

LAS VEGAS TAKES A CUE FROM HOTEL-CASINOS WHEN IT COMES TO GOLF COURSE CLOSURES

While they are certainly different industries, golf course owners and managers could learn a thing or two from hotel-casinos in the case of faltering operations.

By Jamie Thalgott

Las Vegas is ground zero for the corporate reinvention model. As the whims of younger generations change, the hotel and casinos that dominate Las Vegas' economic landscape have adjusted their brands, refocused and repurposed spaces within their properties, and ultimately proved flexible and responsive to consumer demand. But what if legal constraints burdening the land under those properties prevented the very flexibility that allows them to survive? For example, what if — with waning gaming demand — a portion of a slot floor could not become a nightclub? Or — with health-consciousness trending — a once-packed donut shop could not become a now sought-after juice bar?

This precise obstacle burdens another entertainment draw in the city: golf courses. While both hotel-casinos and golf courses are entertainment-focused businesses, in most cases, the two could not be positioned more differently. Where governing regulatory frameworks segregate hotel-casinos by zoning to certain commercial areas of a city, golf courses, by design, occupy significant real property acreage, often in the heart of residential areas. As a result, many communities seem to conflate golf courses, in terms of purpose and value, with parks rather than other entertainment-driven businesses.

This perception develops naturally for a couple of reasons. First, golf courses and parks often exist pursuant to the same zoning and land use, and will share zoning and land use with the adjacent neighborhood. Second, developers have actively marketed golf courses as amenities to these adjacent neighborhoods, driving up home prices and promising to sustain surrounding home values going forward. Over time, the perception solidified into a mindset. The golf course mixture of residential with commer-



An example of a golf course closure is Silverstone Ranch in northwest Las Vegas, which has been closed since 2015. The 27-hole golf course has been tied up in litigation for the past four years.

cial resulted in synergistic blending at best, or at least went unnoticed so long as the business supported itself. However, once a golf course operation no longer makes fiscal sense to its owner, the solution is much more complicated than a simple home sale. The community feels the impact of this type of closure much more deeply than a closure of a business in another industry.

Golf course developers were not ignorant to the potential for this result. To bolster the otherwise precarious positioning of golf courses from a land-use perspective, many developers deed-restricted the underlying real property and/or incorporated the golf course into the surrounding neighborhood's CC&Rs (covenants, conditions and restrictions). However, this legal framework created a whole new set of issues: contract interpretation (e.g., does the deed require just the initial development of a golf course or ongoing maintenance thereof and for how long?); court enforcement (e.g., can a court require a business to operate at a loss just because the land is restricted?); and standing (i.e., which party has the right to seek enforcement of the deed restriction?); to name a few.

Ultimately, the burning question of what happens to the land if the owner goes bankrupt must be addressed.

Does the community really want to adopt a scorched-earth tactic in strict accordance with the deed restriction, rather than have the land repurposed into something making more financial sense? Either way, what happens to the closed golf course in the interim?

Many of these questions initially fall to the local jurisdiction that has regulatory authority over the property. These jurisdictions must grapple with whether their property maintenance codes adequately address the fact that a golf course closure means landscape death, as the overhead associated with the business is largely landscape-related. Even if the closed golf course doesn't technically run afoul of property maintenance standards, the locality nevertheless will field complaints from unhappy neighbors facing declining property values and the eyesore of a failed business where they once saw a park. The local jurisdiction might also face an uphill battle explaining to constituents that CC&Rs and deed restrictions are private agreements outside of the jurisdiction's authority.

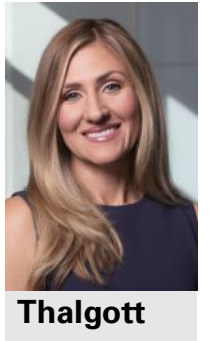
To address these issues, local jurisdictions might consider the hotel-casino industry as a model and adopt ordinances requiring closure plans as for a shuttered casino property. These plans would govern how the owner

must handle landscaping, field neighbor complaints and prevent trespassing and crime, etc. However, unlike a casino closure plan — meant to provide a governing body with a roadmap back to operation and to preserve a use

permit — a golf course closure plan would likely arise prior to submission of a redevelopment application requiring new entitlements and/or impacting existing entitlements. For example, golf course acreage might have counted toward a larger master plan's open space requirements or require rezoning, so governing bodies might consider adopting specific code criteria to handle the unique circumstances of golf course repurposing.

Generally, communities and developers alike should think strategically in advance of golf course redevelopment requests in terms of potential offsets to the loss of open space to the surrounding neighborhood and the inevitable public backlash that will arise. Specifically, governing bodies might identify bargaining chips, such as profitable club houses that a developer wants to continue operating but which are ancillary to the underlying use permit, or turf reduction credits if the golf course shrinks in size, while golf course owners could proactively do public outreach prior to filing such applications.

From a legal perspective, unless communities adopt specific ordinances, courts will define the parameters of golf course redevelopment through interpretations of private covenants and localities will manage closures under existing (and potentially inadequate) property maintenance codes. From an attitude perspective, golf course owners should respect their unique role in residential neighborhoods, with neighbors remembering that their golf course neighbors are commercial enterprises with bottom lines. Otherwise, the community will end up with that now-empty donut shop where both neighbors and owners alike would benefit much more from the now-trending juice bar.



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Silverstone Ranch sits adjacent to 1,500 homeowners, many of whom have been trying to get the course reopened, to no avail.