1. Since the golf industry is declining and liabilities unknown, should homeowners take the risk of owning a golf course?

RESPONSE:

The first question appears to be, what does the ArrowCreek homeowner receive for buying the two golf courses from FOA? The answer is:

1. the status of being a member of a social club, which permits him to use and attend functions at the golf club and Residence Center.

2. NOT the right to play golf on the golf courses, for which an additional membership fee must be paid.

The second question is, how much will the homeowners be paying? The additional fee is currently estimated to be $100 per month x 12 months = $1,200 per year per homeowner. Multiplying $1,200 per year x 1,056 property owners totals up to $1,267,200 per year – their conservative estimate of the amount required to maintain and operate the golf courses.

The third question each homeowner should ask himself is: why buy an asset that has no upward limit on the additional expenses which will be charged through the increase in the Homeowners' monthly assessments?

According to the Board's "Community Club Committee," the two ArrowCreek courses have never operated at a profit (Ex 1 p.7). Today's economic forecast for golf courses is very dim, indeed. Consider these observations from national authorities who, after studying the golf course industry, have asserted:

From "Buying Or Building A Golf Course, Due Diligence Is Key" http://www.hospitalitynet.org/news/4063485.html (Ex 3A):

- Golf is a difficult business, in which one-third of the courses nationally have operated at a loss.
- The first point for a purchaser to get clear is your objective. If nearly two-thirds are unprofitable, why are we doing this? Golf courses are a breeding

ground for lawsuits, and golf and legal issues can be found in every square inch of a golf facility

- The cost of maintaining an 18-hole golf course has about doubled in the last 7 years. (Note: The Board's proposal is for the HOA to purchase two 18-hole golf courses.)

From "Golf Market Stuck in Bunker as Thousands Leave the Sport," http://www.bloomberg.com/news/2014-05-23/golf-market-stuck-in-bunker-as-thousands-leave-the-sport.html (Ex 3B):

- The sport is suffering from an exodus of players, a lack of interest among millennials and the mass closure of courses.
- About 400,000 players left the sport last year, according to the National Golf Foundation. While almost 260,000 women took up golf, some 650,000 men quit.
- The sport is suffering the biggest decline from younger players, according to the National Golf Foundation, with 200,000 players under 35 abandoning the game last year.
- Only 14 new courses were built in the U.S. last year, while almost 160 shut down, the National Golf Foundation said. Last year marked the eighth straight year that more courses closed than opened.

From "Thoughts From the Golf Industry Show," www.hvsgolf.com (Ex 3C):

- There are no major national lenders providing capital to the industry.
- For the first time in the modern era, the actual number of golf holes has declined every year from 2006 to 2012.
- The total number of golf courses in the United States has declined in every year since 2005. Just under 500 golf courses have been removed from the market during that time period, with 280 removed during the past two years.
- Golfers per course have decreased every year since 2007.

- Based on our estimates, the average course lost 15% of its rounds, had a 20% reduction in average rate, and an estimated 10% loss in ancillary spending. In total, revenues declined by an estimated 35% at the average golf course from peak levels in 2006.
- There are nearly 16,000 golf courses in the country today, and The National Golf Foundation reports total closures of around 1,150 golf courses during the previous ten years, with approximately 665 closing in the last five years. So about 7% of the inventory of golf courses in the United States has closed during the past decade.
- Given the perfect storm of compression of revenues, rising expenses, a loss of capital, decreasing value and more stringent lending conditions, it is of little surprise that the golf industry is in a painful period of distress. Golf course values are down, lending is still difficult, and the ability of the industry to alter these constraints is going to be tested in the years to come.
- The latest data from the National Golf Foundation shows that, while the overall golfer population has contracted from a peak of 29,500,00 golfers in 2007 to 25,300,000 in 2012, the number of core golfers peaked in 2000 at 19,700,000 and declined to just 14,400,000 in 2012. This means that we have lost 25% of the core golfer population in the last decade, and 75% of the loss of golfers since 2007 has been a loss of core golfers.
- It is clear that there will be substantial pressure on golf course profits in the near future due to the general economic conditions, the current oversupply of golf courses, the lack of demand, and the decline in golfers.

From "Home Owner Evaluations, the Golf Course, A Source of Contention," http://www.hoaevaluations.com/the-golf-course-a-source-of-contention/ (Ex 3D):

- The cost of maintaining an 18-hole golf course has about doubled in the last seven years.
- In many HOA's other than 55+ communities, the golf course is becoming a source of contention.

