



CITY ATTORNEY'S OFFICE

TO: Lehi City Council
FROM: Ryan V. Wood, City Attorney
DATE: July 30, 2019
RE: Peck Park

History

In October of 2003, Thomas J. Peck & Sons, Inc. and Ivory Homes draft a Business Points Outline for about 66 acres of what is now commonly referred to as “Peck Park.” The Outline allows Ivory to exercise four annual purchase options with a total purchase price of \$4,522,500. The purchase price includes water rights provided by Peck & Sons and there is no reservation of excavation rights by Peck & Sons. The Outline is never signed because of the negative tax implications to Peck & Sons that will result from selling the property.

After the city council tours Peck Park on November 1, 2005, Mayor Ken Greenwood negotiates a lease agreement (“Lease”) with Peck & Sons which is signed without further city council action on December 29, 2005—the last business day for Lehi City in 2005 and two days before Greenwood leaves office having lost his re-election bid earlier in November

Under the terms of the agreement, the City makes an annual \$300,000 lease payment for 10 years, pays the annual property tax assessment, and upon exercising the option to purchase the property at the end of the lease, makes a \$4.2 million balloon payment. Notably, the Lease does not contain an obligation for the City to do any of the following: i) name the park; ii) allow material to be excavated from the property; iii) purchase five additional acres of property owned by the Anthony Peck Trust; or iv) build baseball fields.

The final written agreement is never presented to the city council in a public meeting for review or official approval. Although the city council is aware of the general business points that are contained in the Lease, none of them are aware of or told about the purported promises made by Ken Greenwood that are not found in the written Lease.

In early January of 2006, the City receives notice that the property has been transferred to TBT Property Management, Inc. TBT has two 50% shareholders, Tony and Tom Peck.

Soon after the Lease is signed, Cole Peck (Tony’s son) approaches city officials about Ken Greenwood’s promise that material can be removed from the property. This concerns members of the city council because they don’t know what the future of the park will look like

and they don't want material removed that might limit development of the property. The dispute continues through 2006 and early 2007. A series of meetings about the dispute culminates in a December 12, 2006, executive session where Councilmember Steve Holbrook indicates "that the baseball fields were never a discussion and some dirt not all the dirt in the park." The council agrees that "*we will not tie the facilities the Pecks want to the approval of the 5-acre sale.*" In a subsequent executive session on January 2, 2007, Jamie Davidson reports that "Tony Peck would like to proceed on the [purchase agreement for the] 5-acre parcel and continue on the 67 acres *with no bind on the use of the property.*"

It appears that the dispute over the promises made by Ken Greenwood in late 2005 is finally resolved. On April 24, 2007, a Purchase Agreement with the Anthony T. Peck Trust is approved by the city council. The Trust receives \$1,040,000 in water shares and the City receives title to five additional acres of property. The Trust is allowed to excavate material from the property consistent with a temporary grading plan. Significantly, consistent with the minutes from the December 12, 2006 and January 2, 2007 executive sessions, there is *still* no obligation for the City to build baseball fields on the property.

Seven years later the issue of baseball fields at Peck Park appears again in the public record. During the April 22, 2014, city council meeting, two concept plans for Peck Park are presented. In spite of the execution of the Purchase Agreement that was supposed to resolve the earlier dispute, Ken Greenwood, Tony Peck, and members of his family speak at the meeting asking the City to honor Greenwood's promise that the City would build competition baseball fields at Peck Park.

On December 21, 2015, as the Lease comes to an end, the City gives TBT notice of its intent to exercise the option to purchase the property. Days later, the City receives a letter from TBT that it will only close the property subject to four conditions, one of which is that "the development of the park will include a softball/baseball complex of competition quality." The Lease itself does not contain any of the four conditions and neither of the other two directors of TBT, are aware of this letter. The City subsequently delivers a notice of default to TBT for failing to unconditionally close on the property as required by the Lease. Subsequently, the other two directors deliver notice to Tony of a special meeting of TBT at which they will attempt to remove him as the president so that the property purchase can move forward. The next day Tony initiates shareholder litigation against TBT. This action effectively blocks the sale of the property until the litigation is resolved.

