

WB
Parks & Rec
Scott Morgan

FILED
NO. 99.054

ZEPHYR COVE TENNIS COURT
LICENSE AGREEMENT

'99 APR -8 A9:13

This agreement is made and entered into this 11th day of March, 1999, by and ^{BARBARA REED} ~~and~~ ^{CLERK} ~~for~~ ^{DEPUTY} between DOUGLAS COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as "COUNTY" and "Scott Chaplin" hereinafter referred to as "TENNIS PROFESSIONAL" or as "PROFESSIONAL".

WITNESSETH

WHEREAS, the COUNTY owns and operates six (6) tennis courts, said courts being known as "ZEPHYR COVE TENNIS COMPLEX" and;

WHEREAS, the Parks & Recreation Commission, at a regularly scheduled and duly noticed meeting recommended the Community Services/Parks & Recreation Director develop a request for proposal for a multi-year agreement regarding tennis professional services at the ZEPHYR COVE TENNIS COMPLEX.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions herein contained, the parties do mutually agree to follow:

1. Purpose and Term - Professional is hereby given the right, license and privilege to conduct and operate the tennis activities at the Zephyr Cove Tennis Complex, all in accordance with the terms and provisions of this agreement, and the schedule in Attachment "A". This contract only applies to the present six (6) courts at Zephyr Cove Tennis Complex as outlined in Attachment "B". The term of this agreement shall be from May 1, 1999 until November 1, 2004, weather permitting, unless sooner terminated or extended in accordance with this agreement. The maximum term of this agreement is five (5) years.
2. Duties of Professional - Professional shall devote his/her time and personal attention to the operations necessary to conduct a modern and efficient tennis complex and tennis program on the premises herein designated. His/her duties shall include, but shall not be limited to the following:
 - a. Promote, create, and manage play at the Zephyr Cove Tennis Complex in accordance with this License Agreement in an efficient manner in

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accordance with the rules and regulations established by the Community Services/Parks & Recreation Department. Such functions include, but are not limited to: the collection of fees, scheduling of court times, reservation of court times, scheduling of tournaments, scheduling of leagues, providing youth programs, youth clinics, private lessons in accordance with the fees approved by Community Services/Parks & Recreation Director.

Professional shall regulate play and conduct of players. Whenever possible, the manner of play should conform to the rules of tennis as adopted by the U.S.T.A. or U.S.P.T.A. Professional will be required to provide two (2) free youth clinics in each season of play under this contract.

- b. Provide lessons and instruction in tennis to the public at Zephyr Cove Tennis Complex.
- c. Comply in full with the U.S.P.T.A. code of ethics for tennis professionals.
- d. Advertise, promote, and conduct all tennis activities as County operated programs.
- e. Require all participants to register, and all youth to register and complete a parental consent authorization to medically treat as supplied by the Community Services and Parks & Recreation Department.
- f. Weather - Professional, at his/her discretion, shall begin the tennis season anytime after May 1 as soon as weather permits or cancel services on a daily basis based on weather conditions which are not conducive to safe play. Further, Professional may end a season before November 1 if weather conditions deteriorate. Professional shall notify the Community Services/Parks & Recreation Department upon beginning the season, and prior to terminating a season prior to November 1.
- g. Professional may operate a concession at the Zephyr Cove Tennis Complex for the sale of beverages (non-alcoholic), prepackaged food, equipment rental, equipment sale, and apparel. All prices for all concession

items must be approved by the Community Services/Parks & Recreation Director.

h. Professional shall submit daily revenue and receipts along with Daily Court Schedule and Cash Reconciliation Form provided by the Department. This form, revenue, and daily receipts will be turned in to the Kahle Community Center in person or through the secured drop box on a daily basis. (If lump sum is selected as the form of payment then the form and daily receipts will be turned in to the Kahle Community Center in person or through the secured drop box on a weekly basis).

i. Professional, unless prior approval is obtained from the Community Services/Parks & Recreation Department, must be in attendance to supervise the complex and perform all functions of Professional at least five (5) days of each week the courts are opened for play. The County acknowledges that attendance of Professional at out of town commitments may be required to fulfill his/her duties under this agreement. Professional agrees to notify the Community Services/Parks & Recreation Department, in advance, of any such absences. Professional shall be allowed vacation time not to exceed two (2) weeks in duration each season, but shall be responsible for providing adequately trained personnel to fulfill the duties of this agreement during his/her vacation period.

j. No complimentary play on the courts shall be allowed by Professional, except for two (2) required free youth clinics. Professional or his/her paid or non-paid employees are allowed free use of the courts for practice and exhibition.

k. Professional will provide the County with projected revenue estimates for the current and future budget years in the same manner as prescribed by the Community Services/Parks & Recreation Department.

l. Should any dispute arise between Professional and the Community Services/Parks & Recreation Department regarding day to day operations, the County Manager shall have the authority and responsibility to resolve

the dispute subject to review upon request by the Board of County Commissioners. Professional agrees that the decision of the County Manager or the Board is final and unappealable.

