



CITY ATTORNEY'S OFFICE

TO: Lehi City Council

FROM: Ryan V. Wood, City Attorney

DATE: July 30, 2019

RE: Peck Park

STATEMENT OF FACTS

- In October of 2003, Thomas J. Peck & Sons, Inc. (“Peck & Sons”) and Ivory Land Corporation negotiate a Business Points Outline (“Outline”) for 66 acres of the Peck sand and gravel property (“Property” or “Peck Park”). The Outline contains the following terms:
 - Ivory makes an initial nonrefundable payment of \$100,000.
 - Ivory has a series of four annual purchase options it can exercise, each for 16.75 acres of property as follows: i) \$60,000/acre for the first year, ii) \$65,000/acre for the second year, iii) \$70,000/acre for the third year, and iv) \$75,000/acre for the fourth and final year.
 - If the options are exercised as contemplated, the total purchase price is \$4,522,500.
 - The purchase includes water rights provided by the seller.
 - There is no reservation of excavation rights by Peck & Sons.
 - Ultimately, the Outline is never signed due to the negative tax implications to Peck & Sons that will result from selling the property.
- Although the public record through the years contains references made by the Tony Peck family to the Property being “under contract” with Ivory for 9.3 million dollars, a copy of this contract has never been produced.
- On November 1, 2005, during its work session, the city council tours the Property “being considered for purchase for upcoming projects.” Between this date and January 13, 2006, there is no further mention of this transaction in the public record.
- During November and December of 2005, a lease agreement (“Lease”) is negotiated between Mayor Ken Greenwood and Peck & Sons.
- The Lease Agreement is signed on December 29, 2005. This is two days before Greenwood leaves office after having lost his bid for re-election in November of 2005.
- Notable terms of and omissions from the Lease Agreement:
 - Recital B of the contract (recitals are not binding contract language) states that “it is contemplated that the Property will be developed as a Lehi City park for

recreational uses typical of other parks in Lehi City, and such other related uses not inconsistent with such primary use.”

- Sections 1 and 3 state that the City pays an annual lease payment of \$300,000 a year and the term of the lease is 10 years.
- Section 4 imposes the obligation to pay the annual property taxes on the City. During the term of the Lease, the City pays a total of \$254,278.27 in property taxes.
- Section 6 states that *during the term of the Lease*, the City may only use the Property as a park. The Lease contains no obligation to build a park either during the Lease or after purchasing the Property.
- Section 31 states that upon exercising the purchase option at the end of the 10th year, the City will make a \$4,200,000 balloon purchase payment.
- The Lease contains no obligation for the City to name the park; at the request of the Tony Peck family, this is done by motion during the October 2, 2006, city council meeting.
- The Lease contains no reservation of excavation rights for Peck & Sons/TBT or any other entity owned by members of the Peck family. This right is later granted to the Anthony T. Peck Trust in the 5-acre Purchase Agreement (“Purchase Agreement”) signed on April 24, 2007 and becomes the subject of TBT shareholder litigation between Tony and Tom Peck.
- The Lease contains no obligation for the City to purchase an additional 5 acres of property owned by the Anthony T. Peck Trust.
- The Lease contains no obligation for the City to build baseball fields—or any specific amenities for that matter—on the Property.
- Although they are aware of the general business points of the Lease, the final written Agreement is never presented to members of the city council for final review and approval in a public meeting.
- Because it is never presented in a public meeting, there is no opportunity for the public to view the Lease or comment on its terms.
- There is no resolution authorizing Greenwood to execute the Lease Agreement.
- None of the five members of the city council at the time are aware of any promise made by Greenwood to Tony Peck that the City will build baseball fields on the property.
- None of the city council members at the time are aware that Greenwood has promised Tony Peck that he may excavate material from the Property.
- On January 3, 2006, the City receives notice that all property formerly held by Peck & Sons has been transferred to TBT Property Management, Inc. (“TBT”).
- TBT has two 50% shareholders, Tony Peck and Tom Peck, and three directors, Tony Peck, Tom Peck, and Steve Schoonover.
- 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 and the park amenities to be developed on the Property.
- On January 13, 2006, Councilmember Mark Johnson reports that “Cole Peck (Tony’s son) had made an agreement with Mayor Greenwood to remove the dirt from the property that they sold to Lehi and since excavation needs to be done it would probably make sense to allow him to begin.” Councilmember Steve Holbrook’s recommends that “the City take their time and make no agreement to remove the soil until we determine the use

for the property.” The city council then approves an expenditure of \$7,000 to do a topographical survey of the Property.

