

**Date:** December 21, 2015

**Date Minutes Approved:** January 4, 2016

## **BOARD OF SELECTMEN**

**Present:** Theodore Flynn, Chair; Shawn Dahlen, Vice-Chair; and David J. Madigan, Clerk

**Absent:** None

**Staff:** René J. Read, Town Manager; and Nancy O'Connor, Executive Assistant

**Additional attendee:** Art Kreiger, Esq. from Anderson & Kreiger

### **CONVENED IN OPEN SESSION –**

- I. CALL TO ORDER** - The meeting was called to order at 7:00pm in the Mural Room.
- II. OPEN FORUM** Nothing brought forward.
- III. NEW BUSINESS**

#### ***Rescission, reconsideration and a new decision regarding the award of the North Hill Country Club management contract***

Mr. Read began the discussion by reading his memorandum to the Board of Selectmen, which described the details of the bid/evaluation process as it related to the North Hill Country Club. The memorandum also included Mr. Read's recommendation to rescind the award to Sterling Golf Management Inc. and subsequently award the contract to Johnson Golf Management Inc. (See Memorandum filed in the Selectmen's records.) Mr. Read then turned over the discussion to Town Counsel, Attorney Art Kreiger.

Attorney Kreiger stated that there is a lot of history, especially with regard to the pending litigation, and that it is important to put that history aside in order to make the correct decision under the law. He further said that the Town needed to make sure the proposers were responsible in order to consider them eligible to carry out the contract in good faith. He mentioned that both Mr. Read and Mr. Lambiase checked references, asked the same questions, and found the proposers to be responsible. Attorney Kreiger continued to say that Sterling's references were uniformly glowing and that Johnson's were mixed. After further reference research on Johnson Golf, Mr. Read found the recent references to be good. Attorney Kreiger explained that now since the rankings are equal, the recommendation goes to the highest bidder under 30B.

Mr. Madigan mentioned that it was previously brought up that the financials were not audited. He further stated that there was discussion regarding the money, the lowest bid, and if the decision was all based on the scoring. Attorney Kreiger replied that this was a Request for Proposals instead of just an Invitation for Bids so they could look at non-price factors, which would override the money unless rankings were equal.

Mr. Dahlen commented that after looking at the evaluations, it was apparent that they would go with the highest ranking under the 30B process. He also felt that Pilgrim Golf was ranked significantly

lower due to wording in the evaluation criteria. Even if they had the same rating and the award went to the highest bidder, he said that he would still have liked an evaluation with a more level playing field.

Attorney Kreiger replied that evaluation criteria with the focus on experience does not make a level playing field. It was an operational judgment in drafting the RFP and was followed by the law. Even if Pilgrim was ranked higher, the outcome would still be the same because Johnson Golf was the highest bidder.

Mr. Flynn then stated that we need to follow the letter of the law and personal feelings need to be set aside. The outcome still comes down to money with all else being equal. Mr. Read stated that no one wanted to be in this position, least of all him, and apologized for this being brought back.

Mr. Flynn mentioned that the evaluators were not accountants. They all saw the accountant's letters provided by Sterling along with their financials, interpreted those letters as audit letters, and made an honest mistake in their evaluations.

Mr. Madigan moved that the Board of Selectmen rescind the award to Sterling Golf Management for North Hill Country Club and reconsider the award. Seconded by Mr. Dahlen. (Discussion continued before the vote)

Attorney Robert Galvin, representing Pilgrim Golf and Emmet Sheehan, suggested that another option to be considered would be to rescind the entire process due to flaws in the RFP that placed Pilgrim Golf at a competitive disadvantage. He further stated that Pilgrim Golf has a significant amount of experience, which could not be considered in the process. Attorney Galvin also mentioned that a financial professional was needed to go through the evaluations. He also reminded everyone that Johnson Golf has a history of litigious behavior.

Attorney Kreiger responded that this was not a flawed RFP process under 30B. Mr. Madigan asked who wrote the RFP. Mr. Read responded that it was a combination of efforts between himself, Scott Lambiase, and Town Counsel.

Mr. Emmett Sheehan stated that since Anderson & Kreiger were involved in the process from the beginning, how did they miss evaluation results. Attorney Kreiger replied that they did not check the evaluation scores, that they left that up to the Town, and when the error was brought to their attention, they reviewed all the evaluations in detail.