3. Equipment to be provided by Professional. Professional shall provide:

- a. Tennis equipment to be available for public rental.
- b. May provide inventory of merchandise for sale. Canned or bottled beverage (no glass containers), no alcohol, prepackaged food, and candy, tennis balls, rackets, and other apparel with prices approved by the Community Services/Parks & Recreation Department.

4. Collection of receipts and accounting:

- a. Professional shall process, through a receipt book or cash register, all monies collected from reservation fees, season passes, lessons, clinics, instruction, and the court fees generated from camps, leagues and tournaments. All monies received or collected on behalf of the County shall be held by Professional in a fiduciary capacity, and Professional shall not make any personal or other use of the same. Professional shall be responsible for any cash shortages, and all returned checks. If lump sum is used as the form of payment then the form and daily receipts will be turned in to the Kahle Community Center in person or through the secured drop box on a weekly basis and Professional shall be responsible for all cash deposits and refunds.
- b. Fees collected - receipts and Court Schedule Reservation and Cash Reconciliation Forms shall be delivered to the Kahle Community Center on a daily basis to be deposited in the County's bank account. (If lump sum is selected as the form of payment than the form, and daily receipts will be turned in to the Kahle Community Center in person or through the secured drop box on a weekly basis Professional shall be responsible for all cash deposits and refunds.)
- c. Professional shall immediately report to the Douglas County Sheriff's office any suspected theft of County money or property.

d. Professional shall immediately report, in writing to the Community Services/Parks & Recreation Director, any significant weakness in or deviation from the County's existing accounting procedure and controls.

e. Professional shall provide a facility membership list to the County at the end of each tennis season for the purposes of conducting a program evaluation. The Professional is also required to conduct his/her own program evaluations and make available the results of the survey to the Parks & Recreation Department.

f. The Professional shall form an advisory board who will informally meet two (2) times a month. The advisory board shall have no less than five (5) members, all who have paid membership with the facility, and make recommendations to the Professional on the following areas:

- I Suggestions on enhanced levels of service to the residents and non-residents of the Zephyr Cove Tennis Complex.
- II Recommendations to create enhanced revenue generation for the improvements to the Zephyr Cove Tennis Complex.
- III Recommendations to enhance the quality of maintenance on the tennis courts for the enjoyment of Douglas County residents and visitors.
- IV Recommendations on court schedules and operating policies.
- V Recommendations on special events, socials, and activities for the membership at the Zephyr Cove Tennis Complex.

5. Compensation to Professional:

a. Professional shall receive the net profits, if any, that he realizes from the operation of the sale of concessions, equipment and equipment rentals. All prices must be approved by the Community Services/Parks & Recreation Director.

b. **Year One** - Professional shall receive sixty percent (60%) of the sum collected on behalf of the County for the items referenced in Section 4; a,

Year Two - Professional shall receive sixty percent (60%) of the sum collected on behalf of the County for the items referenced in Section 4; a, or if mutually agreed upon by both the County and the Professional, the Professional will pay the County a lump sum of \$9,000.00, twenty five percent (25%) on or before May 1, fifty percent (50%) on or before June 15, twenty five percent (25%) on or before August 1. If the Professional and the County choose to have the Professional pay the County a lump sum, the Professional understands he will receive no percentage payments from the County.

Year Three and every year after - Professional shall receive sixty percent (60%) of the sum collected on behalf of the County for the items referenced in Section 4; a, or if mutually agreed upon by both the County and the Professional, the Professional will pay the County a lump sum of \$9,000.00, twenty five percent (25%) on or before May 1, fifty percent (50%) on or before June 15, twenty five percent (25%) on or before August 1. If the Professional and the County choose to have the Professional pay the County a lump sum, the Professional understands he will receive no percentage payments from the County.

c. Professional will receive compensation on a regular basis in accordance with the County claim and payment schedule (If paid by percentage).

