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# Congenial

/kən'jēnyəl/

*adjective*

**(of a person) pleasant because of a personality, qualities, or interests that are similar to one's own.**

- Joint CDD Meeting on November 15, 2023
- Discussion of proposed sale of Coconut Park to The Commons Club
- Prepared and presented by Dave Garner



# History

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- Prior to 2010- Coconut Park (“Park”) was owned and maintained by The Commons Club (“TCC”) the Park containing amenities including a playground, interactive splash pad, restrooms, covered shade benches and a basketball court.
- 2010- the TCC sold the Park to the CDDs who have maintained it since that time under a cost share agreement with TCC.
- 2015- the CDDs improved the Park’s amenities by building 3 pickleball courts.
- 2022- TCC made an offer to purchase the park which was declined by the CDDs.
- 2023 (August)- the CDDs voted against further expanding the Park’s pickleball amenity.
- 2023 (September)- TCC made a new offer to purchase the Park.
- 2023 (October)- the CDDs used a professional facilitator to gain consensus on whether to sell the Park and on what terms. As a result of that meeting, the CDDs authorized a representative of each CDD to meet with representatives from TCC to determine if a sale was feasible and if so to submit a proposal for sale.

# The Team

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- Consisted of:
  - Dave Garner (CDD1);
  - Ken Gould (CDD2);
  - Theresa Weinberg (TCC President);
  - Jennifer Smyth (TCC Vice President);
  - Bob Lienesch (TCC Finance Committee Member); and
  - Joe Archazki (TCC General Manager).
- Our first meeting was October 13 and lasted approximately 2 hours. We met in person 4 more times in addition to numerous email exchanges and phone calls.
- Overall, the process was remarkably smooth with agreement reached on all critical issue in a congenial manner and without conflict between team members.

# Team Ground Rules

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- Each of us are residents, friends, or neighbors of the owners within the Brooks and as such agree to treat each other with respect and dignity while at all times remaining congenial;
- As stated by the facilitator at the October 4, 2023, CDD workshop: the interests of the CDDs and TCC are aligned as we seek what is best for our community;
- We agreed to commit all necessary time and effort to determine if a sale is feasible;
- Our situation is unique as it is not a “zero-sum game” or a traditional “arm’s length” transaction. Any proposed sale must be beneficial and equitable to the CDDs, TCC, and most importantly to the owners within The Brooks; and
- If for any reason we cannot come to an agreement, we will walk away as friends and refrain from commenting negatively about any failure to reach agreement.

# Community Concerns

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The Team discussed concerns within the community including:

- Limiting Park access exclusively to Brooks Owners and their guest. This concern has been exacerbated with the proposal to construct apartments on the former Winn Dixie property;
- Preserving the Park as a **Park**, meaning prohibiting commercial or residential development if possible;
- Repairing existing amenities including the restrooms, playground, splash pad, pavers, fencing, existing Pickleball courts, etc.;
- Expanding the Pickleball amenity while addressing concerns of aesthetics, noise, lighting, etc.;
- Addressing the absence of consensus on how to improve the Park to its fullest potential and determining who will pay for any improvements; and
- The need of TCC to enhance access control to its facilities.

# Facilitator Suggested Approach

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- We have much more in common than in dispute and should focus on three key aspects:
  - Access- who will have access to the Park and under what terms? We sought to secure for the Brook's Owners the broadest practical access with an understanding that not everyone may be happy with our recommendations;
  - Control- what is the best way to ensure that the Park remains a "Park"? We sought to protect the Park to the greatest extent practical through reasonable land restrictions including a "safety valve" in case of any unforeseen need for TCC to sell the Park at a future date; and
  - Price and other terms- what is the best way to address the remaining concerns of the CDDs and TCC? We sought compromise on a reasonable basis always seeking equitable terms while negotiating all remaining issues.

