

PARK HILL GOLF COURSE FAQ
Updated and Revised: November 4, 2019

1. History and Background:

A. How did the City become involved with the Trust and the Park Hill Golf Course?

- When he died in 1899, George W. Clayton left a will that established a Trust to manage the assets he owned at the time of his death, including the land that would become the Park Hill Golf Course. From 1899 to 1982, the City served as the Trustee of the Trust. In that role, the City held “legal title” to all of the assets owned by the Trust.
- In 1982, the City was removed as Trustee and an interim Trustee was appointed. In 1984, the Clayton Foundation was incorporated and appointed to serve as Trustee of the Trust. The Clayton Foundation later changed its name to Clayton Early Learning, which is the entity that continues to serve as the Trustee of the Trust today.
- Between 1982 and 1997, the City had no direct ownership or other interest in the Park Hill Golf Course.

B. What is the Conservation Easement?

In 1997, the City agreed to pay the Trust \$2M dollars to acquire a set of use restrictions on the Park Hill Golf Course limiting the use of that land to a regulation-length 18-hole daily fee public golf course. The use restrictions represent a private restrictive covenant and a real property interest owned by the City. A more detailed analysis of the purpose and effect of the golf course use restrictions is set forth in a separate Q/A.

C. Who is Arcis and what role does/did it have in the Park Hill Golf Course?

In 1998, the Trust entered into a Lease with a company known as American Golf Corporation to operate the Park Hill Golf Course. The Lease was later assigned to Evergreen Alliance Golf Limited, d/b/a Arcis Golf. The Lease had an original term of 20 years ending December 31, 2018. The Lease contains two renewal options for an additional 5 years each. The Lease also contains a provision known as a “Right of First Refusal” which gives the Lessee a right to purchase the property from the Lessor under certain circumstances. The City is not a party to the Lease. Arcis exercised the first renewal option so that the term of the Lease will end on December 31, 2023 (with one 5-year renewal option remaining). In connection with the sale of the property to Westside (as described in Section 6 below), the Lease has been acquired by and assigned to an entity affiliated with Westside. To the City’s knowledge, Arcis currently has no further interest in the property.

D. What is/was the Agency Agreement and why was it created?

In 1999, the City Assessor determined that the Park Hill Golf Course land was not exempt from real estate tax liability in the City and County of Denver and issued a Notice of Valuation to the Trust seeking back-taxes for at least 3 years. The Trust elected to challenge that determination by initiating an action in the Probate Court. With approval from the Probate Court, the City and the Trust entered into arrangement whereby the City would hold “legal title” to the Park Hill Golf Course land and the Trust would have all other rights as “beneficial owner” of the land. That

arrangement was set forth in a document known as the Agency Agreement. The sole purpose and intent of the Agency Agreement was to provide a real estate tax exemption for the Park Hill Golf Course land. As described in Section 6 below, the Agency Agreement has been terminated.

E. What happened to the use restrictions when the Agency Agreement went into effect?

Pursuant to applicable law, when the City took “legal title” to the property in 2000 under the Agency Agreement, the use restrictions would have been extinguished by a principle known as “merger-of-title” because a landowner cannot hold “legal title” and a separate lesser interest in the same property at the same time. Therefore, in order to keep the use restrictions in place, it was necessary to release the original conservation easement and re-state and incorporate the use restrictions into the Agency Agreement. As described in Section 6 below, the use restrictions remained in effect under the Agency Agreement until July 2019 when the Agency Agreement was terminated by the Trust, at which point the use restrictions continued in place under a separate re-recorded instrument. Accordingly, the use restrictions have been in place in some form continuously since they were originally acquired by the City in 1997 and the restrictions continue in place today.

2. The 2017 Proposed Purchase of the Property by the City:

A. How was the purchase transaction structured?

In 2017, the City announced that it had negotiated a potential agreement with the Trust to purchase the Park Hill Golf Course. That transaction would have resulted in the City taking full fee title to approximately one-half of the property and effective control over the remainder under a 30-year lease/purchase arrangement. However, the proposal was never signed by the City or presented for a vote to City Council or to the Probate Court as required by the terms of the Denver City Charter and the Agency Agreement.