- When combined with a difficult borrowing climate and nervous investors, commercial clubs have been forced to sell clubs while many members' clubs have been trying to cut budgets to survive.
- Communities which own golf courses suddenly faced the fact that fewer owners played golf and fewer owners paid for golf club members, which made the associations' ownership of a golf course a losing proposition. That caused legal wars between the golf players and the non-golf players in these communities. The golf players realized that it would be too expensive for them to pay for the upkeep of the golf course alone. So they looked for others to pay for their entertainment – and making golf club membership mandatory was the name of the newest game.
- Just because the golf course/club gets into financial trouble is not a valid reason to saddle non-golfing residents, who never intended to play golf or be a member of the golf club, with expenses. Common sense dictates that the folks who want to play golf should pay for their own entertainment, not force their neighbors to finance their fun.
- No matter what the proponents of HOA's purchasing a golf course or making golf club membership mandatory tell you, a golf course is not improving the property values of the homes in the association. A golf course is a serious financial liability; and, in many communities, it is dragging down property values.
- No matter what the documents are promising you, history clearly shows that folks who buy homes in golf course communities find out, too late, that playing golf is getting more and more expensive. More importantly, these owners soon learn that the golf club needs and seeks other sources of income. YOU, as a non-golfing owner, are it! Put a target on your back! Thus, the lawsuit begins!
- **And, never forget:** if the golf course fails, and your contract states that your community "owns the golf course," or that membership is "mandatory," your home is collateral for all of the debts generated by the golf course/club.

- Why do I believe that golf courses are really **GOLF CURSES? Because others pay dearly for golf players' entertainment!**

It is beyond doubt that investing in a golf course is a grossly speculative proposition – one that has no upside potential for the members of our HOA. If you have an extra $2,500 and you want to speculate, it is safer to put it in the stock market. If the stock goes up, you make a profit; if it goes down, even to nothing, you know the most you can lose is $2,500. Not so when the homeowner buys into a golf course. The $2,500 is consumed in the first two years for the operation of the golf course benefitting the golf club members; you really have no upside potential for your investment, except the "enjoyment" of belonging to a social club. And your downside risk is well beyond your initial investment – it is unlimited.

ArrowCreek homeowners must realize that once the courses have been acquired by the HOA, the homeowners' liabilities do not end with payment of the $100 increase in the monthly fees. Rather, each member becomes personally liable for all future expenses, all operating costs, maintenance costs, interest on loans, insurance premiums, and reserves. These expenses can only be paid by the HOA assessing its members through huge dues increases.

Homeowners should not take that risk unless and until they have all the facts surrounding the transaction. Before you enter into a horrendously expensive, speculative investment like this, provide your accountant/investment advisor with both (a) the ArrowCreek Community Club Committee's Report distributed at the August 26, 2014 HOA meeting (Ex 1, copy attached) and (b) the Recommendations for Dealing With the Aspen Sierra Bankruptcy and Update on Community Club Proposal, presented at the Board meeting on November 4, 2014 (Ex 2). Also, tell them there was a third power-point presentation at the Board meeting on November 17, 2014, but no copies have been released as of December 7, 2014.

2. Is there any hard data to suggest that the value of every property in Arrowcreek will decline if the golf courses go "brown," or just those who live on the golf course?

Response:

If there is hard data, it hasn't been presented to the membership. Moreover, I believe that "the golf course going brown" never was a true concern – it was a scare tactic in the sales pitch at the August 26, 2014 meeting, when the Board first unveiled its proposal for the HOA to buy the golf course. (Ex 1)

That power-point presentation was premised on the theory that the ACHOA had only "three potential alternatives" in responding to the golf course bankruptcy:

- "'Let it go brown,' meaning let the property revert to its natural, high desert state.
- "'Keep it green,' meaning maintain the property as a park for use by the residents.
- "'Operate as golf course,' meaning to find an appropriate arrangement so the Club would continue to operate on a stable, viable basis."

The Board asserted that "'Do nothing' was discussed but dismissed due to lack of control over land use and threat posed by unmitigated fire risk." The statement that "do nothing" was not an alternative for the HOA was false! The Committee and Board members knew that the FOA had a detailed plan and would be purchasing the courses and operating them with Arnold Palmer Management.

