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IN THE SUPREME COURT OF THE STATE OF NEVADA

SCENIC NEVADA, INC.

Appellant,

Case No. 65364

v.

CITY OF RENO, a Political Subdivision
of the State of Nevada,

Respondent.

JOINT APPENDIX

VOL. 2

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1 It hadn't happened yet?

2 A. No. We knew it was going to and they were in
3 negotiations, but we didn't know the final number.

4 Q. So you were letting the city know the cost?

5 A. Oh, yeah.

6 Q. So the city says, Scenic Nevada proposed the draft
7 and presented arguments against its passage. We see
8 Exhibit 231. The city denies that happened. But it did
9 happen, didn't it?

10 A. Yes.

11 Q. The city council approved the first reading of the
12 draft ordinance over Scenic Nevada's objections. That was
13 the July 18th result?

14 A. Yes.

15 Q. And the second reading was for August 22nd. And
16 for the August 22nd second reading, Scenic Nevada submitted a
17 letter opposing that draft on August 16th, right?

18 A. Yes.

19 Q. And that's exhibit what?

20 A. 232.

21 Q. So this is the next letter, August 16th. The city
22 denies that happened, but there is the letter?

23 A. Yes.

24 Q. You did send it to the city, correct?

1 A. Yes.

2 Q. Scenic Nevada opposed a draft only to learn that
3 the second reading was postpone, because the defendant city
4 council was considering substantial changes to the draft that
5 had been made since the first reading, right?

6 A. Yes.

7 Q. Did that in fact happen?

8 A. Yes.

9 Q. Did they in fact change the first draft? What is
10 Exhibit 54?

11 A. Well, it shows the minutes of the August 22nd city
12 council meeting where they were supposed to have the second
13 reading and staff -- actually, the city attorney was
14 recommending that they take -- they bring it back for another
15 first reading. Instead of approving the second reading then,
16 bring it back for another first reading. And Councilman
17 Gustavson suggested that the proposed changes were
18 significant enough to require another first reading. And in
19 fact, that's what they voted on and that's what they decided
20 to do.

21 Q. The next paragraph the city denies is paragraph
22 46. On October 5th, the city staff notified representatives
23 of the billboard industry and Scenic Nevada that there were
24 more substantial changes to the draft and another first

1 reading was scheduled for October 10th.

2 A. That's right.

3 Q. And Exhibit 233 is an e-mail from Claudia Hanson
4 to Chris Barrett and other people, right?

5 A. Yes.

6 Q. About the October 10th first reading?

7 A. Correct.

8 Q. So, in fact, the city did notify representatives
9 of the billboard industry starting with Chris Barrett, of
10 course, and Scenic Nevada, because you got a copy?

11 A. I did.

12 Q. That there would be more substantial changes and
13 that another first reading was scheduled for October 10th?

14 A. Yes.

15 Q. That's the exhibit?

16 A. Correct.

17 Q. Finally, paragraph 50 of the first amended
18 complaint starts off with a summary that Scenic Nevada's
19 objections to the digital billboard ordinance are
20 longstanding and consistent. By the way, the city denies all
21 of this, that Scenic Nevada's objections have been
22 longstanding and consistent. Is there anything more true
23 than that statement?

24 A. No. There were -- the city, when we asked for

1 documents, they submitted 6,143 pages to us and we submitted
2 1,348 pages and Saunders Outdoor submitted 313 pages. It's a
3 huge record of a lot of things that happened over a four-year
4 period. We were there at every meeting. We objected every
5 time.

6 MR. WRAY: Thank you very much. Pass the witness.

7 THE COURT: Thank you, Mr. Wray. Mr. Gilmore.

8 CROSS EXAMINATION

9 BY MR. GILMORE:

10 Q. Mrs. Wray, you use e-mail, right?

11 A. Yes, I do.

12 Q. You use e-mail, because it's more efficient to use
13 an e-mail and than it is to get out of your house and walk
14 down the street and say something to somebody in person,
15 correct?

16 A. Correct.

17 Q. You also have a smart phone. I see one right
18 here. Is this yours?

19 A. No, it's my husband's.

20 Q. Okay, but you use it, right?

21 A. I have one of my own.

22 Q. Because using a cell phone is more efficient than
23 pulling a quarter out of your pocket and going downstairs
24 across the street to the 7-Eleven and making a phone call to

1 somebody, right?

2 A. Yes.

3 Q. Do you have a computer upon which you send your
4 e-mails, right?

5 A. I do.

6 Q. Because using a computer is easier to produce Word
7 documents than it is to use an old fashioned typewriter,
8 correct?

9 A. Correct.

10 Q. You also own a calculator, right?

11 A. Yes.

12 Q. Because it's more efficient to do math problems
13 with a calculator than it is to pull out the old slide rule,
14 right?

15 A. Correct.

16 Q. So you're in favor of those upgrades, aren't you?

17 A. Yes, I am. They're improvements.

18 MR. GILMORE: Thank you.

19 THE COURT: Mr. Shipman.

20 MR. SHIPMAN: Thank you, your Honor.

21 CROSS EXAMINATION

22 BY MR. SHIPMAN:

23 Q. Ms. Wray, thank you for being here. Two questions
24 real quick.

1 A. Sure.

2 Q. From Scenic Nevada's perspective, there are a
3 number of problems with digital billboards, correct?

4 A. Yes.

5 Q. So some of those are like aesthetic problems?

6 A. Yes.

7 Q. They mar scenic landscapes?

8 A. Correct.

9 Q. They become the brightest object on the landscape
10 at times?

11 A. Yes.

12 Q. They become a dominant visual element, it's tough
13 to turn away from them when they're there all the time,
14 right?

15 A. Yes.

16 Q. And then you have the ability to portray motion on
17 digital billboards, correct? Sort of like films, I mean, or
18 animations, does that make sense?

19 A. That technology exists, yes.

20 Q. So in seeing that when you're driving down the
21 street can be particularly distracting, correct?

22 A. Yes.

23 Q. And then you have a billboard next to a great
24 historic building like the court here, it kind of takes away

1 from that feeling or that perception, would you agree with
2 that?

3 A. Yes.

4 Q. Then you have highway safety problems. That's
5 another thing that both Scenic Nevada and Scenic America has
6 looked at over the years relative to billboards, is that
7 correct?

8 A. Yes.

9 Q. Again, there's always a danger, especially with
10 digital billboards, because they're so bright and you're
11 driving down the street, that your eye will go to those
12 billboards and you won't be paying attention to where you're
13 driving?

14 A. It's also the movement, too.

15 Q. And the movement, so it's like trying to text
16 while you're driving almost?

17 A. Well, it's a distraction. Texting is a
18 distraction. So is, we think, digital billboards. That's
19 what they're meant to do.

20 Q. They're meant to distract?

21 A. Yes.

22 Q. And then there's, I think, Scenic Nevada has a
23 problem with some of the environment consequences?

24 A. Energy, yes.

1 Q. So they take a lot of energy. How do they impact
2 property values, are you aware?

3 A. We think that they reduce property values within
4 five -- well, there was a study done in Philadelphia, that
5 within 500 feet of a regular billboard, the property would
6 sell for -- a residential property would sell for less,
7 \$30,000 less than a similarly situated or similar property
8 that wasn't situated near a billboard.

9 Q. And then Mr. Wray talked about it, and you talked
10 about it, if you have to, God forbid, move one of these signs
11 or take it down, that's a pretty expensive proposition?