- On January 24, 2006, Councilmember Johnson “reported that Cole Peck approached him about making an arrangement with Kenneth Greenwood on the property that they sold to Lehi, that they could salvage the soils off the site. The excavation will need to be done but what is the plan for the property.”
- On February 14, 2006, Councilmember Johnson reports that he “spoke with the Pecks about any agreements that they had made with the previous Mayor. The need to come up with a plan to do the survey work, rough grading and begin excavating.”
- The public record is silent between February and August of 2006 regarding any mention of the Property.
- On September 5, 2006, Councilmember Johnson presents a conceptual plan for Peck Park.
- On October 3, 2006, Councilmembers Johnson indicates that he will be making a presentation on the concept for the Peck Park on October 10. The city council also approves a motion to name the park the Thomas J. Peck Family Park.
- On October 10, 2006, Council Member Mark Johnson presents a concept plan for the Property that includes “soccer fields, bleachers, a skate board park, pavilions, an amphitheater, tennis courts, basketball courts, and a chip and putt golf course.”
- In an executive session on October 24, 2006, the minutes indicate that there is a dispute with the Tony Peck family over both the timing and scope of excavation of material and the proposed concept plan for the Property because it does not include baseball fields. The minutes state that “the Pecks concept of the agreement and the cities seems to be different. They plan to level the property for ball fields and use the dirt on other projects. The city and the Pecks need to come to a written agreement for clear direction before all of the dirt is removed.” Councilmember Johnson offers to call Ken Greenwood “and find out the intention for the soil.”
- On October 24, 2006, the minutes for a meeting (not a city council meeting) indicate that “Tony Peck was concerned for the previous mayor’s vision for Peck Park and that the verbal agreement was for walking paths and ball fields.”
- Between October 25, 2006 and November 2, 2006, Councilmember Johnson exchanges e-mails with Greenwood to try and verify certain aspects of the agreement that are not in the written Lease. Greenwood is on a church mission in Africa.
- On November 1, 2006, a meeting is held with city staff, members of the Tony Peck family, and Councilmember Johnson to discuss the excavation issues. At the outset of the meeting Jamie Davidson comments that “most of the issues on this project had been discussed with the previous mayor, Mayor Greenwood and Ed Collins with the Peck family. There had never been minutes taken or recorded from their conversations.” During the meeting, Tony Peck comments that “he sold the ground with the understanding that the City *would place ball fields or possibly a motor cross field* if they could get sponsors or grants.” (emphasis added). The minutes indicate that there was a discussion “about the fact that no agreement had been made other than a verbal agreement on what the property would be used for. Mark clarified that it is important to have a contract drawn up so that there is no disagreement on what had been discussed for the property use.”

- A special meeting of the city council was held on November 7, 2006. In that meeting Councilmember Dixon reports that “He could now [sic] find any agreements or letters that the Pecks would get ball fields on the property.” Councilmember Barnes indicated “that he still does not know what the commitment was.” The minutes indicate that Councilmember Holbrook does not recall any conditions placed for ballparks or special requests from the Pecks.”
- During an executive session on November 14, 2006, discussion was held about 2 options, “to unravel the deal...or modify grading plans.” Councilmember Holbrook stated “that there never was an agreement to let them mine as much as they wan too [sic], wasn’t it to satisfy the city’s plans?” The minutes indicate that “the Council was in consensus to have the Pecks **STOP** the excavation project.” “The offer to unravel the deal or sign an agreement with the amount of soil to be excavated was decided on by the Council.”
- In an executive session held on December 12, 2006, Councilmember Holbrook reports that “the Pecks have asked that the property contain Football fields, 2 soccer fields, baseball fields (in the upper end).” Holbrook also indicates “that the baseball fields were never a discussion and some dirt not all the dirt in the park.” The council agreed that “*we will not tie the facilities the Pecks want to the approval of the 5-acre sale.*”
- In a city council work 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.*”
- On February 13, 2007, the minutes indicate that “The Peck Family has had Tony Trane submit a grading plan that they have developed as an option to the grading plan submitted by Mark Johnson.”
- On Tuesday, March 27, 2007, and April 4, 2007, the details of the Purchase Agreement are discussed including a report from Jamie Davidson that “the Pecks want to remove more dirt when the city develops the ground and needs more removed.” The minutes indicate that “the attorney was directed to draft a first right of refusal or something acceptable.”
- On April 10, 2007, a temporary grading plan is approved and on April 24, 2007, the Purchase Agreement with the Anthony T. Peck Trust is approved bringing the total acreage for the Property to approximately 72 acres. The Purchase Agreement contains the following provisions:
 - The City receives title to five acres of property
 - The City purchases 100 shares of Lehi Irrigation water stock in the Trust’s name for \$10,400 per share. This equates to a \$1,040,000 purchase price for the 5 acres.
 - The Trust was granted permission to excavate material in accordance with a temporary grading plan.
 - The Trust was granted a right of first refusal if additional material was to be removed from the property as a result of future park development.
 - 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—or any specific amenities—on the Property.
- On May 27, 2008, another grading plan is presented to, but not approved by, the city council. The Pecks are allowed to continue removing material from the Property and representatives of the Tony Peck family and Tony Trane are directed to bring back a final grading plan.

