

An Open Letter to the Mayor and City Council of the City of Scottsboro, Alabama:

For the reasons hereinafter detailed, I urge you to use all of your powers and confirm your authority to stop the defiant and historically extra-statutory actions of the Public Park and Recreation Board of the City of Scottsboro, a/k/a Goose Pond Parks and Recreation Board (hereinafter referred to as "GPBd"), the continued effect of any illegal appointments of your predecessors and to solicit advisory opinions and investigations of the Attorney General and other appropriate Alabama investigative authorities necessary to substantiate your power to remove and replace said individuals, "Public Officers" within the meaning of Alabama Code Section 36-25-1(8),(24).

The Alabama Legislature passed legislation authorizing the creation of Public Corporations in Alabama Code Section 11-60-2 for the purpose of encouraging public recreation and parks: "to promote public interest and participation in sports, athletics and recreational activities...and public parks in this state." In 1967 the City gave permission to the incorporators to incorporate for the foregoing purposes. Papers were filed and the "Public Corporation" began. It is unmistakable that the beneficiaries or shareholders of this particular entity are the public and more specifically the residents of Scottsboro.

At a Board meeting on September 20, 2011 a decision was made that sent a clear message that the GPBd was creating two classes of shareholders: (1) boat slip users; campground users; cabin guests, Goose Pond Colony golfers; and (2) Plantation Pointe golfers, many of whom are seniors and year round residents of Scottsboro. To my knowledge at least six senior couples have moved to Scottsboro due to the two year-round public golf courses, a fact advertised in the Chamber of Commerce Package handed to me in 2008. Chamber materials are paid for in part by funds of the City and GPBd.

While the GPBd divides membership fees equally between the two courses for revenue purposes, many seniors play almost exclusively at Plantation Pointe and only on weekdays. Some have played Goose Pond Colony on Mondays only because Plantation Pointe has been closed. The closures started in 2010. While one might argue that the recent closure of Plantation Pointe for 4 days per week leaves member golfers free to play Goose Pond Colony, it is not an attractive option to many seniors. Plantation Pointe is much like a municipal course, while Goose Pond Colony more resembles the resort-type course. Plantation Pointe is flatter, more easily negotiated and on a weekday an almost constant 4-hour or less round. Goose Pond Colony is more crowded, hillier and more often than not takes 5 hours or more to play. The Colony lay out is more suitable to the better golfer, Plantation Pointe, the recreational golfer, equally as enthusiastic, but not as proficient. As an aside when GPBd members solicited some opinions before the recent closure they met with the better golfers who already play at designated times and have preferred tee times. They did not meet with all golfers or send customer surveys or questionnaires, something they have done with other facility users. This appears reflective of their management bias which seems to favor transients, seasonal or temporary users, board members, their employees and city employees over full-time citizens or golfers and member golfers in particular.

The keys are public duty, equally and not as separate classes of shareholders where some are treated better than others and services for some being materially reduced while expending dollars to expand services to others with a helter-skelter approach that voluntarily accepts huge losses in some areas while claiming to exercise fiscal austerity in others. This is an appointive board that sought to sell a resource, but was re-buffed by the elective board that appointed them with a 5-0 unanimous vote. The GPBd has chosen to ignore the no confidence vote and the strong message to continue to manage the resource for the public benefit and proceeded to close it for three additional days. The closure in effect has occurred as of Sept.30th arguably the most beautiful time of year and affects most full-time citizens of Scottsboro, most of whom are seniors, many of whom play only on weekdays at Plantation Pointe, because it is less crowded, flatter and easier for that class of golfer who is less proficient, but just as enthusiastic as any. The Colony course is really more of a resort course, Plantation, the local or municipal course, but the GPBd has failed to identify those important distinctions. And while the GPBd has essentially ignored the Plantation Course, the volume of play has remained almost constant, 14,000 to 17,000 rounds per year, during the worst economic decade since the Great Depression.

