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Golf Course Repurposing:

Legal Issues and the Challenge of Implied Restrictions

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Repurposing Golf Courses:

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America's love affair with golfing is waning. There are too many golf courses and not enough golfers. The average age of the active golfer is increasing…and the cost to maintain the courses is increasing as well. Few people realize that golf courses periodically require *significant* capital infusion to upgrade their facilities in order to successfully compete with newer courses. Physical amenities age and must be remodeled. New high-quality residential communities use lakes and other passive greenspace, and even urban farms, as amenities instead of the traditional golf course. *What will happen to excess golf courses?*

Because golf courses are often located in desirable areas, they have become an object of interest for redevelopment as primarily (but not always) residential communities.

In many situations, the original golf course developer's long-term intent was not clearly documented (and, perhaps not known by the developer themselves). A long-operated golf course may have nothing at all in its chain of title addressing use. Sometimes, use is affirmatively restricted, but only for a set period, which has or will soon lapse. Even if there are restrictions, there are usually amendment provisions. Also, zoning treatment of golf courses is varied, from specific golf course or recreational/green space limits to being zoned consistent with the surrounding development uses. How can one determine whether a particular golf course may be repurposed, and what requirements, if any, for permission is required? Is the due diligence the same as any other tract of undeveloped land. Without recorded restrictive covenants, is a golf course ready for repurposing? Although traditional land use review indicates a clear path for redevelopment, some surprising cases apply equitable doctrines to imply restrictive covenants limiting or prohibiting repurposing. *How can this be?*

I. The Problem:

Texas has too many golf courses, as of 2017 there are 742 Texas golf courses, 4th most in the county after Florida, California and New York (2017). In 2017, 12 golf courses (based on 18-hole equivalents) closed and only 1 opened, making Texas one of the top 5 states for golf course closures.

Nationally, 205 courses closed and only 15 opened in 2017. The period of 1986-2005 was an unstainable period of golf course growth (supply increased by 44%), followed by the period of 2006-date with a supply decrease of almost 7%. The prediction is a 1-1.5% reduction annually.

"…[T]he strong commercial and residential real estate market has created demand for desirable golf course properties, leading some facility owners to sell as an exit strategy." NATIONAL GOLF FOUNDATION, GOLF FACILITIES IN THE U.S. 1 (2018). "While no golfers like to hear stories about golf courses shutting down…it's a trend we expect to continue for several more years." Id.

A. What happens to Tired Golf Courses?

Because golf courses are often located in desirable areas, they have become an object of interest for redevelopment for other uses. See the following former Houston Area Golf Courses and their new use:

Clear Lake City	Exploration Green Conservancy
Evergreen	Frisbee Golf/Houses
Goose Creek	Houses
Inwood Forest	Detention
Willowisp	Business Park
Glennbrook	Houston Botanical Garden

This same pattern has played out throughout the country.

B. Who owns Golf Courses?

Golf courses are owned by a variety of owners:

- Private Golf Clubs
- Private Homeowner's Associations
- Independent golf course operators
- Residential developers
- Local Governments

Many golf courses were installed as amenities to adjacent residential neighborhoods created by the same developers to create more valuable lots. Most developers, sooner or later, sell their golf courses to an independent golf course operator, or the Homeowner's Association. These are the golf courses where implied restrictions can occur. Completely independent golf courses without adjacent residential lots developed by a common developer out of commonly owned land should never had implied restrictions.

C. How are Golf courses set up Legally?

Some golf courses, which can be called "Core Courses", are physically separate from residential neighborhoods, even if adjacent. They are typically developed by independent golf course operators/developers. On occasion, excess land might be sold to an independent, 3rd party residential neighborhood developer. As separate, standalone facilities, they are separate operating businesses, often set up with a separate legal entity. There is no relationship with any 3rd parties, so there are no legal connections. These golf courses, like any other business, are independent from their consumers and neighbors. The golf courses are separately platted and not subject to any restrictive covenants benefitting 3rd parties. Zoning, if applicable, requires the use to be permitted.

Golf courses installed by residential neighborhood developers may be owned by the same entity which develops and sells residential lots to the public or 3rd party builders, or, as is more frequent today, under separate legal ownership, but controlled by the residential developer. Usually, these golf courses are imbedded in the residential neighborhood so to maximize the return from golf course frontage lots, and may be called "Integrated" Courses. Some golf courses are platted together with the surrounding residential lots, but could be platted separately and without reference to the residential lots. Adjacent residential lots are often limited by recorded restrictive covenants so that the backyards maintain a more pleasing appearance from the golf course. Prohibition of solid fences and structures are examples of these types of restrictions. Usually, these restrictive covenants terminate if the adjacent golf course use terminates. Most golf courses were not restricted as to use, either by plat or separately recorded restrictive covenants. Zoning, if applicable, must permit the golf course use and can be a residential use category (if golf course or other recreational use is permitted in that use), recreational or open space.

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