12 A. Even a regular billboard, I talked to Allen Ushita
13 when he worked for the Regional Transportation Commission and
14 I asked him, ballpark, what did it cost to move the
15 billboards for the Moana widening project? He said, well, we
16 haven't gotten to that at the time, hadn't gotten through the
17 process yet. But I said, what's your best guess on what it
18 costs to do that? He said, well, it's 40 or \$50,000 to take
19 one down, and it's another 50, \$60,000 to put one up. And he
20 said, the main reason is because of those big cement poles,
21 the mono poles that are required by law now, they're so big
22 and they're sunk down so low, that when you take one down,
23 you have to cut it off at ground level and then you have to,
24 you know, just bury it, and then you have to erect an

1 entirely new pole, and that's what we were showing in our
2 exhibit.

3 Q. So for those reasons and probably a handful of
4 others, Scenic Nevada, Scenic America are totally against
5 digital billboards, is that a fair statement?

6 A. Yes.

7 Q. And then in terms of since about 2008, there's
8 been a number of stakeholder meetings conducted by and for
9 the City of Reno to get input from various parties on the
10 digital billboards ordinance, is that a fair statement?

11 A. Yes, it is.

12 Q. Best estimate, how many meetings do you think you
13 attended either in person or by submitting written testimony?

14 A. I'd say more than 15, less than 20, 16, 17, 18
15 meetings.

16 Q. Over that four-year period of time?

17 A. Yes, public meetings.

18 Q. Public meetings?

19 A. And then there were other meetings, you know, we
20 would meet as a group, Scenic Nevada would meet with each
21 other, our billboard group. And then there would be lots of
22 times when we would, you know, get together or I would draft
23 an e-mail and send it to them. There would be all kinds of
24 back and forth. I mean, it was constant, pretty much

1 constant.

2 Q. And then you would meet, potentially, with council
3 members?

4 A. We did. We tried to meet with planning commission
5 and council.

6 Q. To educate them --

7 A. Yes.

8 Q. -- on the issues?

9 A. Yes.

10 Q. How many times do you think you met with them?

11 A. I think we met with each of the last group of city
12 council people, except for the mayor. That was the only
13 person we didn't meet with.

14 Q. Just once or multiple times?

15 A. Once.

16 Q. And again throughout, the message being conveyed
17 is, you know, digital billboards is the wrong way to go. We
18 don't want those.

19 A. Well, it was moving father and farther away from
20 the ballot initiative. The voters had approved the ballot
21 initiative that said no new construction and the city
22 shouldn't issue any new permits. And then they allowed them
23 to upgrade -- or, excuse me -- maintain them. They allowed
24 them to relocate them. And then ten years later, now they're

1 allowing the digital. So it was even --

2 Q. In those stakeholder meetings, was that just
3 Scenic Nevada or were there other parties? I mean, who were
4 some of other parties who were at the table?

5 A. It depends on which meeting you're talking about.
6 I remember that at a planning commission meeting in 2009 when
7 they first discussed the first draft that finally got to the
8 planning commission meeting, a bunch of young people from in
9 the food movement in town, they were from the new food co-op,
10 showed up and they said, we want to live here in this town
11 now and we really don't like billboards and we don't want the
12 city to go in that direction. We were surprised to see them
13 there. We did not solicit that or anything. So we feel like
14 there's lot of support out there for our position.

15 Q. But then also in those meetings, there were like
16 industry representatives, is that fair?

17 A. Yes.

18 Q. So you always had the Yesco, you always had the
19 CBS, you always had the Clear Channel or some variation of
20 that?

21 A. Yes. At some meetings, there might just be Clear
22 Channel and Scenic Nevada, you know, but other meetings there
23 would be more.

24 Q. And you guys were generally in agreement on where

1 you wanted to go, correct?

2 A. Who?

3 Q. The industry stakeholders, were guys in agreement
4 on the digital billboards ordinance?

5 A. I'm sorry. I didn't understand.

6 Q. Did everybody propose the same solution for how
7 the City of Reno should deal with billboards, digital
8 billboards or were you pretty much on different pages? Does
9 that make sense?

10 A. Right. If I understand your question, Scenic
11 Nevada maintained that digital billboards were new
12 construction and should not be allowed. There are other ways
13 to eliminate clutter. And the industry representatives said
14 they wanted to move to an upgrade to the new digital
15 technology.

16 Q. So there was a divergence of opinions there, is
17 that a fair statement?

18 A. Yes.

19 Q. And their opinion was that, well, we have this
20 thing called the cap that essentially set the number of
21 billboards in 2000 that were going to be legally allowed, and
22 as long as we stay within that cap, we can establish new
23 billboards?

24 A. Well, the City of Reno is the one who established

1 that interpretation and that was exactly what the billboard
2 industry wanted.

3 Q. But, again, for clarity, Scenic Nevada takes the
4 position that, no, the ordinance, it doesn't distinguish
5 between new and relocated. It's just, you know, there are no
6 new billboards physically are ever allowed in the City of
7 Reno?

8 A. We distinguish it. We say that relocated, we say
9 that's not an old billboard. They don't take the old pieces
10 and put them somewhere else on the lot. That's not what's
11 happening.

12 Q. Okay. A couple of quick questions. Washoe County
13 prohibits digital billboards right now, correct?

14 A. Yes, because they have an item in their code that
15 says until all the billboards within the county are in
16 conformance with the code, no new billboards will be allowed.

17 Q. But there are digital billboards, off-premises
18 billboards in Washoe County, is that a fair statement?

19 A. Well, I live in Washoe County, too, but it's not
20 in unincorporated county land, as far as I know.

21 Q. Good point. I'm not talking about -- I'm talking
22 about -- the first question went to Washoe County as a
23 political jurisdiction. The second question goes to within
24 the broader Washoe County, including the City of Sparks?

1 A. Right.

2 Q. There are in fact off-premises digital billboards
3 that are currently out there, correct?

4 A. That's right. In Sparks, where they don't have a
5 ban on new construction, they allowed digital billboards and
6 there are four of them.

7 Q. Do you know where they're located?

8 A. They're only allowed in industrial zones and
9 they're located, as far as I know, along the freeway, along
10 I80.

11 Q. Along the I80 corridor?

12 A. Yes.

13 Q. Are there any located along the I580 corridor that
14 you're aware of?

15 A. Well, there's Indian colony land that has allowed
16 digital billboards on their land, and that's because that's
17 their jurisdiction and they can do that if they want,
18 apparently.

19 Q. And those aren't -- like you said, they're located
20 next to the highway, so when you're driving on the highway,
21 you can see them pretty easily?

22 A. I think there's two or three. I'm not sure.

23 Q. So prior to the adoption of the digital billboards
24 ordinance in the 2012, the City of Reno prohibited digital

1 billboards, correct? I mean, you couldn't put up a digital
2 billboard before the digital billboard ordinance was put in
3 place?

4 A. That's right, because there's a line in the code
5 that says you can't use that kind of lighting.

6 Q. The lighting has to be directed at the sign and
7 not away for the sign, correct?

8 A. Yes.

9 Q. Then in 2012, that was changed so it would
10 allow --

11 A. Digital.

12 Q. -- digital. So, essentially, prior to that, the
13 city had banned digital billboards by effectively not acting?

14 A. Correct.

15 Q. So the digital billboard ordinance really repeals
16 that ban to a certain degree, would you agree with that?

17 A. Yes.

18 Q. And the council's intent of really allowing the
19 digital billboard ordinance, I think I read it on your
20 website, was to clear billboard clutter by allowing trades,
21 some traditional billboards might be removed to erect a
22 digital?

23 A. Correct.

24 Q. So really the clear intent is the council, as you

1 understood it, at least going to all of those meetings and
2 seeing what the ordinance did, at the end of the day was to
3 get rid of some of this billboard clutter. And the way they
4 would do that would be having this removal requirement,
5 correct?

6 A. Correct.

7 Q. And the removal requirement essentially said, in
8 order to have a digital billboard, you need to remove X
9 number of physical or banked billboards, correct?

10 A. Yes. And that changed over time and they started
11 at one end and ended up at the other end.

12 Q. Right. So there was a huge discussion over time,
13 about, A, does this even work, correct? Or A, should we even
14 go down this path? Is that a fair statement?