Though their own minutes of 12-11-02, recognize and acknowledge that such a method is inappropriate in determining operational gains or losses, the GPBd has exaggerated losses through the use of numbers that included "amortization and depreciation". While the GPBd has publicly told the Council that it has lost \$1.6 million at Plantation Pointe Golf Course since 2005, the operational losses only commenced in 2009 and 2010 (when closures began), and if amortization, depreciation and the clubhouse (not golf related) are excluded, the total losses for these years are less than \$70,000. The Board has also claimed that they knew in 2008 there was a crisis, yet never solicited volunteers, continued legally questionable discounts to employees, non-employee city workers and free golf to others, while willingly accepting revenues far lower than the \$100,000 they claim will be saved by the Plantation Pointe closure.

At arguably the worst juncture in the current economic downturn the GPBd hired a General Manager and a Golf Pro, responsibilities previously held by one person. Existing employee discounts and the questionable free services to some were perpetuated, even expanding while expenses were growing. The pattern seems to be when there are losses at Goose Pond Colony the remedy is don't investigate or cut expenses, lease the losing entity. The Goose Pond Colony Snack Bar is a prime example. In 2002 revenues were \$110,000+, expenses \$61,000+ and profits were \$49,000+. In 2010 revenues were \$85,000+, expenses \$132,000+, (\$71,000+ above 2002), with losses exceeding \$47,000+. While the biggest loss before the new General Manager was hired in 2008 was (\$13,000+), losses during the next 3 years were 2008 (\$41,500+); 2009 (\$51,000+); 2010 (\$47,000+). Three years of Goose Pond Colony Snack Bar losses total (\$139,500+), far more than the \$100,000 the Board claims will be generated for Goose Pond Colony Golf Course and cabin repair from the Plantation Pointe closure.

While the Alabama Ethics Code excludes from Public Official conflicts of interest loans made in the ordinary course of business, the Council needs to request an opinion and investigation by the Alabama Attorney General concerning the highest executive officer on a Public Board who is also Executive Vice-President for Loans at a bank holding a note from the GPBd with an interest rate of 8.25% and a balance of \$400,000+ and agendas (normally prepared by the GPBd President) being silent on refinancing (until 2011) when prime dropped as low as 3.25% in 2009 and

remained there to the present. Obtaining a more favorable interest rate in early 2009 could have saved in excess of \$50,000. Inquiry should also be made concerning an FNB note balance paid with Alabama Department of Environmental Management (ADEM) grant proceeds of \$73,828.55 received in June 2007 intended for transient boat slips. Alabama Code Section 36-25-1(8)(24).

Various structures at Goose Pond Colony have been leased to entities for boat storage, repairs, bait and tackle and restaurant. Even a cursory review of various rental revenues discloses glaring inconsistencies and undercharging. The structure with the multimillion dollar view, on the lake, next to the beach, adjoining the long pier with adequate parking clearly has a best use fair rental value of approximately \$2,000 per month from April 2003 to March 2005 the rent was \$300 per month, \$600 per month since. The difference in lost revenue through Sept. 2011 is \$154,000. The estimated losses that have been acceptable to the GPBd that claims to have taken necessary steps in times of crisis by materially reducing services to the year round citizens of Scottsboro simply don't match with their otherwise fiscally complacent management style. Arguendo, adding the losses detailed above with the note interest loss estimated at \$50,000, total \$343,000. Those exclude the lost revenues due to the questionable discounts and free golf. There has been additional lost revenues from 36 Tee Marker ads which could have been renewed annually (36 x \$300 = \$10,800 x 6 = \$64,000). If these lost revenues are limited to the period beginning 2008 when the GPBd observed a "crisis", they amount to in excess of \$284,900.