B. What would have happened to the use restrictions if that transaction had gone forward?

The transaction would have resulted in a termination of the Agency Agreement, including the use restrictions contained in the Agency Agreement. Because the City would have held fee title and effective control over the entire property, the use restrictions could not have been effectively re-recorded due to the legal principle of merger-of-title. As owner of the property, however, the City would have had the ability to impose use limitations comparable to, or more stringent than, the use restrictions contained in the Agency Agreement. The City also would have been able to provide for an open-space or recreational use other than a golf course. That transaction would have required action by City Council.

C. Why was the potential transaction abandoned?

Although the Trust had indicated to the City that Arcis did not intend to extend the term of its Lease, the Trust was unable to secure a waiver or release of those rights from Arcis. Because clear title was a condition to the City’s proposal, the effort to purchase the property was halted when Arcis indicated that it intended to renew the Lease. At that point, the City decided to return to its original plan of completing the stormwater improvements on the property and providing for the restoration of the golf course. Arcis did in fact subsequently renew the term of the Lease for an additional 5 years.

3. The Platte to Park Hill Stormwater Project (“P2P Project”):

A. What is the P2P Project?

The Platte to Park Hill Stormwater Project is a major stormwater systems public infrastructure improvement program that will provide critical flood protection and community facilities to the neighborhoods north and east of downtown Denver. With no natural drainage way (such as a creek or stream) in this area, and an aging, century-old network of pipes, it is the most at-risk part of the City for flooding. While improving flood protection, the program will also make valuable community improvements including increasing the size of Globeville Landing Park, adding new recreation and trail features, creating vital mobility connections, improving water quality, restoring and protecting natural habitats and more. For more information about the P2P Project, please visit the following website:

<https://www.denvergov.org/content/denvergov/en/platte-to-park-hill.html>

B. How is the Park Hill Golf Course related to the P2P Project?

For many years, the City’s wastewater department had recognized that the land at the northeast corner of the Park Hill Golf Course was a natural detention area that could be effectively utilized in a flood control system for the Montclair Basin in Denver. Those plans were eventually incorporated into the P2P Project, which provides for approximately 220 acre-feet of stormwater detention on the Park Hill Golf Course site, a pipe connection to the Holly Pond located east of the Park Hill Golf Course, and outfall pipes beneath Smith Road to the north.

C. What is the status of the P2P Project on the Park Hill Golf Course?

The City selected SEMA Construction as the Design/Build contractor for the portion the of the P2P Project impacting the Park Hill Golf Course. That portion of the P2P Project broke ground on or about January 2, 2019 and is expected to be completed on or before December 31, 2019. Major excavation work is now complete and all dirt from the detention area (approximately 350,000 cubic yards in total) has been taken off-site.

4. Condemnation Process and Acquisition of Easements by the City:

A. How did the City acquire the land on the Park Hill Golf Course for the P2P Project?

After the discussions to purchase the entire site ended in 2017, the City engaged in informal discussions with the Trust for the City’s purchase of just the land needed for the P2P Project and simultaneously sought formal authority with respect to those negotiations by pursuing a Land Acquisition Ordinance (“LAO”) from the Denver City Council. The LAO was approved by City Council on January 2, 2018. On July 1, 2018, the City and the Trust entered into an Agreement for Immediate Possession which provides for the acquisition by the City of a 25-acre Permanent Easement and a 46-acre Temporary Easement on the property. Those Easements have been fully executed and recorded.

5. Lawsuits:

A. What are/were the issues in the 2018 lawsuit initiated by Arcis against the Trust?

Essentially, Arcis sued the Trust for injunctive and declaratory relief claiming that the proposed sale of the Park Hill Golf Course to the City in 2017 triggered the Right of First Refusal under the Lease giving Arcis the right to purchase the property on the terms contemplated in the proposal between the City and the Trust. The Trust denied that the Right of First Refusal had been triggered by those events. The City was subsequently added as a party to the 2018 lawsuit.

B. What is the current status of the 2018 lawsuit?

When Westside purchased the property from the Trust, Westside also separately acquired the leasehold interest owned by Arcis. As part of that transaction, the 2018 lawsuit was dismissed, with prejudice, as to all parties including the City.

C. What are the issues in the 2019 lawsuit initiated by Arcis against the City?

Arcis initiated an “Inverse Condemnation” action against the City to provide a forum to assert claims relating to the City’s acquisition of the Easements and the compensation payable for those interests and related damages. Arcis also sought a temporary restraining order against the P2P Project, but that claim was quickly resolved through a Stipulation approved by the Court on April 29, 2019. When Westside purchased the property from the Trust (and the leasehold interest from Arcis), Arcis withdrew from the 2019 lawsuit and Westside was substituted as a party.

