

A HISTORY OF THE PARK HILL GOLF COURSE PERPETUAL CONSERVATION EASEMENT

As uncovered by Inter-Neighborhood Cooperation's Park & Rec Committee

1982 – The Colorado Attorney General's Office files a lawsuit to remove the City and County of Denver as the Trustee of the George W. Clayton Trust for the City's alleged self-dealing with the Trust's assets, including the Park Hill Golf Course. The City resigns as the Trustee and University of Denver Chancellor Chester Alter is named as interim Trustee.

1984 – The Clayton Foundation (now known as Clayton Early Learning) is created and becomes the permanent Trustee of the George W. Clayton Trust. Clayton is governed by a volunteer Board of Trustees.

1986 -- Clayton hires a real estate firm to market the Park Hill Golf Course property for sale. In November of 1986, Clayton enters into an agreement to sell the property to L.C. Fulenwider, Inc. for \$10.6 million. Fulenwider's purchase of the property is contingent upon the successful rezoning of the property for a mixed-use development that includes retail and light-industrial uses.

1988 -- As a result of the economic and real estate downturn in Denver during the late 1980's and resistance to the rezoning from surrounding neighborhood groups such as Greater Park Hill, North Park Hill, and City Park North, Fulenwider terminates the purchase and sale agreement in 1988. Rather than re-market the property for sale in an unsupportive economic and political environment, Clayton decides to hold the property and renegotiate the golf lease to increase the rental payment to a "market" rate.

1989 -- In an effort to save the Park Hill Golf Course from development once the market improved, then Denver City Councilperson Cathy Reynolds includes a line item in the City's \$300 million Bond Referendum that earmarked "*\$2 million towards the purchase of the Park Hill Golf Course.*" Councilperson Reynolds was an avid golfer who played regularly at the Park Hill Golf Course. The \$300 million Bond Referendum passes.

1994 -- Mayor Wellington Webb's director of special projects, Andrew Wallach, approaches Clayton about the \$2 million earmarked for the course. He asks whether Clayton would grant the City a perpetual Conservation Easement on the course in exchange for the \$2 million. The Conservation Easement would allow Clayton to continue to operate the property as a golf course or open space, but would preclude development of the property.

To determine if the \$2 million was sufficient compensation for the potential development rights it would be giving up, Clayton goes through an appraisal process and the appraiser concludes that the value of the property as a golf course is \$6 million and its value under a highest and best use scenario is \$8 million. In other words, the appraiser concludes that the value of the golf course's potential development rights at that time was \$2 million (\$8 million minus \$6 million).

1997 -- Based upon the appraiser's conclusion, Clayton grants a perpetual Conservation Easement on the golf course property to the City in exchange for payment from the City of \$2 million. The perpetual Conservation Easement limits the use of the property to open space in general and a golf course in particular.

1998 – Clayton issues a request for proposal to prospective lessees of the course, including American Golf Corporation and Arnold Palmer Golf. In late 1998, Clayton enters into the current 20-year lease with American Golf Corporation. AGC agreed to pay Clayton \$500,000 in year one, \$550,000 in year two, \$650,000 in year three and \$700,000 in years four through 20.

2000 – The Office of the Assessor for the City and County of Denver informs Clayton that even though the owner of the course, The George W. Clayton Trust, is a tax-exempt entity, the lessee of the course is not. As a result, American Golf Corporation is subject to a Possessory Interest Tax. Because American Golf entered into the Lease with the understanding that the property was tax-exempt and that Clayton would be responsible for any real estate taxes, Clayton would be required to reimburse American Golf for the Possessory Interest Tax. This was a significant unforeseen expense to Clayton.

To address this unforeseen expense, Clayton submits a proposal to the City whereby the City would release the Conservation Easement (although its terms would continue), while Clayton would convey fee simple title to the City but would retain control of the beneficial use of the property under an Agency Agreement. Because the City would hold legal title to the property, the property would once again be tax exempt.

Clayton and the City enter into the Agency Agreement, which provides that Clayton may terminate the Agency Agreement at any time and the City would convey legal title back to Clayton. **If termination occurs, however, the Agency Agreement requires that the Conservation Easement must be put back in place and the lessee would once again become subject to the Possessory Interest Tax.**

2017 -- Park Hill Golf Course property continues to be encumbered by the Agency Agreement, which includes the terms of the perpetual Conservation Easement. That means the City currently has the legal ability to restrict development of the property, and to limit its use to open space in general and a golf course in particular.



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