Mr. Michael Walker, Alden Street, said that he thought from the beginning that Pilgrim Golf was automatically at a disadvantage because they did not run multiple courses.

Mr. Read responded that there were criteria that Pilgrim could have excelled at.

Mr. Walker also asked why their (Pilgrim's) references were not checked.

Attorney Kreiger responded that there was no need to check Pilgrims referenced because they currently run the golf course and there was no need to. Johnson Golf's references were double checked to prove that they were responsible.

Mr. Madigan stated that Town Meeting voted to go out to bid. Mr. Walker responded that the concessions were supposed to be separate too—but that the wording was such that it could be combined.

Mr. Flynn attempted to keep all on track regarding the contract.

Mr. Walker asked if the Town had the right to reject all bids.

Mr. Read stated yes, but that in his judgment he respectfully disagrees with that suggestion as it would not be in the best interest of the Town. Mr. Walker said that he was just trying to understand the process.

Mr. Bob Austin asked if there was a provision to get rid of a contractor for lack of performance. Mr. Flynn responded that yes, performance requirements are in the contract. Mr. Bob Doyle asked about past history. He further stated that Johnson left the place in shambles, and Pilgrim Golf did a great job of improving. Mr. Flynn stated that Johnson Golf is under new management.

Mr. Walker asked why we weren't considering running the golf course ourselves. Mr. Madigan stated that that was originally discussed and it was decided that it would be more expensive to run ourselves than to contract it out.

Mr. William Zachman spoke and stated that having the Town run the golf course was discussed at a Board of Selectmen's meeting, and that Gordon Cushing provided a pro forma that showed that it was not economically feasible for the Town to run it. He continued to say that at Town Meeting, the RFP was voted on for five years with a three year extension and encouraged residents to attend Town Meeting.

Mr. Dahlen further stated that it would cost the Town more money and the Town could not run it efficiently as the Town would be required to go through the 30B process.

Mr. Sheehan stated that he hoped that the Town makes Johnson Golf accountable as no one did in the past. Mr. Read stated that it will boil down to contract enforcement.

Mr. Bob Austin asked if there contract restrictions regarding annual memberships. Mr. Read replied that there were provisions in the contract for fee schedules.

Attorney Galvin also commented that both Sterling's and Pilgrim's bids were reasonable to run the course and Johnson's was vastly different and a lot more. He urged the Town to be careful as the higher amount does seem to be financially feasible to run the course.

Attorney Kreiger replied that there would be a performance bond required to cover a year's worth of revenue.

Attorney Galvin stated that the Town would get their money, but not the services or the condition of the golf course. Mr. Flynn stated that the contract would be enforced.

Mr. Sheehan commented that there was no appetite in the past to enforce the contract and was hopeful that with different Selectmen and Town Manager, that would change.

Mr. Madigan moved that the Board of Selectmen rescind the award to Sterling Golf Management for the management of the North Hill Country Club and reconsider the award. Seconded by Mr. Dahlen. Vote: 3:0:0

Mr. Madigan, upon recommendation of the Chief Procurement Officer, moved that the Board of Selectmen give the award to Johnson Golf Management based on the financial bid for North Hill Country Club subject to the execution of the appropriate contract. Seconded by Mr. Dahlen. Vote: 3:0:0

**IV CONTRACTS** None presented.

**V TOWN MANAGER'S REPORT** Nothing presented.

**VI COMMITTEE APPOINTMENT/RE-APPOINTMENTS/RESIGNATION**  
None presented.

**VII ONE-DAY LIQUOR LICENSE REQUESTS** None presented.

**VIII EVENT PERMITS** None presented.

**IX MINUTES** None presented.

**XI ANNOUNCEMENTS** None presented.

**XII ADJOURNMENT**

At approximately 8:00pm Mr. Madigan moved that the Board adjourn. Seconded by Mr. Dahlen. Vote: 3:0:0

*Minutes submitted by Nancy O'Connor*

*LIST OF DOCUMENTS (documents are kept in the Board of Selectmen files)*

- 1) *Agenda*
- 2) *René Read Memorandum to the Board of Selectmen*
- 3) *Letter from Johnson Golf Management Inc dated 12/17/15*
- 4) *Letter from Attorney Robert Galvin dated 12/21/15 on behalf of Pilgrim Golf LLC*