The foregoing numbers estimates and revenues and commensurate closure of Plantation Pointe while extending Wi-Fi to boaters, repairing cabins and extending the Goose Pond Colony Campground sewer system demonstrate an inconsistent management style that reflects a willingness to favor some public shareholders while disregarding and punishing others; primarily seniors, and an arrogant even possibly retaliatory response to the vote of the elected municipal body that sent the strongest possible message to keep all present facilities open. Those Board members who complied with actions resulting in paying higher interest rates than prudence dictated, accepted rental revenues significantly lower than fair rental values would dictate; fostered, indorsed or participated in discounted or free services that contravene the dictates of Alabama statutes; "The directors shall serve without compensation" (Section 11-60-7), should resign or be removed by the Council once assured by the Alabama Attorney General of its authority after an advisory opinion and full investigation.

Alabama Code - Section 10A-3-2.22 Removal Of Officers states: "Any officer elected or appointed may be removed by the persons authorized to elect or appoint the officer whenever in their judgment the best interests of the nonprofit corporation will be served thereby." On Removal Authority of City Council See Code 11-43-160; 11-43-163(Power to Summon Witnesses).

With all due respect to the Council, its President, its attorney and counsel for the GPBd; the latter three were in place on May 27, 2003, a possibly continuing effect of an illegal appointment must be acknowledged and addressed. On that date, in clear contravention of Alabama Code Section 11-60-7, the City Council appointed a key financial officer of the City to the GPBd. The appointee served illegally until June 13, 2005 resigning with "deepest regrets and sadness and due to circumstances beyond my[his] control." His resignation letter also contained a

recommendation and list of the qualifications a successor should possess. The then Council was apparently so concerned that the successor be appropriately qualified that they only allowed until noon, that Friday, June 17, 2005 for applications. The inference is that the successor was already known to one, some or all of the players. This rush was unnecessary in that Code Section 11-60-7 provides that one whose term expires may continue until a successor is elected and the Board member whose term was expiring had been nominated for re-election without a second at the fateful May 27, 2003 meeting. The successor in question remains on the GPBd to date.

Consequently, the status quo is the appointee who served illegally on the GPBd in 2003-2005 remains in the official capacity he held with the City in 2003, as does the GPBd successor whose appointment appears to have been hastened. Arguably some might say it is convenient for the City to employ an official who has been so intricately involved in the historical financial management of the city and Goose Pond Colony. The counterargument of course is the legislature intended to separate the two entities, "No director shall be an officer or employee of the municipality" Section 11-60-7. Coincidentally, one Councilor who voted for the illegal appointment was named manager of the Marina at Goose Pond Colony by a GPBd with the illegal appointee; plus many other expensive and elaborate additions to Goose Pond Colony were formulated during the illegal two year tenure. What the illegal appointment may have put in place was continuous control in one financial entity that the legislature sought to prevent. While all of the financial decisions that have been made on behalf of the city since 2003 may have been responsible and competent, the area of concern arises when the city of Scottsboro may still be affected by those decisions made between May 27, 2003 and June 13, 2005, e.g. the marina expansion and commensurate loan and the long-term lease of the Civic Center from Goose Pond Colony by the City. If and when questions arise from the perspective of a City Councilor who seeks the input of the City's Chief Financial Officer relative to any matter on which the GPBd voted during that time-frame, can the answer given be totally objective and untainted by the extra-statutory dual role? Does the public deserve more?

The aforementioned current President of the GPBd who is also presently employed at the First National Bank was first appointed to the GPBd in 2004 and subsequently served simultaneously with the aforementioned financial officer and participated in many of the decisions made by the GPBd and referenced above. Some of the actions that occurred during the relevant time-frame are pertinent to some of the areas referred as "voluntary losses". The City Council of May 27, 2003 in the presence of their counsel created the situation and this Council is the only body that can undo the continuing effect of that illegality. The Council should act quickly and decisively to confirm its full authority, investigate any and all statutory violations, hidden, unclaimed or extra-statutory compensation through barter (IRC Sections 6041 and 6045), (Alabama Dept. Of Revenue Income Definitions) or breaches of any public duties (Criminal Code Section 13A-10-62; 13A-8-10).

Respectfully submitted,

Arthur Davis