MEMORANDUM

TO: Supervisors of the University Park Recreation District

FROM: Hank Fishkind, Ph.D., Municipal Advisor

SUBJECT: Analysis of the Better Than Bonds Plan

DATE: November 30, 2018

VIA: Email only

1.0 Summary of Opinion

The Better Than Bonds Plan ("Plan") is fatally flawed rendering it incapable of purchasing the land, amenities, and recreational facilities of University Park ("RF"). Furthermore, even if it could successfully purchase the RF (which it cannot do), the Plan would expose the community to excessive and unnecessary financial risks.

2.0 The Plan

The Plan proposes that the current full-members of the University Park Country Club ("UPCC") form an independent, equity-based, country club ("New Club") that would purchase the RF for $16,750,150. Table 1 shows the proposed sources of funds for the transaction.

Table 1. Summary of the Better Than Bonds Plan

Components	*Amounts*
HOA Loan to New Club	$10,500,000
UP Homes Pay 1-year Assessment	$1,200,000
350 New Club Equity Members @ $14,429	$5,050,150
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Total	$16,750,150
HOA Reserves Replenished	
UP Homes Pay 9-years of Assessments	$10,800,000

Since New Club has no funds, the Plan envisions three sources of funding.

(1) $10,500,000 interest-free, 35-year term, loan from the HOA's reserves that is secured by New Club's assets.

(2) $5,050,150 generated from the sale of 350 equity memberships in New Club at a cost of $14,429 per membership.

(3) $1,200,000 from a one-time, HOA, special assessment of $1,000 per home.

To repay the $10,500,000 HOA loan, the Plan expects that either: (a) New Club will repay the HOA loan by paying $300,000 per year for 35-years from its net operating income or, (b) homeowners would be specially assessed $1,000 per year for 9-nine years.

3.0 Fallacies of the Plan

3.1 Overview

The Plan has a number of fatal flaws rendering it incapable of purchasing the RF. First, the HOA will not make the required $10,500,000 loan which is the foundation of the Plan. Second, the likelihood of New Club's formation is doubtful because: (a) there is no funding to form it; (b) no leadership has been identified; and (c) no steps taken to initiate formation. Third, there is no assurance, or even a basic analysis, of how many UPCC members would be willing to purchase the needed equity memberships in New Club.

Not only is the Plan unworkable, but even if it could somehow overcome its fatal flaws (which it cannot do), the Plan would expose University Park homeowners to extraordinary and unnecessary risks including: (a) putting the RF assets into private, equity club, outside the control of the homeowners; (b) relying on the success of New Club which would have limited capital and no operating experience; (c) depending upon the Plan that has no timeline, no leadership, no capital, no indication of any potential buy-in from any of the parties that are assumed to be involved; and (d) depleting the HOA reserves which would only be restored over a lengthy period of time.

3.2 HOA Financing Not Possible

The Plan relies on a $10,500,000 interest-free, 35-year loan from the HOA funded from its reserves. The use of reserves to fund the loan under the Plan, is governed by Chapter 720.306(6)(h) which reads as follows.

"Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all non-developer voting interests voting in person or by limited proxy at a duly called meeting of the association."

The HOA is currently still controlled by the Declarant and not homeowners of University Park. Therefore, it is theoretically possible that the contemplated HOA loan could be approved by a majority vote of the homeowners.

However, the HOA reports that it cannot and will not make the required loan. Essentially, lending the HOA's funds to New Club, a third-party organization in which the HOA has no interest to purchase the RF, is inconsistent with the General Purpose and Powers of the Association.

Therefore, the HOA's attorneys have opined that the HOA is barred from making the contemplated loan because the loan would be: (a) inconsistent with stated purposes of the HOA; (b) inconsistent with the purposes of the reserve funds; (c) outside the defined powers of the HOA; (d) beyond the authority of the HOA Board to approve; and (e) in conflict with Internal Revenue Code Section 528, exposing the HOA to the loss of its tax-exempt status.

Finally, even if these hurdles to the contemplated loan could be overcome, the depletion of the HOA's reserve funds would put the HOA and the homeowners at significant risk. The HOA would face risks from: (a) the viability of New Club; (b) economic recessions which would compromise the viability of New Club and cause reductions in HOA revenues from current homeowners; and (c) hurricanes and storm damage without full reserves available.

3.3 New Club Structure Problematic

The structure of the transaction is problematic. It entails formation of New Club that does not exist, has no identified leadership, and no capital. The Plan ignores the substantial cost and time needed to create New Club including, but not limited to: (a) preparing club documents; (b) soliciting equity membership; and (c) negotiating the complex financial documents with various parties as envisioned in Table 1. This is, at best and to be charitable, a concept. It is not a viable approach.

Furthermore, it is troubling that the Plan sponsors provide no research or support for the proposition that there would be sufficient equity members willing to pay almost $15,000 for an equity interest in a new, untested, under-capitalized entity. Instead, the Plan simply presumes that 350 equity memberships can be sold to the existing full members of UPCC.

Also, the New Club structure only focuses on full (golf) members. The structure completely ignores the majority of existing UPCC members that are not golf members including non-resident members, tennis, sports, social and mandatory resident members. Under the Plan all of these existing, non-golf members of UPCC would be put at risk to the whims of New Club's equity members.

In addition, the Plan assumes, without any analysis whatsoever, that New Club will generate sufficient annual operating surpluses to: (a) fund its own requirements for operating reserves; (b) make 35-years of repayments on the $10,500,000 loan from the HOA; and (c) pay-off $5,050,150 in promissory notes proposed for the equity members of New Club.

Furthermore, the Plan would put the critical land, amenities, and club facilities in the hands of a private, equity, country club instead of under homeowner control. There is no guarantee that New Club will succeed. If New Club falters, this would seriously impact the reputation of the University Park community jeopardizing home values. This is in fact what has occurred in other country club communities when their clubs have faltered or failed.

Finally, even if New Club does succeed, there is no guarantee that the interests of the homeowners will perfectly align with those of an independently owned New Club. This subjects homeowners in University Park to serious and unnecessary risk.