopted October 22, 2007 regarding the City’s two municipal golf courses which provides, in relevant part, as follows:

“Resolved, That the Mayor and City Council declare that all the properties commonly known as the Leslie Park and/or Huron Hills Golf Courses will not be sold either in whole or in part for private development, and;

Resolved, That the Mayor and City Council agree that *all the golf course properties shall remain in the parks system as open space for the purpose of other possible public recreational uses, should the golf operations cease for any reason.*” [emphasis added]

At a minimum, the MOG Proposal to build a structure primarily for its retail store on part of Huron Hills golf course would mean a cessation of golf operations for that area of the property. Such a proposal violates the express policy of City Council articulated above to keep the land as open space if golf operations cease. We request that City Council abide by its Resolution and reject the MOG Proposal.

4. Miles of Golf’s Proposal to Build Its Retail Golf Store and a Driving Range on Public Parkland Does Not Comply with the City’s Parks and Recreation Open Space (“PROS”) Plan

The Ann Arbor Parks and Recreation Open Space Plan, 2006 – 2011 (“PROS Plan”) was approved by City Council by Resolution R-29-1-06 in January of 2006 as part of the City of Ann Arbor Master Plan. That resolution notes that the PROS Plan “is the guiding document for all future planning for the Ann Arbor Park System,” and that “a comprehensive list of facility improvements, recreation needs and park improvements was developed to provide the basis for millage renewals and capital improvements as a result of the public input.” The Needs Assessment for Huron Hills at pages J6 – J7 addresses only a new irrigation pumping station, additional trees and other plantings, updating maintenance equipment, and design enhancements for a pathway along Huron Parkway. The adopted PROS Plan does not contemplate the drastic reduction of the Huron Hills Golf Course from 18 to 9 holes, or the addition of a golf equipment retail store and driving range proposed by Miles of Golf. We request that City Council follow its PROS Plan and reject the MOG Proposal.

B. The City Has a Viable Alternative of Having a Non-Profit Entity Operate Huron Hills Golf Course, Such as the Foundation Proposed by Ann Arbor Golf

It would be ironic if, despite voters authorizing Greenbelt millage funds for purchase of *additional* open space both within and outside Ann Arbor, the City were to consider *reducing* the amount of its existing valuable open space by the erection of a primarily retail structure and attendant parking in the middle of Huron Hills parkland.

Instead of allowing the commercialization of public parkland, the shrinking of a golf course from 18 holes to 9 holes and the incurring of new public debt, the City has the opportunity to keep historic Huron Hills golf course intact as open green space while also eliminating a financial loss to the City in the operation of the course.

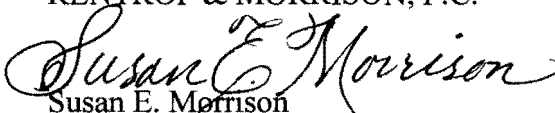
The Miles of Golf Proposal would violate the zoning ordinance, and fails to comply with the “concession exemption” as required by the RFP, or with City Council’s October 27, 2007 Resolution or with the City’s PROS Plan. The Miles of Golf proposal would put the City in the business of operating (and apparently using municipal funds to build) the third largest golf retail store in the state and unfairly competing with other retail stores which have to pay property taxes. The Miles of Golf Proposal is legally and financially risky for the City.

City Council has a duty as a fiduciary for public parklands which are held in trust for the people. The citizens of Ann Arbor have empowered you to uphold the City’s zoning ordinance and to compel compliance with the RFP conditions.

For the reasons set forth above, and on behalf of our client, we respectfully request that the Miles of Golf Proposal for Huron Hills Golf Course be rejected.

Please include this letter as part of the record of proceedings before City Council at its November 15, 2010 meeting.

Respectfully submitted,
RENTROP & MORRISON, P.C.


Susan E. Morrison