15 A. That was our contribution to the discussion was,
16 you shouldn't be going down the path, it's not the correct
17 way to go, they're banned and there are other ways to
18 approach this problem. And, in fact, the 2002 ordinance is
19 the one that perpetuated billboards.

20 Q. Right. So you had the -- there was a point where
21 it started with, well, don't even go down this path. And
22 there was other discussion about maybe we need a 3-to-1, a
23 5-to-1, an 8-to-1, and then ultimately that resolved to the
24 current ordinance that we have today? Is that a fair

1 characterization?

2 A. Yes.

3 Q. And there's certain parts of town that have more
4 billboard clutter than other parts of town?

5 A. Yes.

6 Q. So like the Interstate 80 right of way from Robb
7 Drive to the most western limit of the city, that's
8 identified as a restricted area. Does that have a lot of
9 billboard clutter in your opinion?

10 A. No, it doesn't.

11 Q. U.S. 395 right of way from Panther Drive to the
12 most northern city limit?

13 A. I don't really know where that is. I only saw
14 that on the thing and I never really figured out where that
15 was on the map.

16 Q. I'll be quick here. Between 2003 and 2012, did
17 Scenic Nevada take any legal action against the city
18 regarding challenging the constitutionality of, I'm going to
19 call it, you know, the conforming and the relocation
20 billboard ordinance? That's Exhibit 4, if you want to look
21 in your book, ordinance number 5295, did Scenic Nevada ever
22 file a lawsuit against the city to rule that
23 unconstitutional?

24 A. No.

1 Q. Again, from those days, 2003 through 2012, prior
2 to these lawsuits, did Scenic Nevada at any point challenge
3 the constitutionality of the banking ordinance? I'm talking
4 about Exhibit 3, that's ordinance 6258.

5 A. Well, we read in that one memo from the city
6 attorney where Doug Smith, president of Scenic Nevada, the
7 man that drafted and organized the whole ballot initiative,
8 he said that the 2003 ordinance was not -- was a violation.
9 I can't remember exactly what he said in that -- he made the
10 city aware that we were opposed to that and that was wrong,
11 that was not what the ballot initiative meant. Did we sue?
12 No, but we always objected. We've objected through -- when
13 the city was drafting that 2002, 2003 ordinances, we were
14 opposed.

15 Q. Just, again, quick for clarity, so you always
16 opposed it as it being illegal administratively, but you
17 never took legal action until this lawsuit to challenge the
18 city?

19 A. Correct. That's correct.

20 MR. SHIPMAN: Thank you, your Honor.

21 THE COURT: Thank you. Mr. Wray.

22 MR. WRAY: No, your Honor. Thank you.

23 THE COURT: All right.

24 MR. WRAY: Do you have any questions for the

1 witness, your Honor?

2 THE COURT: I have a couple of questions. Looking
3 at Exhibit 204, these are the minutes of the Reno City
4 Council meeting of January 30th, 2008, and, apparently,
5 you're having a dialogue with Councilman Aiazzi.

6 THE WITNESS: Which page?

7 THE COURT: I think it's probably the second to
8 the last page.

9 THE WITNESS: Okay.

10 THE COURT: Are you there?

11 THE WITNESS: Yes, I am.

12 THE COURT: Do you see the discussion you're
13 having with him?

14 THE WITNESS: On Scenic Nevada 49?

15 THE COURT: I don't think it's 49.

16 THE WITNESS: It might be 50.

17 THE COURT: Let me get there. Mine starts at 58.
18 Are you on Exhibit 204? These are the minutes. Counsel,
19 help me out there. Am I on the wrong page?

20 MR. WRAY: Your Honor, the pages that -- this is
21 my Exhibit 204. You want to see the hard copy version?

22 THE COURT: Provide it to the clerk.

23 MR. WRAY: Maybe they weren't scanned completely.
24 I don't know. The typeface looks different. There might be

1 two documents combined in 204.

2 MR. GILMORE: It is, judge. The cover page of 204
3 is the January 2008 council meeting, but the conversation
4 you're referring to, I think, is the 2006 agenda, which are
5 on the last two pages of the Exhibit 204. That's a
6 conversation between Ms. Wray and Councilman Aiazzi.

7 THE COURT: Are you there, Ms. Wray?

8 THE WITNESS: Yes. I'm on page Nevada 50.

9 THE COURT: Correct. That would be the fifth
10 paragraph, council person Aiazzi and Ms. Wray agree, right
11 there.

12 THE WITNESS: Yes.

13 THE COURT: That the proposed ordinance does not
14 expand the existing allowable areas. What did you mean by
15 that agreement?

16 THE WITNESS: Well, your Honor, this is an exhibit
17 from 2006 and this doesn't have anything really to do with
18 the digital billboard ordinance at all. This was a time when
19 Scenic Nevada, and it just shows how we've been trying to
20 follow this process and be a watchdog on billboards. There
21 was a time when the staff recommended that there will be new
22 zones on the high transit areas and they called them TODs,
23 Transit Oriented Districts. And staff recommended that
24 billboards be removed, not be continued to be an allowed use

1 on these TODs. And they went to all the neighborhood
2 advisory board meetings, and I was on the neighborhood
3 advisory board at the time, and we were very happy to hear
4 staff say that now these locations would not be allowed,
5 because it would be a new mixed use zone to have work, shop
6 and live in one neighborhood and billboards would not be a
7 compatible use in those zones.

8 So then when Clear Channel Outdoor found out about
9 that, they came and they asked for a text amendment. The
10 city council actually passed that. And Clear Channel Outdoor
11 came and asked for a text amendment and the city moved
12 forward with a text amendment to put the billboards back into
13 the transit zones, so now they would be an allowed use, even
14 though we didn't want them to be.

15 What I'm saying right there was I'm agreeing with
16 Councilman Aiazzi, because he's saying, if we leave it the
17 way it was, we're not taking any away, we're not adding any
18 back in. And I said, yeah, that's true. But the good thing
19 you almost did was you almost took them out so that people
20 that live, work and shop in those transit areas won't have to
21 put up with billboards.

22 THE COURT: Okay. Thank you.

23 THE WITNESS: You're welcome.

24 THE COURT: The next phrase says, more increase

1 the number of allowable signs, what did you mean by that?

2 THE WITNESS: Kind of the same thing, that they
3 wanted -- the city council called it a deal. The 2002
4 ordinance was a deal with the industry. So that we'll place
5 a cap on it and you can bank and relocate and they're going
6 to be allowed in all of these locations and that's the deal,
7 which is what they all agreed to.

8 And then in this meeting, they said to us, you
9 know, this is the deal that everybody agreed to. And we said
10 we didn't agree to it, but the city did and they passed the
11 ordinance over our objections. And so it's true, you know,
12 what it was doing was just preserving the status quo from the
13 2002 ordinance.

14 THE COURT: Okay. Thank you. I think that's the
15 only questions I have. Thank you, Ms. Wray. Watch your
16 step.

17 THE WITNESS: Thank you.

18 THE COURT: Mr. Wray, we'll pick up right after
19 lunch. I take it Ms. Hanson is next?

20 MR. WRAY: Yes. I'll have a few minutes of
21 questions, not very long for Ms. Hanson, and then I'll rest.

22 THE COURT: Mr. Gilmore, you're up.

23 MR. GILMORE: Thank you.

24 THE COURT: Let's come back at 1:30.

1 MR. WRAY: 1:30, your Honor. Thank you.

2 (A lunch break was taken.)

3 THE COURT: Mr. Wray.

4 MR. WRAY: Thank you, your Honor. Claudia Hanson
5 as the next witness, please.

6 (One witness sworn at this time.)