- During the August 26, 2008, city council meeting, Council Member Mark Johnson inquires about the grading plan for the Property and public works director Jim Hewitson reports that they have “shut down.”
- While issues re: the Property are discussed at various city council meetings between August of 2008 and March of 2013, these discussions do not pertain to the ongoing excavation activities or the amenities to be constructed in the future.
- In March of 2013, Arsenal FC (“Arsenal”) makes a proposal to the city council for development of 20 acres of the Property into soccer fields. The proposal is discussed by the city council but is ultimately not acted upon.
- In July of 2013, at the request of the City, Peter Beeton of Colony Design Collective presents his analysis of parks in Lehi City and how Peck Park fits into that analysis.
- On April 22, 2014, Robert Ranc presents two concept plans for Peck Park, one based on input from the public open house and one based on input from the citizen survey. Tony Peck and members of his family speak during the citizen input portion of the regular council meeting and encourage the city council to construct baseball fields at Peck Park.
- On April 14, 2015, Mark Vlastic from Landmark Design presents the draft Parks Master Plan. He specifically mentions that the Master Plan does not recommend a baseball facility at Peck Park due to its location. In subsequent meetings, Landmark is retained to do a design specifically for Mellor-Rhodes Park and Peck Park.
- On July 7, 2015, as required by the Lease, Lehi City delivers a notice to Peck & Sons/TBT indicating its intent to exercise the option and purchase the Property.
- On September 1, 2015, Landmark presents its concept plans for Mellor-Rhodes Park and Peck Park.
- On December 21, 2015, the City delivers an additional notice to Peck & Sons/TBT that it intends to close the purchase of the Property within 10 days of December 29, 2015 as provided in the Lease.
- On December 29, 2015, the City receives a letter from outside counsel representing Peck & Sons indicating that it will only close the purchase of the Property subject to four conditions, including the condition that “the development of the park will include a softball/baseball complex of competition quality” in spite of Tony Peck’s earlier agreement to “proceed on the 5-acre parcel and continue on the 67 acres with no bind on the use of the property.”
- The Lease does not contain any of these four conditions and in fact, Section 31(3) of the Lease states “there shall be no conditions to the Purchase Option closing, except that there shall be no monetary liens or encumbrances on the fee interest of landlord.”
- Neither the other shareholder (who is also a director) nor the other director are aware that the letter has been sent to the City imposing conditions on the sale of the property.
- In January of 2016, a special meeting is noticed for Peck & Sons/TBT to be held on January 25th.
- Tony Peck objects to the meeting and the other directors agree to reschedule the meeting until February 1. After receiving no response from Tony regarding the rescheduled meeting, the other directors give Tony official notice of the February 1 special meeting. The purpose of the meeting is to remove Tony Peck as president of TBT.
- The next day, Tony Peck initiates shareholder litigation against TBT alleging, among other claims, that the corporation is deadlocked and requests a temporary restraining order against further corporate action.

- This action effectively blocks the sale of the Property to Lehi City from closing pending the outcome of the litigation.
- After the appointment of a receiver (court-appointed person who is authorized to settle the issues between the parties) in the case, the Lease is made a part of the litigation. After the receiver's attempts to negotiate a resolution of the Property purchase with the Plaintiff (Tony Peck) fails, he recommends that the Property be sold to the City on the terms and conditions described in the Lease. The receiver's proposed Settlement Agreement is approved by the Court and the Property is sold to the City with no conditions imposed.
- On August 9, 2016, the city council approves the Settlement Agreement proposed by the receiver in the ongoing Peck v. Peck case. The Settlement Agreement contains a clause whereby the parties release the City from all claims related to the Lease and waive the right to bring any legal action against the City.
- As a result of the court's order approving the Settlement Agreement, the Property transaction ultimately closes and the City receives title to 66 acres free and clear of any legal obligations to Peck & Sons/TBT or any individual members of the Peck family.
- On September 6, 2016, Robert Ranc, assistant city administrator, presents a concept plan for Peck Park.
- On October 4, 2016, the city council adopts a final concept design for Peck Park.
- In November of 2016, the parks bond fails to get approval from the voters of Lehi City. Without the bond proceeds, there is no funding for development of Peck Park.
- On August 8, 2018, Arsenal again 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 for soccer fields 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.