They knew that nine days earlier (August 15th) the FOA had told the Bankruptcy Court that the FOA had the funding for the purchase of the golf courses, and that when acquired, the golf courses would continue and in fact be expanded:

- "The FOA has engaged a reputable nationwide golf club management company to run the golf course facility *indefinitely*. … and the FOA will immediately establish a financial committee and will implement internal controls, generate monthly financial statements, and upgrade the restaurant facilities during the winter shutdown." (Ex 4, pp 3-4.)

As FOA's President told the *Reno Gazette Journal*, if our HOA didn't purchase the golf courses, "we are prepared to keep both courses and sometime down the road, when it becomes profitable, we could sell it." (Ex 5)

The FOA further advised the Bankruptcy Court that it had a membership plan and would immediately and aggressively pursue new members. "The FOA believes that its de facto community ownership of the club will be attractive to both residents and nonresidents of ArrowCreek." And the FOA had offered the ACHOA the option to purchase the golf courses within 9 months after the FOA acquired them, if the HOA so desired.

According to the FOA in its Disclosure Statement and Business Plan, filed with the Bankruptcy Court on August 15th (attached as Ex 6), FOA was formed in December 2013 to explore the possibility of raising money from the community to finance replacement ownership.

In early 2014, as soon as the golf course went into bankruptcy, the Board, its Club Committee members, and attorneys had begun talks with the "30-35 unidentified residents of Arrowcreek" (the FOA) and also had begun meetings with a management group they called "Arnold Palmer group" and there was no need to purchase the golf courses. (Ex 1, p.3)

Our Board knew the FOA was going to purchase the golf courses and continue to operate them indefinitely. That should have been disclosed to the homeowners at the Board meeting on August 26th, so our homeowners would know that, indeed, there was a fourth choice – "do nothing". And "do nothing" should have been the choice, as the FOA as the new owner was committed to operating and maintaining the courses.

Note that in this August 26, 2014 presentation by the Board and its Committee, their parade of horribles (brown/green/operate as golf course) (Ex 1, p. 8) was based upon the express assumption that the golf club and its two courses would go into Chapter 7 bankruptcy; that no buyer would come forward; and that the ACHOA would have to purchase the golf courses out of bankruptcy. (Ex 1, pp. 9, 12, 15)

In fact, the Board was well aware by August 16th that the HOA was not required to purchase the courses out of bankruptcy, because there were **two** bidders to purchase the courses. Nevertheless the Board permitted this

deceptive presentation on August 24th and then on September 9th filed pleadings with the Bankruptcy Court supporting the FOA's purchase over the other bidder.

On September 9, 2014, the HOA filed two pleadings requesting that the HOA be awarded the contract to purchase the golf courses out of bankruptcy, rather than the competing bidder. The pleadings are entitled ArrowCreek Homeowners Brief in Support of FOA and a declaration by HOA President Sam Fox. (Ex 6 A, B) Mr. Fox states in his declaration that:

- HOA's Board voted to support FOA;
- FOA's business plan has a strong long-term financial outlook;
- FOA's business plan calls for a national reputable professional company, Arnold Palmer Golf, to provide on-site management;
- FOA has worked closely with the HOA committees to obtain mutual benefit and develop a sound financial plan;
- FOA is composed primarily of ArrowCreek residents who have a strong interest in revitalizing the golf club, by not only offering golf related activities, but also social activities in its facilities, thereby improving quality of life for all the residents.

On October 15, 2014, FOA purchased the golf courses and hired Arnold Palmer Professional Golf as manager. It is now the owner and operator for the courses. At the next board meeting on November 4, 2014, a new power point presentation was made to the attendees, entitled "Update on the Community Club Proposal." (Ex 2) It begins with a Recap of Prior Meeting Recommendations – again neglecting even a mention of the option of "Do Nothing." The FOA had purchased the course; Arnold Palmer Golf was managing the club, and it was off and running. But the report and presentation by Richard Kenny chose not to mention those facts. Instead, the presentation focused on Structure of Partnership, Financial Impact to Homeowners, and communication plan. Not once does it mention that if the HOA did nothing there would be no financial impact on the homeowners whatsoever. The FOA owned the courses and was responsible for the liabilities tied to ownership. We would have no reason to have a Joint Venture with Arnold Palmer which would require us to relinquish the Residents Club and raise homeowners fees $100 per month, paying the Joint Venture over a million dollars per year.

Based on these representations and failures to disclose all facts, it appears that the Board of Directors failed to recognize that their fiduciary duties to the homeowners.