7 THE COURT: Mr. Wray.

8 MR. WRAY: Thank you, your Honor.

9 CLAUDIA CAROL HANSON

10 called as a witness and being duly sworn did testify as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. WRAY:

14 Q. Would you please introduce yourself to the Court,
15 tell us your name and where you live?

16 A. Claudia Carol Hanson and I live in Truckee,
17 California. I work for the City of Reno.

18 Q. Your business, profession or occupation is
19 planning and engineering manager for the City of Reno?

20 A. Correct.

21 Q. And, briefly, what does that mean, planning and
22 engineering manager?

23 A. I supervise the planners and engineers and
24 technical staff related to new development in planning and

1 engineering issues.

2 Q. Now, your original employment with the City of
3 Reno started in 1994, as I understand it?

4 A. Correct.

5 Q. And during that time period from 2008 through
6 2012, would you say that you were the person who had the most
7 staff knowledge and interaction regarding this proposed
8 digital billboard ordinance?

9 A. At most times, yes. There were times I was not
10 working on it, but most of the time, it was me.

11 Q. Now, you report to Fred Turnier, presently, right?

12 A. Correct.

13 Q. T-u-r-n-i-e-r?

14 A. T-u-r-n-i-e-r, yes.

15 Q. And he's another person in the same department as
16 you?

17 A. He's the community development director.

18 Q. And he reports to Bill Thomas?

19 A. Correct, Assistant City Manager.

20 Q. Mr. Thomas as the Assistant City Manager reports
21 to Andrew Clinger, who is the City Manager?

22 A. Correct.

23 Q. That's the chain of command?

24 A. Yes.

1 Q. Thank you. Now, as I understand it, you've never
2 read the Scenic Nevada lawsuit against the city, you've just
3 glanced through it?

4 A. Correct.

5 Q. You've never been asked yourself if any of the
6 allegations in the Scenic Nevada lawsuit are factually true?

7 A. I don't believe so, no.

8 Q. Other than in your deposition, January 16th of
9 this year, correct?

10 A. Correct. Yes.

11 Q. And you've never discussed the lawsuit itself with
12 the city council?

13 A. Correct.

14 Q. As I understand this cap, you do not know today
15 the number that is set to be the cap?

16 A. According to the inventory in our database, it's
17 294.

18 Q. Is that a number you did not have at the time of
19 your deposition?

20 A. That's correct.

21 Q. Thank you. When you talk about getting this
22 number, 294, what was the number of billboards within the
23 city limits in 2000?

24 A. It would have been slightly less than that, maybe

1 in the 280s, 270s. Because of annexation, some boards have
2 come in over time.

3 Q. Would it fair to say for whatever reason that
4 since the citizens passed an initiative saying there will be
5 no new billboards in the City of Reno, right, the number of
6 billboards in the city limits has increased?

7 A. Due to annexation, yes.

8 Q. So there's actually a cap, but an exception to a
9 cap, which increases the cap, which is if you annex new
10 territory, correct?

11 A. If we annex areas that have existing billboards on
12 them, then they would be added to the cap.

13 Q. If they are annexed in, they come from Washoe
14 County, right?

15 A. In most cases, yes.

16 Q. Now, in Washoe County, you know as a fact you
17 can't have new billboards, correct?

18 A. I have been told that, yes. I have not read their
19 ordinance.

20 Q. By virtue of being annexed to a city that has an
21 ordinance that says, no new billboards, there now can be
22 billboards under banking and relocation in areas where they
23 couldn't have been before, correct?

24 A. Correct. Like any law that changes from

1 jurisdiction.

2 Q. But it's ironic, isn't it, that you go from a
3 jurisdiction that says, no new billboards, to another
4 jurisdiction that says, no new billboards, but by doing that,
5 you actually allow billboards to be banked and relocated and
6 therefore rebuilt, correct?

7 A. Yes.

8 Q. I showed you in your deposition and I've opened up
9 the exhibit book in front of you to a photograph. It's
10 actually the second page of the exhibit in front of you. And
11 that exhibit is Exhibit 207, a Scenic Nevada exhibit, and you
12 recognize the scene depicted in the photograph, right?

13 A. Yes.

14 Q. Is this the Market Street billboards?

15 A. Yes.

16 Q. And the question I have for you, is this
17 photograph taken in 2011, according to the testimony earlier,
18 a photograph of a new billboard under construction?

19 MR. SHIPMAN: Objection, your Honor, that's
20 ambiguous and confusing.

21 THE COURT: Do you understand the question?

22 THE WITNESS: I do, but it's going to be a
23 compound answer.

24 THE COURT: Do the best you can. The objection is

1 overruled.

2 MR. WRAY: The objection is overruled?

3 THE COURT: Yes.

4 MR. WRAY: Thank you.

5 THE WITNESS: The way the system works, if
6 somebody takes down a billboard elsewhere in the city, they
7 can bank it, as we call it. So you maintain the rights or
8 the rights to that board to relocate or reconstruct
9 elsewhere. So this is the rights to a board that was
10 elsewhere in the city, new materials and new construction,
11 but for an old entitlement or to rights to an old board.

12 BY MR. WRAY:

13 Q. My question was, is this a picture of a new
14 billboard under construction?

15 MR. SHIPMAN: Objection, as to legal conclusion.

16 THE COURT: Overruled. Is this a picture of a new
17 billboard under construction?

18 BY MR. WRAY:

19 Q. Is this picture showing a new billboard?

20 A. It is new construction of an old board.

21 THE COURT: Okay.

22 BY MR. WRAY:

23 Q. New construction. All right. In order to get
24 this construction that we see in Exhibit 211, does the city

1 have to issue a permit?

2 A. Yes.

3 Q. Did the city issue a permit?

4 A. Yes.

5 Q. I remember -- I was expecting a different answer.

6 I remember asking you something about this photograph and you
7 giving me the explanation of this photograph, and I'm
8 quoting, tell me if you remember this, this is reconstruction
9 of a preexisting board. There is reconstruction of
10 preexisting boards. Is that what this is?

11 A. It's construction. I think I said in my
12 deposition also that it was new materials.

13 Q. Okay. Because, clearly, there's nothing from any
14 preexisting board in this photograph, correct?

15 A. I don't know all the materials present, but the
16 ones that are shown there seem to be new, yes. I didn't
17 understand the question.

18 Q. And you personally issued the permit, you, Claudia
19 Hanson, signed the permit for this board, correct?

20 A. I believe so.

21 Q. And before this board's permit was approved, your
22 staff person sent an e-mail to the company that was erecting
23 this new billboard, right?

24 A. I remember you explaining that earlier, but I

1 don't really remember it specifically.

2 Q. It's Exhibit 211.

3 A. Thank you.

4 Q. Which contains a copy of the permit on the first
5 page.

6 A. Uh-huh.

7 Q. The trailer, the trail report, which is the second
8 page, and then -- well, the permit is in Exhibit 211, but did
9 you also approve the permit for Mr. Aaron West for the Moana
10 billboard in July of 2012?

11 A. Is that an exhibit? I don't remember which ones I
12 have. If you can direct me to the exhibit, that would be
13 helpful.

14 Q. I sure will. The first page of Exhibit 211 says,
15 erect new billboard and it's a building permit. The second
16 page is city trailer. The third page is a building permit
17 that says, new billboard structure to replace two units at
18 the top.

19 A. For Moana widening, yes.

20 Q. Yes. Is this a permit that you had some personal
21 familiarity with?

22 A. Yes.

23 Q. And as we keep paging through that exhibit, we
24 come to an e-mail from Claudia Hanson to Aaron West with a CC

1 to Ms. Montero dated July 17th, 2012, and isn't this about
2 that very same permit?

3 A. Yes.

4 Q. Okay. And if we turn to the next page of that
5 e-mail string, we see it says, from Danielle Montero to Aaron
6 West, dear applicant the following permit has been reviewed
7 by planning and placed on hold for the following reasons.
8 And then it has reason number six, right?