6. Employees - Professional shall be responsible for hiring and paying any necessary employees (paid or non-paid) including, but not limited to; assistant professionals, concession and court attendants to carry out the obligations set forth in this agreement. No person shall be hired by Professional, who are known to have a prior felony conviction or to have other convictions involving moral turpitude. The Professional shall have finger printed, in accordance with County hire policy, all employees at County expense.
7. Alterations - Professional shall not make any permanent alterations or permanent additions to any portion of the premises covered by this

agreement, or to have any equipment belonging to the County without having first obtained the County's written consent. Professional shall not be reimbursed for any permanent alterations or permanent additions to any portion of the premises covered by this agreement which occur after the execution of this agreement. The parties agree to cooperate in the expansion and development of new and additional facilities or improvements at the Zephyr Cove Tennis Complex. County will develop, with Professional's assistance, a five (5) year capital improvement program for improvements at the Zephyr Cove Tennis Complex for future consideration by the Board of County Commissioners.

8. Insurance - Professional shall file with County prior to April 1, 1999, evidence of liability insurance in the amount of \$4 million dollars for on-court bodily injury and damage to property. County shall be named as an additional insured. No separate payment shall be made by County for the cost of such insurance. Professional shall save and hold County harmless against all claims, demands, losses, damages, or liability arising or out of loss or damage to property, injury to death to persons resulting from the use or occupation of the Zephyr Cove Tennis Complex by Professional or his employees. In particular, Professional agrees to hold harmless and to indemnify County against all claims, demands, losses, damages, or liability arising or out of loss or damage to property, injury or death to persons resulting from the use or occupation of the concession area.

9. Licenses, Permits and Taxes - Professional shall:

a. Obtain any and all permits or licenses which may be required by law to conduct his/her operation. He shall pay any and all taxes, which may be assessed against him or his/her property in regard to these operations.

b. Maintain, during the entire term of this agreement, a U.S.P.T.A. Professional Certificate.

10. Facilities to be provided by County - Professional shall have use and control during times provided in Attachment "A" of the Zephyr Cove Tennis Complex as outlined in Attachment "B".
11. Maintenance - County shall perform maintenance on:
 - a. The tennis courts, nets, net posts, fences, gates, benches, pathways, windscreens, and other permanent fixtures associated with the Zephyr Cove Tennis Complex. County will also maintain lighting and restroom facilities at the same, and provide facilities for Reservation Center and Tennis Shack.
 - b. Professional shall provide day to day facility maintenance of the Professional's equipment and court facility including: trash pickup and emptying, court cleaning, and washing.
12. Utilities - Payment for utilities shall be as follows:
 - a. Applicable water, sewer, and electrical fees shall be the responsibility of County.
 - b. Professional shall be responsible for phone service charges, and toll charges for his/her use. Professional may restrict public use of telephone facilities to the general public.
 - c. County shall be responsible for refuse collection.
13. Termination - Either party may terminate this agreement without cause (and without damages or penalties of any kind) by providing at least 30 days written notice to the other party.
14. Conformance with conditions - It is expressly understood, and agreed by both parties to this agreement, that Professional's continued use of the premises prescribed herein, and his right to occupy the same, is hereby granted, and shall continue only so long as each and all undertakings, provisions, conveyances, agreements, stipulations, and conditions herein contained are strictly and promptly adhered to.
15. Notices - Any notices to Professional may be served personally, or may be deposited in the post office, postage prepaid, addressed to Professional.

Any notice by Professional to County may be deemed properly served on County if same is delivered to the Community Services/Parks & Recreation Department, or deposited in the post office, postage paid, addressed to County.

16. Financial Audit - County shall have the right, at its expense, to conduct periodic financial and compliance audits of all activities conducted by Professional, on behalf of County at the Zephyr Cove Tennis Complex. The results and process of such audit shall be made available to Professional at his/her request.
17. Non Waiver - The failure of County or Professional to insist upon strict performance of the terms and conditions shall not be construed to be a waiver or relinquishment of any of the conditions of this agreement, but the same shall be, and shall remain, in full force and effect.
18. Compensation Coverage - The parties agree that Professional shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between County and Professional, and nothing in this contract shall create any contractual relationship between County and Professional's consultants, subconsultants, contractors, or subcontractors. The parties also agree that this contract, by explicit agreement of the parties, incorporates and applies the provisions of Nev.Rev.Stat.284.713, as necessarily adapted, to the parties, including that Professional is not a County employee and that there shall be no:
 - (1) Withholding of income taxes by County;
 - (2) Industrial insurance coverage provided by County;
 - (3) Participation in group insurance plans which may be available to employees of County;
 - (4) Participation or contributions by either Professional or County to the public employees retirement system;

(5) Accumulation of vacation leave or sick leave provided by
County;

(6) Unemployment compensation coverage provided by County
if the requirements of NRS 612.085 for independent
contractors are met.