Because the sale of the property is at the heart of Tony's shareholder lawsuit against TBT, the City is brought into the litigation. Tony Peck's family continues to insist that the sale to the City should not close unless the City agrees to build competition level baseball fields. After failed attempts by the court-appointed receiver (neutral third party appointed by the court) to negotiate a resolution of the baseball issue with the City and Tony Peck's family, the receiver asks the court to approve a settlement agreement that orders the sale of the property to the City. The settlement agreement is approved by the court and contains a clause whereby the parties release the City from all claims related to the Lease and waive the right to bring any further legal action against the City. On October 24, 2016, the City makes the 4.2 million balloon payment and receives title to the property free and clear of any legal obligations arising out of the Lease.

On October 4, 2016, the city council adopts a final concept design for Peck Park in preparation for the vote on the proposed parks bond. In November, the parks bond fails to get approval from the voters of Lehi City. Without the bond proceeds, there is no source of funding for development of Peck Park.

On August 8, 2018, Arsenal proposes an agreement with the City where it will develop 20 acres of soccer fields on the Property at no cost to the City. In exchange Arsenal will have the exclusive use of 70% of the developed fields. An agreement with Arsenal is approved by the city council on December 11, 2018. On June 27 and July 11, 2019, a concept plan is presented to the Lehi Planning Commission. The concept plan receives a positive recommendation from the Planning Commission and is moved forward to the July 30, 2019, city council meeting.

Common Peck Park Myths

Myth #1: The City Made Promises to Tony Peck and His Family That Should Be Honored

A common argument throughout this process is that today's city council ought to keep the promises the City made to Tony Peck and his family. The problem with this argument is that these promises weren't "the City's" promises—they were Ken Greenwood's promises. The public record is clear that the city council was never informed of the promises made by Ken Greenwood. These promises were Ken Greenwood's alone. At the time the Lease was signed, he knew he only had two days left in office and that he wouldn't even be around to ensure that his promises were kept. A mayor can make all the promises he or she wants, but in Lehi City's form of government, those promises are ineffective unless and until the city council approves them in a public meeting. Much like the president or CEO of a corporation who is required to receive approval from a board of directors for major corporate decisions, the mayor has no authority to bind the City without the approving vote of the city council. A mayor who attempts to do so exceeds his authority and circumvents the public process. This process ensures two important tenets of local government: i) transparency in conducting the public's business, and ii) safeguarding taxpayer funds by ensuring the public's duly-elected representatives exercise their oversight authority.

Myth #2: The Sale of Peck Park was a Donation to the City

Although it has been frequently mentioned in public meetings that the property was "under contract" to Ivory for 9.3 million dollars at the time of the negotiation of the City's lease, a copy of this contract has never been produced. The best evidence of what was being considered is the Business Points Outline mentioned above. The City is not aware of any other agreement between Peck & Sons and Ivory Homes.

Considering the annual lease payment, the property taxes, the balloon payment, and the value of the water shares paid for the 5-Acre Purchase Agreement, the average price per acre for the City's purchase of the 72 acres of Peck Park stands at \$116,000/acre. This figure does not account for the value of the 500,000 cubic yards of material that will have been removed from the park by the Tony Peck family at an estimated value of approximately \$2,100,000. It also does not account for the tax benefit to Peck & Sons/TBT for structuring this as a 10-year lease with a 4.2 million balloon payment at the end. It is the City's position that both TBT and the Trust have been fairly compensated for the property. The City does not view this transaction as a "donation"

with a corresponding obligation to honor the promises made by Greenwood in order to make it a “fair” deal.

Myth #3: The Entire Peck Family Wants Baseball Fields at Peck Park

Since the Lease’s execution on December 29, 2005, only Tony Peck and his family members have been actively involved in the public process and the dispute regarding excavation of material from and the development of baseball fields at Peck Park. As detailed above Tom, the other 50% shareholder of TBT and therefore the joint owner of the property, has been absent from the public record on the issue and in fact attempted to change the corporate structure of TBT in order to bring about the sale of the property to the City with no conditions. The public has never heard from other members of the Peck family who were involved in the initial negotiation of the Lease. Those family members have never asked the City to honor the promises made by Ken Greenwood to Tony Peck and his family.