From the bankruptcy documents and the Board's statements on what was at stake, we can see that the homeowners are being pushed by our Board to vote on a decision to purchase or not to purchase two golf courses and enter into a joint venture with a golf management company. Tthe Board is constantly blitzing our members with a one-sided campaign about why the purchase is a terrific opportunity, while denying the opponents equal access to email communications with the HOA members and denying opponents a presence on the debate platform.

Obviously, months before its August 26th presentation, the Board had decided that purchasing the courses from the FOA and then joint venturing with Arnold Palmer was the only way to proceed. That decision has the effect of requiring homeowners to invest in one of the most speculative ventures ever, at a time when the golf industry is plagued with all sorts of issues which opens up homeowners to the possibility of unlimited liability. Why? So we can have a social club! We already have a golf course that is running fine – and according to its owners (FOA) it has a top flight golf course manager CGPM to operate the course. That's precisely where we want to be. However, the Board continues to forcefully push if not shove the HOA into this purchase and joint venture.

According to Nevada law, the Board members and their officers are fiduciaries and must act on an informed basis, in good faith, and in the honest belief that their actions are in the best interests of our homeowners association. They are prohibited from acting outside the scope of the governing documents, and may not commit an act or omission that amounts to negligence, and are supposed to represent all members and not just a select few.

The Nevada Revised Statutes 116.3103 provides that homeowner association offers and directors are fiduciaries.

In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in

the honest belief that their actions are in the best interest of the association. Officers and members of the executive board:

(a) are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business judgment rule; and

(b) are subjurect to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

A Department of Real Estate publication provides:

"Expectations – Prohibited acts: Do not act outside the authority in the Governing Documents; Do not act for reasons of self-interest, gain, prejudice or revenge; Do not commit an act or omission that amounts to incompetence, negligence – failure to exercise the degree of care that the law requires for the protection of other persons or their interests; or gross negligence – an extremely careless action or an omission that exhibits willful or reckless disregard for the consequences to the safety or property of another."
(emphasis added)

In addition, the Nevada courts have recognized that the fiduciary has a duty of loyalty which requires the board and its shareholders to maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's interests. A violation will only be found where there is either intentional misconduct, fraud, or a knowing violation of the law. When the fiduciary's interestedness is challenged, the burden is on the fiduciary to show the transaction's entire fairness to the corporation. *Shoen v. SAC Holding Corp.,* 137 P.3d 1171 (Nev. 1971).

For the Board and its officers to withhold information from the homeowners, and then make misrepresentations of fact, would appear to be a breach of their fiduciary duties.

3. If the data suggest that only the golf course lots will decline in value, should everyone else in Arrowcreek subsidize those owners?

Response:

No, they should not! In any event, why is there speculation about golf lots declining in value, now that FOA is operating and will continue to operate the golf courses. Why do we need to purchase the courses and contribute over $1,200,000 annually for the privilege of owning them?

4. Shouldn't the HOA consider setting the amount of dues based on proximity to the golf courses? This would be a complicated approach and difficult to calculate because of the valuation issues – such as size of houses, views, etc.

Response:

There is no reason to revise the dues structure, so long as FOA operates the golf courses.

5. The Friends of Arrowcreek will earn a 12% return on their investment if the HOA purchases the golf course. Should everyone in Arrowcreek subsidize the Friends of Arrowcreek to receive a 12% profit?

Response:

No. In my judgment, this is a really dumb idea.

6. If the homeowners are required to pay $318 or more per month for dues, will Arrowcreek residents selling their homes be at a competitive disadvantage against other semi-custom and custom home neighborhoods whose dues are significantly lower? Put differently, will the $100 increase in dues negatively affect homeowners property values?

Response:

I would think so.

7. Since the HOA will be in a 50% joint venture with Arnold Palmer equally sharing the profits and losses, do you want the HOA board making decisions on whether make capital contributions which will increase your dues?

Response:

No.

8. Will the HOA commit to returning any profits to the homeowners in the form of lower dues or spend them on capital improvements?

Response:

I have not seen anything to suggest that the Board proposes to do this.

9. Since the Friends of Arrowcreek spokesperson has already stated that they will keep the golf course if the homeowners vote against the proposal, is there a downside to waiting before deciding to take on this risk?

Response:

No. Golf industry authorities agree that the golf course industry has long been in a state of continuing decline, and it appears it will remain in the doldrums for a long time to come.