If applicable (and Professional bears the sole responsibility for producing
proof satisfactory to County that these provisions are not applicable to
Professional, Professional further agrees, as a precondition to the
performance of any work under this contract and as a precondition to any
obligation of County to make any payment under this contract, to provide
County with a work certificate and/or a certificate issued by the State
Industrial Insurance System (SIIS) in accordance with Nev.Rev.Stat.
616B.627. Professional also agrees, prior to commencing any work under
the contract, to complete and to provide the following written request to
SIIS:

(Company Name) has entered into a contract with Douglas County
to perform work from (starting date) to (ending date) and requests that the
State Industrial Insurance System provide to Douglas County 1) a
certificate of coverage issued pursuant to Nev.Rev.Stat. 616.280 and 2)
notice of any lapse in coverage or nonpayment of coverage that the
Professional is required to maintain. The certificate and notice should be
mailed to:

Douglas County Manager
Post Office Box 218
Minden, Nevada 89423

Professional agrees to maintain required workers compensation coverage
throughout the entire term of the contract. If Professional does not

maintain coverage throughout the entire term of the contract, Professional agrees that County may, at any time the coverage is not maintained by Professional, immediately order the Professional to stop work and may immediately suspend or terminate the contract. For each six month period this contract is in effect, Professional agrees, prior to the expiration of the six month period, to provide another written request to SIIS for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Professional does not make the request or does not provide the certificate before the expiration of the six month period, Professional agrees that County may order the Professional to immediately stop work and may immediately suspend or terminate the contract. In the event of an immediate suspension or termination under this provision, Professional is entitled to receive all amounts due and not previously paid to Professional for work satisfactorily completed in accordance with the contract prior to the date of the suspension or termination. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. In addition, the provisions of P. 13 shall apply in the case of a suspension or termination in accordance with this paragraph.

19. Assignment and Sub-Leasing Prohibited - This agreement may not be assigned to any other person or persons, in whole or in part, nor shall any portion of the premises be sublet or utilized by any other person, in any manner whatsoever, without the express written approval of the Douglas County Board of Commissioners.
20. Severability - It is understood, and agreed by the parties, that if any part, term, or provision of this agreement is held invalid by the courts, held to be illegal or in conflict with any law, rule or regulation, the viability of the remaining portions of the provision shall be in effect, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain a particular part, term, or provision held to be invalid.

21. Hold Harmless - Professional shall, at his/her sole expense, defend, indemnify, and hold County harmless, his/her employees, elected officials, agents, and assigns including attorney's fees and costs of suit in any action brought against County, his/her employees, elected officials, agents, and assigns based on the acts or omissions of Professional, or Professional's employees under this agreement.

22. Entire Agreement - This agreement shall be deemed, and construed, as the entire agreement of the parties, and there are no prior or contemporaneous oral or written agreements between the parties, which will alter the terms of this agreement in any particular way whatsoever. Any prior agreements between the parties are hereby revoked, and any substantial amendment, or extension to this agreement, shall be in writing.

IN WITNESS THEREOF, the parties have set their hands the day and year first above writing.

PROFESSIONAL

By: Scott Chaplin 3/17/99 8:50 PM

Scott Chaplin

WITNESS

Anthony Durig 17 Mar 99

DOUGLAS COUNTY

By: Jacques Etcheberry
Chairman

Chairman

ATTEST

By: Barbara Reed by Sondra Condon
Barbara Reed, County Clerk Chief Deputy Clerk

Barbara Reed, County Clerk

Chief Deputy Clerk

DISTRICT ATTORNEY - APPROVED TO FORM

By: Robert J. Mann

District Attorney

TENNIS COMPLEX
DAILY COURT SCHEDULE

	COURT 1	COURT 2	COURT 3	COURT 4	COURT 5	COURT 6
6AM						
7AM						
8AM						
9AM						
10AM						
11AM						
12PM						
1PM						
2PM						
3PM						
4PM						
5PM						
6PM						
7PM						
8PM						
9PM						
10PM						