# Access Control Recommendations

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- Restrictions pose significant challenges to public entities such as the CDDs. Furthermore, restrictions are difficult without substantial infrastructure additions including fencing, electronic locks, cameras, gated entrance, etc.;
- Restrictions are easier for TCC as they are a private organization, but restrictions only make sense if TCC controls the property through sale or lease. TCC also possesses the ability to integrate additional controls into their current access system (key cards, etc.).
- Due to liability and insurance concerns, TCC would need to limit access to its members and authorized guests post sale.
- To mitigate the effect to non-members and entice them to join the club, TCC agreed to:
  - Designate the Park as a “Bronze” level (least expensive) membership benefit; and
  - Freeze new member increases to Capital Contributions rates until March 1, 2024.

# Control Recommendations

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- The CDDs reserves a right of first refusal if TCC ever receives a “bona fide offer” for purchase of the Park. The right of first refusal grants the CDDs 60 days, after presentation of the offer, to purchase the Park at the same price and under the same conditions as the “bona fide offer”;
- TCC agrees not to offer the Property for sale within five years of the conveyance from the CDDs.
- For as long as the TCC owns the Park, it agrees that the property will only be used for recreational and leisure purposes consistent with the mission statement of TCC;
- TCC agrees to further expand the pickleball amenity after closing; and
- TCC agrees that the Property is required for members to enjoy the improvements included in the club facilities.



# Proposed Changes to TCC By-laws

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- **2.2. Sales, leases or transfers.** No sale, lease or transfer, except in the course of normal operations, affecting the real estate owned by the Club shall be entered into unless approved by a Super Majority of the eligible voting membership (of the particular class of membership) present or represented by proxy at an annual or special meeting of the membership; ~~provided that member approval shall not be required for the sale of property used for parks, open space and other property not required for members to enjoy the improvements included in the Club Facilities.~~

# Price & Other Recommendations

## Recommended terms include:

- Purchase Price of \$1,012,500 paid in full at a closing prior to year end;
- Assignment to TCC of all rights to engineering studies, sound studies, warranties, drawing, etc.; possessed by the CDDs relating to the Park;
- The CDDs and TCC splitting closing costs;
- CDD attorney Dan Cox (in attendance on October 13) draft the contract and proposed deed for review by TCC attorney of their choosing and expense; and
- Final documents to be presented for vote and signature by the CDDs on November 15 and by TCC on November 16.

## Further recommendations to the CDDs & TCC:

- CDDs to complete all projects currently under contract including paver repair (complete) playground surface replacement (complete), restroom roof replacement (scheduled for completion prior to year end) and cancelation of lease for ice machines.
- CDDs to complete maintenance of the pickleball lights and court #1 surface at a cost not to exceed \$19,000. Unspent funds remaining at closing to be escrowed if repairs incomplete.
- Post closing, TCC at its own expense, to complete restroom refresh, electrical equipment replacement, fence repairs, interactive fountain repair, playground sunshade replacement, gravel parking replacement and any other items.

# Further Thoughts

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- The Park is a unique and valuable community asset in need of further development to reach its full potential.
- TCC has significant experience in amenities planning, construction and management and is in the best position to develop the Park to its fullest potential.
- Under the proposal, Brooks Owners who are not members of TCC will be denied access to the Park. TCC has been generous in enticing these community member to join their organization. We note that the cost of a Bronze membership is the rough equivalent to two years of proposed user fees under the CDD pickleball proposal. However, TCC offers much more than Pickleball to its members.
- The recommendations of the Team are unanimous, and we all strongly feel that the proposal bring the greatest benefit to the CDDs, TCC and the Brooks Owners.

# Recommendations

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- In front of you are documents containing a purchase agreement and deed prepared and agreed to by the attorneys for the CDDS and TCC.
- The documents reflect the contents of the proposal contained herein along with further terms of a legal nature.
- We unanimously recommend that the CDDs and TCC should vote in favor of the sale, execute the documents and move forward with the sale of the Park to TCC.