9 A. Yes.

10 Q. And did you instruct Ms. Montero as to reason
11 number six to tell the applicant?

12 A. We probably discussed it together. We discuss
13 every billboard application at some time.

14 Q. So she is the administrative assistant working
15 with you, right?

16 A. She's a permit tech that works for the building
17 division.

18 Q. Does she work and report to you?

19 A. Yes.

20 Q. Did she at this time have some discussion with you
21 about item number six?

22 A. Yes. Like I said, every billboard permit that
23 comes in, whether it's to be banked or constructed or change
24 in electrical or whatever it is, we do them together.

1 Q. And what could you read for us did she say in item
2 number six?

3 A. It says, please revise application to remove
4 reference of, quote, new billboard, as no new billboards are
5 allowed in the city.

6 Q. That's true, isn't it, no new billboards are
7 allowed in the city?

8 A. Correct.

9 Q. So by taking the word new out, right, what we have
10 is the picture you see in Exhibit 207, no longer becomes a
11 new billboard under construction, because you take the word
12 new out and it's no longer what it looks like? Is that your
13 thought process?

14 A. No. It would be -- as I said before, it's new
15 construction of a preexisting entitlement or a preexisting
16 board that had been made.

17 Q. Isn't it true, actually, that taking out the word
18 new, the billboard was constructed according to the permit
19 exactly as it has been planned to be constructed with the
20 permit?

21 A. Correct.

22 Q. Even without the word new on it, exactly the same
23 thing happened on the ground, right?

24 A. Except it further establishes the link to the

1 banked receipts CC3 and CC4 as identified in number one of
2 that e-mail.

3 Q. True. There had to be banked receipts in order
4 for this to be built?

5 A. Correct.

6 Q. And to build a digital billboard, you have to have
7 banked receipts, right?

8 A. Correct.

9 Q. That's why Saunders is here complaining bitterly
10 that they don't have enough banked receipts to put up
11 digitals, right?

12 A. I believe so.

13 Q. Right. Have you ever read their lawsuit?

14 A. No. I glanced at it.

15 Q. So, Ms. Hanson, to be candid, isn't it somewhat of
16 a sham to say to an applicant that describes what it's doing
17 as building a new billboard to say, take the word new out,
18 because we're not allowed to have new billboards? Isn't that
19 sort of a sham?

20 A. I don't believe so. I think it more clearly
21 represents the record that it is a preexisting board with a
22 preexisting entitlement.

23 Q. What I'm saying is the billboard company knows
24 it's a new billboard, they put it in their application,

1 right?

2 A. They did.

3 Q. In fact, we have two examples of that, don't we?
4 Two examples in this record alone in this exhibit of
5 billboard companies saying we're erecting a new billboard?

6 A. Correct.

7 Q. And you know from the evidence to Exhibit 207,
8 Mr. West says that happened 36 times with Clear Channel
9 alone, right?

10 A. I don't know if it happened 36 times.

11 Q. Well, you doubt Mr. Aaron West's statements to the
12 planning commission that we see in Exhibit 207 that it
13 happened 36 times? We have actually removed and relocated 36
14 structures?

15 A. He would probably know the numbers better than I
16 do. I don't keep track of the individual activities of each
17 company.

18 Q. I don't doubt that you probably have a lot to do,
19 but do you doubt what he says there? Do you have any reason
20 to doubt what he's saying?

21 A. No.

22 Q. Is there any reason to doubt that every time one
23 of those structures has to be replaced, the engineering
24 involved in that construction is something like what we see

1 in Exhibit 217, all of that geotechnic and wind load type of
2 engineering that needs to be done?

3 A. It's usually that size. A lot of it is the same
4 material being repeated over, because it's the same structure
5 that they've done before.

6 Q. 36 times. But still that's what's required to put
7 up a new billboard in Reno, what we see in Exhibit 217, a
8 minimum of this, what I'm holding in my hand?

9 A. That looks about right for a new construction.

10 Q. So to ask my question in a new slightly different
11 way, if I was to take your side of this thing and say this
12 isn't really new construction of a new billboard, this is
13 just relocating an old billboard to another old spot, which
14 one is more accurate? This is new construction of a new
15 billboard or this is an old billboard being moved to a new
16 spot?

17 A. It's new construction and new materials being put
18 on a new location, but under the entitlement of a preexisting
19 board that had been banked.

20 Q. Which is the basis for the First Amendment
21 constitutional challenge that we heard from Saunders?

22 MR. GILMORE: Objection, that's not exactly true.

23 THE COURT: I don't know if she knows what the
24 challenge is.

1 MR. WRAY: That's a good point. She hasn't even
2 seen the lawsuit. You're right.

3 THE COURT: Sustained, but on different grounds.

4 MR. WRAY: Thank you, your Honor. Thank you for
5 that.

6 BY MR. WRAY:

7 Q. And within the City of Reno, we have federal
8 highways 395 and federal highway 80 that come through the
9 city limits, correct?

10 A. Correct.

11 Q. And the jurisdiction of the Highway Beautification
12 Act you're familiar with is the 660 feet on either side of
13 these federal highways?

14 A. I believe that's what it is.

15 Q. The areas that this digital billboard ordinance
16 affects includes these areas within 660 feet of two federal
17 highways in the city limits of Reno?

18 A. Correct.

19 MR. WRAY: Thank you for your cooperation. Pass
20 the witness.

21 THE COURT: Thank you, Mr. Wray. Mr. Gilmore.

22 MR. GILMORE: Thank you, your Honor.

23 CROSS EXAMINATION

24 BY MR. GILMORE:

1 Q. Ms. Hanson, I also took your deposition the same
2 day that Mr. Wray did, correct?

3 A. Yes.

4 Q. And you know what, I think I'm going to move.
5 Well, maybe I'll stay here. I like that so much better.

6 THE COURT: Go ahead. We'll even draw it closer.

7 MR. GILMORE: Thank you.

8 BY MR. GILMORE:

9 Q. Ms. Hanson, you recall when I took your deposition
10 the same day Mr. Wray did, correct?

11 A. Yes.

12 Q. You recall that during your deposition, I asked
13 you a number of questions about this phrase health, safety
14 and welfare? That's a phrase you're well familiar with,
15 right?

16 A. Yes.

17 Q. Health, safety and welfare refers to, correct me
18 if I'm wrong, but in your line of work, refers to the kinds
19 of things that planning would look at in order to ensure that
20 a specific land use doesn't violate citizens' health,
21 citizens' welfare, citizens' aesthetics, those kinds of
22 things, would you agree with me?

23 A. Yes.

24 Q. So in the process that led up to the creation of

1 the ordinance in question, health, safety and welfare were
2 some of the factors that were discussed, correct?

3 A. Yes.

4 Q. Okay. Would you please turn to Exhibit 206?

5 A. Okay.

6 Q. When you're there, let me know.

7 A. I'm there.

8 Q. Do you recall during the deposition, I asked you
9 kind of a silly hypothetical about if the city wanted to --
10 let me see if I can find it. If you had an issue where the
11 city wanted to ensure that drivers didn't get distracted by
12 flashing lights on a billboard, the city could propose an
13 amendment that said, we don't want flashing light billboards
14 within 100 feet of any of the city's waterways. Do you
15 remember me asking that question?

16 A. I do.

17 Q. And that's certainly something the city can do,
18 right?

19 A. They could.

20 Q. They have the ability to legislate that kind of
21 health, safety and welfare provision into a billboard
22 ordinance, correct?

23 A. Yes.

24 Q. And then I said, well, it wouldn't make much sense

1 if the city wanted to do that kind of ordinance. Your
2 answer, do you remember what it is?