D. What is the current status of the 2019 lawsuit?

Pursuant to the terms of the Settlement Agreement between the City and Westside (as described in Section 7 below), the 2019 lawsuit has been dismissed, with prejudice, each party to bear its own attorneys’ fees and costs.

6. Sale to Westside:

A. Who owns the Park Hill Golf Course?

At a closing consummated on July 11, 2019, Westside purchased fee title to the Park Hill Golf Course from the Trust and separately acquired the leasehold interest from Arcis. Westside now owns the property (and the Lease), subject to the City’s permanent and temporary construction Easements and the use restrictions.

B. Did the Trust have the right to sell the property without the City’s approval?

Yes. The Agency Agreement gave the Trust the unilateral right to end the agency relationship with the City and take full fee title to the property. The Trust then had the right to sell the property to anyone on any terms it considered acceptable without the City’s approval or consent. By written notice received by the City on or about June 10, 2019, the Trust exercised its right to terminate the Agency Agreement. The Trust then sold the property to Westside.

C. What happened to the real estate tax exemption on the property when the Agency Agreement was terminated?

The real estate tax exemption ended as of the date of the sale, and the property will now be subject to the normal rules and regulations relating to real estate taxes in the City and County of Denver.

D. Was any permit or permission from the City necessary for the Trust to sell the property?

No. The City had no authority (under the Agency Agreement or otherwise) to prevent the Trust from selling the property to any party at its sole discretion.

E. Could the sale of the Park Hill Golf Course threaten the status of other Denver parks?

No. The Park Hill Golf Course is not owned, managed or controlled by the City and it is not a designated park. Under the Denver City Charter, with regard to land that is owned by the City and officially designated as park land, the City cannot sell or “de-commission” such land without a vote of the people.

F. When the Agency Agreement was terminated, what happened to the use restrictions?

The use restrictions will continue in place. Under the terms of the Agency Agreement, when the Trust exercised its option to terminate the Agency Agreement and take title to the property, the Trust was required to confirm the continuation of the use restrictions by executing and recording an instrument setting forth such terms for the benefit of the City.

G. Since the Agency Agreement has been terminated, is the Trust obligated to reimburse the City for the real estate tax benefits it received while the Agency Agreement was in place?

No. There is nothing in the Agency Agreement or in the Order issued by the Probate Court that led to the creation of the Agency Agreement that would require the Trust to reimburse the City for the tax status established by the agency relationship between the Trust and the City while it remained in place.

H. What happened with title to the land in connection with the sale to Westside?

First, pursuant to the terms of the Agency Agreement, the City’s “legal title” was conveyed to the Trust so that the Trust owned full fee title to the property, subject to the use restrictions. At that point, the Trust conveyed title to Westside.

I. Will the use restrictions be binding on subsequent owners of the property?

Yes. The restrictions are a covenant running with title to the land and will be binding on Westside as the new owner of the land and all subsequent owners.

J. What were the terms of the sale to Westside?

The City is not a party to that agreement and does not have a copy of any written contract between Westside and the Trust. Based upon public records filed in connection with the sale, it appears that Westside paid the Trust \$24M for the land. The City is not aware of any other specific terms of that transaction. In connection with the transaction, the 2018 lawsuit filed by Arcis against the Trust has been dismissed. That lawsuit also asserted claims against the City which have also been dismissed, with prejudice.

K. What happened to Arcis and its Lease in connection with the sale to Westside?

The City understands that Westside had a separate agreement with Arcis to acquire Arcis' interest in the property under the Lease. The City does not have a copy of that agreement and is not aware of the specific terms of that transaction. In connection with the closing of the sale of the property to Westside, the Lease was assigned by Arcis to an entity affiliated with Westside. The 2018 lawsuit was dismissed and Arcis was removed as a party to the 2019 lawsuit. To the City's knowledge, Arcis has no further interest in the property.

L. Did the sale to Westside affect the P2P Project on the Park Hill Golf Course?

No. The City's Easements remained in place and work continued without any interruption relating to the sale of the site to Westside.