ATTACHMENT A

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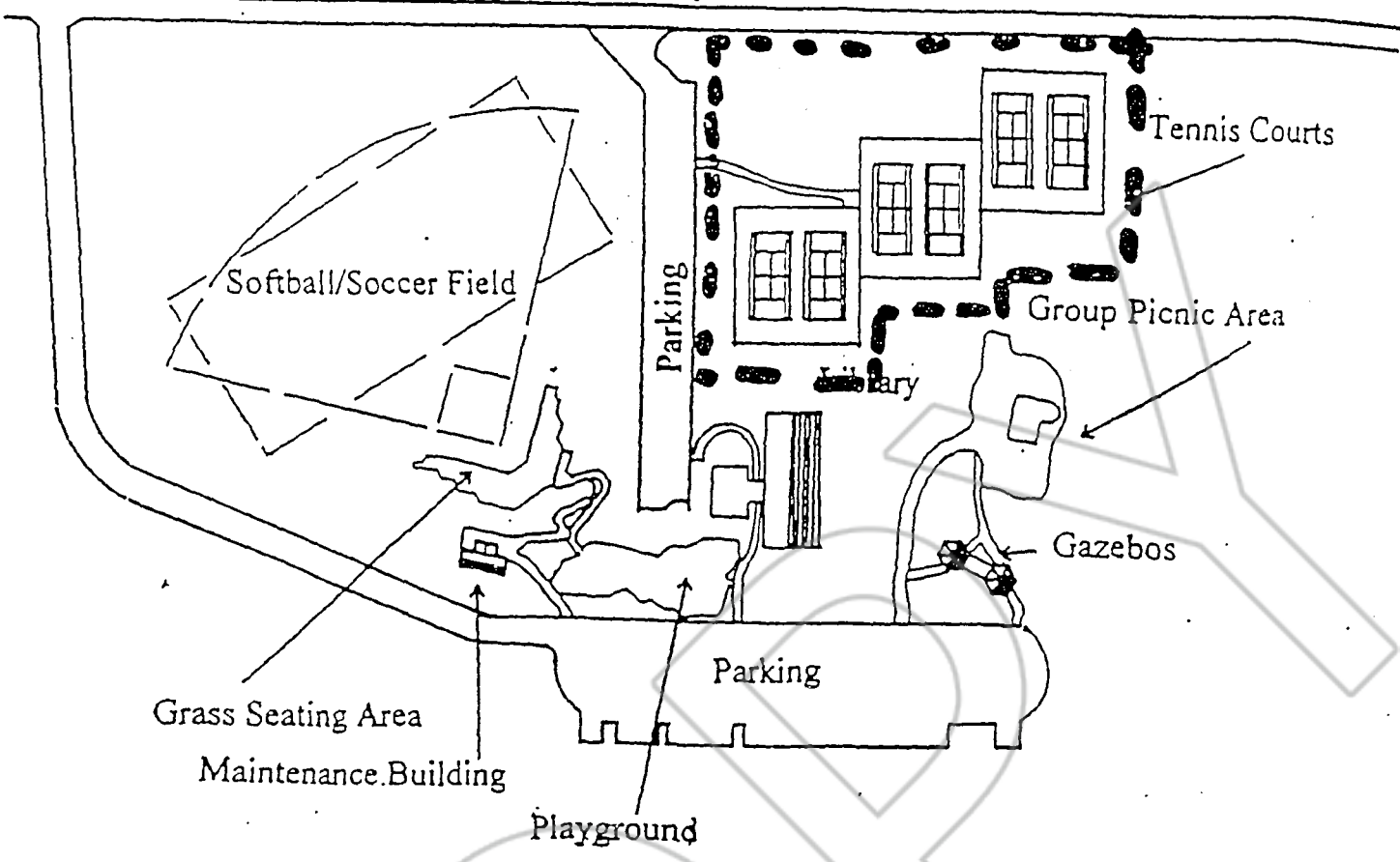
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Zephyr Cove
Elementary
School

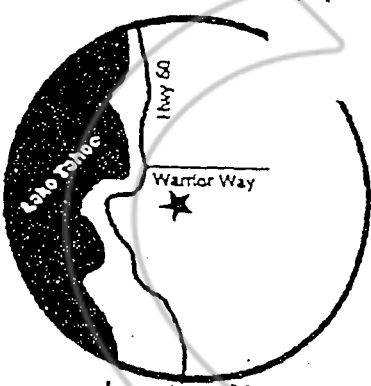
Warrior Way

Whittell
High School



LICENSE AREA

ATTACHMENT B



Location Map



Douglas County Parks & Recreation Department
Master Plan

"More than Just Fun and Games"

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COPY

REQUESTED BY
DOUGLAS COUNTY
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

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LINDA SLATER
RECORDER

\$ 8 PAID KY DEPUTY

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\$00.00

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: April 8, 1999
B. REED Clerk of the 9th Judicial District Court
of the State of Nevada, In and for the County of Douglas.

By Cheryl M. Hullock Deputy

SEAL