3 A. I think it was they need a rational nexus between
4 their purpose and the ordinance.

5 Q. Exactly. Almost verbatim. The reality is it
6 wouldn't make much sense to make an ordinance restricting the
7 ability of lights on a waterway when what we're really
8 talking about is protecting drivers from flashing lights,
9 right?

10 A. Yes.

11 Q. Your answer was there has to be a rational nexus
12 between what you're regulating and how you regulate it?

13 A. Correct.

14 Q. And then you agreed with me that that's a pretty
15 basic concept in your profession and something you would deal
16 with on a day-to-day basis, right?

17 A. Yes.

18 Q. Now, looking at Exhibit 206. If you turn to the
19 second page, which is Scenic Nevada 188. This is an exhibit
20 we marked in your deposition, is that right?

21 A. Yes, I believe so.

22 Q. This is an e-mail from John Hester who is or at
23 the time was one of your bosses, right?

24 A. Yes. He was the community development director.

1 He was my immediate supervisor.

2 Q. And he's writing an e-mail to Marilyn and Tara and
3 he is saying, this is to clarify the scope of the code
4 amendment on billboards initiated by council at the request
5 of Dwight Dortch? Do you remember that?

6 A. I remember this e-mail.

7 Q. We've heard testimony already that it was Mr.
8 Dortch who proposed the billboard text amendment, correct?

9 A. Well, he brought it up for discussion.

10 Q. And then below that, there's a colon and there's
11 nine items identified on there and I'll just briefly go
12 through them. He talks about major arterial freeway
13 locations; number two, image time; number three, percentage
14 of PSA time; number four, brightness; number five, spacing;
15 number six, space from tri-vision billboards; number seven,
16 spacing; eight, replacement ratio LED to conventionals; and
17 nine, on-premises sign brightness. Would you agree with me,
18 Ms. Hanson, that one through seven are health, safety,
19 welfare requirements?

20 A. Yes.

21 Q. Okay. So what Mr. Hester is saying, Dwight Dortch
22 was proposing a billboard ordinance that addresses health,
23 safety and welfare regulation, things like height, size,
24 location, luminosity, brightness, location, those kinds of

1 things, correct?

2 A. Correct.

3 Q. And then in number eight, he says replacement
4 ratio LED to conventional billboards one for one. Isn't it
5 true that Dwight Dortch's original conceptual idea towards
6 the billboard ordinance was to address these health, safety
7 and welfare issues and then allow the billboard owners to
8 simply upgrade?

9 A. I really don't know what his original intent was.
10 I know he brought it up for initiation. But I can't tell you
11 exactly what his original intent was.

12 Q. Let me ask you a different question. Do you see
13 anything in this e-mail from your boss instructing his
14 subordinates to go back and retool the amendment so that it
15 includes these nine things and not other things that he had
16 not included? Can you direct me to anything in this?

17 A. I would say this e-mail from John Hester is the
18 nine things John Hester wants in there.

19 Q. Because he was taking it at the request of the
20 Dwight Dortch to the city council?

21 A. Well, it was initiated by council at the request
22 of Dwight Dortch. Dwight Dortch brings it forward. Council
23 is the one that moves it forward.

24 Q. Fair enough. So we have John Hester, your boss,

1 saying to his subordinates, go back and rework this
2 ordinances so that it addresses theses health, safety,
3 welfare issues, but it doesn't make reference to the ratio
4 other than 1-to-1, correct?

5 A. Correct.

6 Q. Next, please, would you turn to Exhibit 215? Let
7 me know when you're there.

8 A. I'm there.

9 Q. On Exhibit 215, this is an e-mail that you've
10 written to Bill Thomas who at the time was the Assistant City
11 Manager, is that right?

12 A. 2012, he may have been the director at that time.
13 He went from community development director to Assistant City
14 Manager and I don't know when the transfer was.

15 Q. In any event, Bill Thomas at the time, March,
16 2012, you were one of his subordinates, if I can say that?

17 A. Yes.

18 Q. He was your boss?

19 A. Yes.

20 Q. You've written an e-mail to him saying, hi, I just
21 need to bounce some concepts by you, so put your planner hat
22 on. Do you see that?

23 A. Yes.

24 Q. Top of the second paragraph, you say to him, we

1 could also look at expanding the 4-to-1 ratio to other areas
2 where we want to remove clutter. The two sign companies
3 agreed to have an adopted ratio to use throughout the city or
4 in the cluttered areas. In your deposition, do you remember
5 you testified that those two sign companies were Clear
6 Channel and CBS Outdoor?

7 A. I did, because it states that in the paragraph
8 above it. I don't really remember writing that, but that's
9 what it says in the first paragraph.

10 Q. It's fair to make that conclusion, because in the
11 paragraph above, it says, I've met with Scenic Nevada and
12 Clear Channel and CBS since the billboard workshop, right?

13 A. Correct.

14 Q. If you scroll down that paragraph is what looks to
15 be a new paragraph, although it's not indented, it says, my
16 concern would be being consistent from one agreement to the
17 next. We could establish findings. I don't want to relate
18 it to a certain percentage of the signs owned by a company
19 since they can easily form another company and place one
20 board under it. You're troubleshooting with your boss about
21 how you might get the ratio system to work, correct?

22 A. Correct.

23 Q. And you're troubleshooting the ratio system,
24 because you just had a conversation with CBS and Clear

1 Channel where they agreed to adopt some kind of a ratio
2 system, correct?

3 A. That they agreed. They don't adopt the ratio, but
4 they would agree that that would work.

5 Q. Sure. I mean, they would agree to go along with
6 it?

7 A. Right.

8 Q. Not that the city necessarily needed the agreement
9 of the industry to legislate health, safety and welfare,
10 right?

11 A. Correct.

12 Q. Are there any considerations in this e-mail, 215,
13 that have to do with health, safety and welfare as we've
14 defined it before, location, height, size, luminosity, hold
15 time, flash times, those kinds of things? There aren't, are
16 there?

17 A. There's the discussion of clutter.

18 Q. But clutter is not a health, safety, welfare
19 consideration, is it?

20 A. It could be.

21 Q. How so?

22 A. The overall aesthetics for an area, for a
23 neighborhood, if it effects how buildings are visible or
24 intersections are visible or how too many signs in one area

1 can change the environment or the aesthetics of that specific
2 neighborhood.

3 Q. It sounds like what you're saying is spacing,
4 right? Don't you deal with that through spacing?

5 A. Right. And that's what lack of spacing would be
6 clutter.

7 Q. So clutter isn't the health, safety, welfare
8 issue. Spacing is the health, safety, welfare issue that you
9 use in order to avoid the unintended evil, is that right?

10 A. Clutter would be the result, yes.

11 Q. Thank you. Because in the ordinance that has been
12 enacted, there were some health, safety, welfare provisions
13 built into that ordinance, correct?

14 A. Yes.

15 Q. If you look at -- I don't need you to go to it,
16 I'm sure you already know it, 1816905, the general standards
17 for off-premises displays, it says, in addition to other
18 standards identified in this chapter, off-premises digital
19 advertising display shall comply with the following
20 standards. One, it talks about a fixed message time of eight
21 seconds, right?

22 A. Yes.

23 Q. Health, safety and welfare, right?

24 A. Yes.

1 Q. Number two, maximum transition time of one second,
2 health, safety and welfare, right?

3 A. Yes.

4 Q. Display shall be presented -- not be presented in
5 motion, so no animation, health, safety and welfare, right?

6 A. Correct.

7 Q. I'm going to go through all of these and I'm going
8 to ask you to tell me which one of these are not health,
9 safety and welfare; illumination, flashing, intimate traffic
10 signals, contain a default that will freeze the device, no
11 cutouts, no glares, no sounds being emitted, pyrotechnics or
12 odors and must contain a discernible graphic, all of those
13 are health, safety and welfare; right?