M. How was the condemnation process impacted by Westside's acquisition of the property?

As the new owner of the property (and the owner of the leasehold interest), Westside is entitled to receive all compensation payable by the City for the Easements acquired by the City and all related claims and damages. Westside may have arrangements with Arcis and/or the Trust with regard to those matters, but the City is not a party to any such agreement. The City and Westside have now reached an agreement to resolve all issues relating to the condemnation action, the 2019 lawsuit and related matters (see Section 7 below).

7. Settlement Agreement between the City and Westside:

A. What are the primary terms of the Settlement Agreement between the City and Westside?

- The City will pay Westside a total of \$6M for the real estate interests acquired by the City on the Park Hill site. This payment includes compensation for all claims based on the value of the real estate interests acquired by the City, all costs that could be incurred by Westside relating to any potential future restoration of the golf course, and consideration for all other terms set forth in the Settlement Agreement.
- The 2019 lawsuit will be dismissed, with prejudice, with each party bearing its own attorney's fees and costs. All issues relating to the City's condemnation action will be fully resolved and discharged.
- Westside will be responsible for securing and maintaining the property. The City will be responsible for maintaining its 25-acre stormwater detention facility on the site.
- Westside will have a period of not less than 3-years to initiate and complete a community engagement process to explore a comprehensive vision for the Property that is not exclusively focused on golf-related uses. During that time, the City will not enforce any affirmative requirement to restore or utilized the golf course. However, the use restrictions on the property will remain in place.
- Westside will waive any right to unilaterally terminate the use restrictions based upon the City's acquisition of real estate interests in the property by power of eminent domain in connection with the P2P Project.

- If the land use entitlement process does not result in the implementation of some other approved plan, Westside will have the obligation to restore the golf course and otherwise comply with the terms of the use restrictions.

B. What will happen on the property in the immediate future?

The City’s work on the detention project will continue into 2020 which will require the property to remain inaccessible. After completion of active construction work, the City will move forward with the establishment of native vegetation within the detention area and the installation of landscaping features. While Westside is engaged in the land use approval process, no development can occur on the site. Therefore, it is anticipated that the property will remain closed to the public for the next 1-3 years. Under the Settlement Agreement, Westside is obligated to provide security to the site and maintain the property in good order, repair, condition and appearance.

C. How does the Settlement Agreement benefit the City?

The Settlement Agreement accomplishes the following objectives:

- The land use restrictions acquired by the City in 1997 have been preserved.
- The City’s potential financial liability for claims relating to the value of the real estate interests acquired by the City has been capped and mitigated.
- The total financial settlement is within the amount reserved by the City in the real estate budget for the P2P Project.
- Existing obstacles to engaging the community in formulating a future vision for the site have been removed.
- The authority of City Council to participate in any future changes has been preserved.

8. Future Plans:

A. What does Westside plan to do with the Property?

The use restrictions limit the use of the property to golf-related purposes and the current zoning of the property is OS/B (open space). The City is not aware of any specific future plans by Westside.

B. What control does the City have over potential development of the property by Westside?

In order for any development to occur on the land, it will be necessary for Westside to modify or seek removal of the use restrictions and obtain a rezoning of the property. Both of those steps would require support from the executive and administrative levels in the City and at least two separate City Council actions. Depending upon the specific plans, additional approvals from the City, including additional City Council action, could be required.

C. How would the City’s LDR process apply to future development plans for the property?

In light of the size of the property, Westside may be required to submit to the Large Development Review (LDR) process. Under the LDR process, the City would consider whether there is clear and sufficient City Council adopted plan guidance addressing the LDR area, the timing and type of any necessary planning process, and required regulatory processes. If it is confirmed that clear and sufficient adopted plan guidance addressing the LDR area does not exist, a City-led small area planning process may be initiated. Any resulting small area plan would be presented to City Council for acceptance in the ordinary course, after approval by the Planning Board.

D. How could the State Statute concerning Conservation Easements impact potential changes in the future use of the property?

The City Attorney's Office is aware of the recent changes to the State Statute and has considered avenues for compliance in a number of potential scenarios going forward. Specifically, a clear legal path exists under the State Statute that would allow for modifications to be made to the Conservation Easement following a City-led public engagement process with affirmative support from City Council. Generally, with regard to matters of local land use control, courts are highly deferential to decisions made at the local level. If necessary, the CAO would act to preserve that authority.

E. What happens if City Council decides not to approve any changes to the use restrictions?

In that event, the City has retained the right to compel the land to be restored and operated as a golf course as required by the terms of the existing use restrictions.