14 A. Yes.

15 Q. Because those are the kinds of things that the
16 city wanted to address when Scenic Nevada stood up and said,
17 billboards are bad and billboards have downsides and
18 billboards have evils. Those provisions in the ordinances
19 were specifically legislated into the sign code in order to
20 address that, correct?

21 A. To address some of those, yes.

22 Q. Last exhibit and then I'm done. Would you please
23 turn to Exhibit 213? Now, you're familiar with Mr. West from
24 Clear Channel, correct?

1 A. Yes.

2 Q. This is at -- 213 is an e-mail where at first he
3 asks you for dates for the first and second reading. Now,
4 it's not unusual that he would be asking that question of
5 you, is it?

6 A. No.

7 Q. Because if he wanted to know when the readings
8 were, it was your office that was in charge of establishing
9 the readings, right?

10 A. Correct.

11 Q. Then you responded to him and said, we'll have
12 some discussions on September 9, 2006, et cetera. Do you see
13 that? And then he responds the next day and says, thanks,
14 any words from our friends at Scenic or Saunders? Do you see
15 that?

16 A. No. I'm sorry.

17 Q. At the bottom of COR 2971.

18 A. Exhibit 213?

19 Q. It should be in the middle of Exhibit 213. I
20 guess it is out of order. So I would say it's probably six
21 or seven pages from the back, 2971.

22 A. 2971?

23 Q. Yeah. You there?

24 A. Yes.

1 Q. This is an e-mail from Aaron to you on
2 August 28th, which was approximately two months or so before
3 the ordinance was passed, right?

4 A. Yes.

5 Q. And he says, thanks, any words from our friends at
6 Scenic or Saunders? And then you told him, I'm meeting with
7 Saunders this afternoon. Mr. West didn't mean friends
8 literally, did he?

9 A. Probably not.

10 Q. You happen to know that Mr. West and Clear Channel
11 don't look too favorably upon Scenic or Saunders? You do
12 know that to be true, don't you?

13 A. That is my understanding.

14 Q. And he writes back to you on Tuesday, August 28th,
15 at 2:16 p.m. and he says this, I'm curious why Frank, do you
16 know that to be me, don't you?

17 A. I would say that was you.

18 Q. Because I attended a city council meeting where
19 you and I were both present where I made a presentation to
20 the city council about the unfairness of the ratio. Do you
21 remember that?

22 A. Yes.

23 Q. And he's sending you an e-mail in response to
24 something I said at that city council meeting, right?

1 A. Yes.

2 Q. He says, I'm curious why Frank thought it
3 appropriate to call out that Clear Channel was willing to
4 give up 54 signs for a digital, paren, understanding that he
5 is completely wrong again, close paren, in Tacoma when he is
6 bitching about a two for one. Wouldn't you call out
7 situations where there is no exchange ratio? If the council
8 is getting tired of catering to the little guy, I can provide
9 plenty of fodder for increasing the exchange ratio.

10 Now, the only reason why Mr. West from Clear
11 Channel would want to increase the exchange ratio would be to
12 disadvantage some of the smaller companies like Saunders at
13 all, correct?

14 A. I would assume so. That's what it sounds like.

15 Q. Right. He's saying that when council gets tired
16 of hearing the arguments of the little guys like Saunders,
17 he'll be able to provide you sufficient information so you
18 can present something to the city council that will be even
19 more disadvantageous to Saunders, right?

20 A. That's what it sounds like in this e-mail, yes.

21 Q. By virtue of it being more disadvantageous to
22 Saunders, it becomes more advantageous to Clear Channel,
23 correct?

24 A. It could. I don't understand the business aspect

1 of it all.

2 Q. No. But you understand the dynamics of how the
3 competition works, right?

4 A. Yes.

5 Q. Because Clear Channel has a lot of inventory to
6 burn. If the ratio goes up, that gives them a competitive
7 advantage and the ability to convert a ratio -- conversion
8 and ratio from static to digital, you understand that, right?

9 A. Yes.

10 MR. GILMORE: That's all I have. Thank you.

11 THE COURT: Thank you, Mr. Gilmore. Mr. Shipman.

12 MR. WRAY: As long as Ms. Hanson is on the stand,
13 can the city --

14 THE COURT: Go ahead.

15 MR. WRAY: We talked about this. We were
16 wondering if the Court would indulge us and allow the city
17 to do whatever questioning the city wants as matter of cross,
18 as well its own direct. It's like it's part of the city's
19 case, but we thought it would be okay with you if you did it
20 that way.

21 THE COURT: That's fine. Mr. Shipman.

22 MR. SHIPMAN: Thank you, your Honor. Just to
23 clarify the point. So what I intend to do is just I'll do
24 some follow-up questions on the cross and then I'll just roll

1 into direct and we'll go from there.

2 CROSS EXAMINATION

3 BY MR. SHIPMAN:

4 Q. Ms. Hanson, you testified the number of billboards
5 that are in the City of Reno, can you just restate those
6 numbers again, the ones that are in the bank?

7 A. In the bank, there's 93 according to the
8 inventory.

9 Q. And total billboards in the City of Reno?

10 A. 294.

11 Q. How is that number calculated? How did we get to
12 294?

13 A. Back in 2000, 2001, there was an inventory done.
14 We -- and I was not a staff person involved in that at all.
15 This is all what I've heard from people previously in my
16 position. That they asked any owners of billboards to report
17 what boards they had. So however many boards they had and
18 where they were. Some were individual property owners, just
19 somebody who happens to have a board on their property, some
20 are larger companies. And then when those were submitted,
21 there was some verification from staff, I don't know at what
22 level, and then we went with that number.

23 Q. But that number is important, because what does it
24 show?

1 A. It shows how many boards were in existence at that
2 time within the existing City of Reno boundaries.

3 Q. At that time, was it the time that the initiative
4 petition was approved by the City of Reno voters in 2006?

5 A. Yes. It was following that.

6 Q. And Mr. Wray was talking about the difference, was
7 talking about new billboards, can you just clarify that one
8 more time, the difference between, say, a new billboard and
9 an entitled billboard just so we're clear on the record what
10 you're talking about?

11 A. So an entitled billboard would be if somebody has
12 an existing board that they need to take down or move for
13 whatever reason, they lose the lease, the street getting
14 widened or the structure is falling apart, and they want to
15 take that down, and if there's no place that meets spacing
16 criteria, then they can bank that board. And then they
17 maintain the entitlement to put that board up somewhere else
18 where it meets zoning and spacing at a later date.

19 A new board would be -- and then we don't allow
20 any more than that, what is 294 right now. A new board would
21 be something coming in above and beyond those boards
22 established.

23 Q. The 294 boards?

24 A. Right.

1 Q. Other than through annexation?

2 A. Correct.

3 Q. Do you know how many boards plaintiff Saunders
4 has?

5 A. The inventory shows 13 at this time. I've had
6 discussions with their representatives that there may be some
7 that have transferred for whatever reason, so maybe a few
8 less than that, but right now the inventory shows 13.

9 Q. And we were talking about health, safety and
10 welfare. Is billboard proliferation -- what is billboard
11 proliferation? Does that make --

12 A. In what way?

13 Q. Well, to the extent that the ordinance and the
14 ordinance in the sign code talks about controlling billboard
15 proliferation, what is billboard proliferation in kind of the
16 planning and management parlance?

17 A. So an increase of boards beyond what is
18 established by code.

19 Q. And in your mind, would that be a health, safety
20 and welfare type of --

21 A. I believe so.

22 Q. So the notion is the city is trying to keep the
23 number of billboards down or at least trying to slow?

24 A. Definitely not increase them at all and ultimately

1 decrease them and decrease clutter inside the city. By
2 inside clutter, I mean those that don't meet current spacing.

3 Q. Same question that we talked about in the morning,
4 how many stakeholder meetings were you ever a party to for
5 the adoption of the digital billboard ordinance between about
6 2008 time frame and 2012, if you had to estimate?

7 A. Ten, maybe, five to ten.

8 Q. I imagine you had a number of internal staff
9 meetings about billboards?

10 A. Yes, quite a few staff meetings.

11 Q. And the stakeholders, you saw the whole gambit of
12 stakeholders, right? You saw anti-billboard folk, you saw
13 pro-billboard folk and everything in between?

14 A. Yes.

15 Q. And was there a lot of agreement between those
16 stakeholders on issues?

17 A. No, not even close.

18 Q. Not even close. So, again, it was touched upon
19 this morning, there's a huge, voluminous record, like over
20 6,000 pages, I think, in total?

21 A. Yes.

22 Q. That would be consistent with your experience on
23 this issue?

24 A. Yes.

1 Q. When you adopt an ordinance for City of Reno, how
2 many votes on the city council do you need to have?

3 A. I don't adopt the ordinance. I report an
4 ordinance through planning commission and then it goes to
5 city council and then that has to be approved by the majority
6 of council, so four of three -- four of seven -- sorry.

7 Q. So Councilman Dortch is really just one vote on
8 that council, is that correct?

9 A. That's correct.

10 Q. And other council members might have different
11 votes, right?

12 A. Yes.

13 Q. And they might have different opinions about
14 billboards?

15 A. Yes.

16 Q. In your experience, have you seen different
17 councilmen coming from different positions about whether we
18 need more, we need less or was it always a unified front on
19 billboards in your experience?

20 A. I think they all follow the cap and they
21 understood that and they never were trying to increase that
22 at all. I would say as the digital billboard ordinance moved
23 forward, they were looking at different ratios and things
24 like that, but they were always trying to look at the cap or

1 decreasing them.

2 MR. SHIPMAN: That's pretty much it for my cross.
3 Now just rolling into the direct.

4 BY MR. SHIPMAN:

5 Q. So is there currently a moratorium in effect?

6 A. Yes.

7 Q. And what is that?

8 A. It's a -- we're not accepting any applications for
9 any digital boards, permit applications of digital boards
10 until these lawsuits are settled.

11 Q. How is that accomplished, just real quick, two
12 seconds?

13 A. Through city council, it was done by ordinance and
14 then renewed by resolution by city council.

15 Q. At this point, the city is not accepting any
16 applications for digital billboards?

17 A. That's correct.

18 Q. And that was recently extended?

19 A. Yes.

20 Q. This might sound odd, but does the digital
21 billboard ordinance allow for commercial electronic variable
22 message signs?

23 A. Yes.

24 Q. Yes?

1 A. I had to think about that, but, yes.

2 Q. Do you know, can you just tell the Court what a
3 commercial electronic variable message sign is?

4 A. It would be a changeable sign. It's a sign that
5 is not static. So a traditional billboard, which is static
6 board, which is vinyl or painted on wood. So a changeable
7 board would be in this case a digital board. An on-premise
8 sign, you can see like the changeable letters or you manually
9 move the letters, all those are changeable.

10 Q. So generally when we're talking, we're talking
11 about static billboards on one hand and digital billboards on
12 the other?

13 A. Correct.

14 Q. Prior to the adoption of the digital billboard
15 ordinance, were digital billboards allowed in Reno?

16 A. No.

17 Q. You couldn't erect them?

18 A. No.

19 Q. Do they currently exist along I80 and I395 to the
20 best of your knowledge?

21 A. Yes, they do, in Sparks and on colony land.

22 Q. Do you know if they're within 660 feet of the
23 highway?

24 A. Yes, they are.

1 Q. So, hypothetically, an applicant comes and he
2 wants to put up a digital billboard. Can we go through the
3 process on how that works? If you can take a look at
4 Exhibit 3 in front of you?

5 A. Okay.

6 Q. Starting with the first page, what are we looking
7 at here? Do you recognize this?

8 A. This is the ordinance that was approved by city
9 council related to digital billboards.

10 Q. And 1816901, what is that?

11 A. It's the purpose and intent regarding off-premise
12 advertising displays and that would be for static or digital.

13 Q. Was that changed for digital at all?

14 A. No.

15 Q. Was there a reason why it wasn't changed?

16 A. The overall intent has stayed the same to reduce
17 clutter, to maintain the aesthetics of the community and
18 maintain the cap.

19 Q. So we're looking at Exhibit 3 and I guess where
20 you see underlines or strike-outs, that's where we're seeing
21 changes in the ordinance, is that correct?

22 A. That is correct.

23 Q. So then we look at section, it's COR 0006, it's
24 section 1816902, restrictions on permanent off-premises

1 advertising displays. So what does this section accomplish
2 from your standpoint when you're administering it?

3 A. It establishes the cap.

4 Q. And the cap we've talked about before, correct?

5 A. Correct.

6 Q. And so we have X number of billboards and that's
7 it?

8 A. Correct.

9 Q. And then 903 talks about this continued use of
10 permitted off-premises advertising displays, why is that
11 important?

12 A. So that's saying that, A, if there's a board
13 there, an existing board, it can stay. B, it can be replaced
14 in its original position with a new structure to provide area
15 display surface not increased. So if you have a structure
16 that's falling apart, you can fix it and put up new
17 materials. And C is application for permanent off-premises
18 advertising display approved by the city council, although
19 unbuilt, as an existing permanent off-premises advertising
20 display. So it says that any of the boards, existing boards
21 are in existence at this time.

22 Q. Let's take a step back. Let's say somebody wants
23 to come and put up a digital billboard and you have this
24 ordinance in front of you, which I'll represent to you is the

1 state of the law in the City of Reno currently, how would you
2 navigate this ordinance for that to determine whether or not
3 that billboard could go up, digital billboards? What would
4 you do?

5 A. I would go to see where billboards are allowed.
6 So within the same, within 1816904 is permanent off-premise
7 advertising displays permitted in prohibited locations. So
8 we would look to these locations to see if where they're
9 proposing meets the ordinance. There's a number of
10 restricted or prohibited locations and then it states what
11 zoning districts it needs to be in. It does go for awhile.

12 Then there's general standards. So we would
13 review the permit to see if any of those -- to make sure all
14 those criteria are met. There's a lot of structural
15 requirements.

16 Q. I'm sorry. Where is that?

17 A. I'm sorry. 1816905.

18 Q. So you look at 904 for location and 905 for the
19 standards, is that correct?

20 A. Correct.

21 Q. Go ahead. I'm sorry.

22 A. That's okay. And so in there, it also has, once
23 you get to -- there's some reference to digital on the
24 spacing has changed slightly, but you would have to go

1 through all of 905 to make sure the proposed location meets
2 these criteria and being primarily the standards for digital
3 boards.

4 So those would be a lot of operational
5 characteristics and we would make sure that their proposal
6 meets those standards. At that time, looking through the
7 ordinance 14, under section N.

8 Q. Okay. N is talking about digital billboards and
9 the additional standards, right?

10 A. Yes.

11 Q. And, I'm sorry, now you're on 14?

12 A. N 14, yes, and that relates to the exchange ratio.
13 So at that point, just going, probably wouldn't do it in this
14 order, actually. We would make sure they have the rights
15 first before we went through the rest of the review.

16 Q. Okay. How does that work? Stop. When you say
17 they have the rights first, how does that work?

18 A. So they would have to come forward with -- so if
19 they were going into one of the restricted areas that were
20 identified earlier for the locational criteria, they would
21 have to show that they are removing four times the square
22 footage of those signs in the restricted areas, and there's a
23 number of restricted areas.

24 Q. I'm sorry to interrupt you.

1 A. That's all right. 1816904 B five.

2 Q. These are restricted areas?

3 A. Yes. If they're proposing a sign in that area,
4 they would have to show that they're taking down four times
5 the square footage, so we'll say four other signs in a
6 restricted area. So that's to reduce -- the restricted
7 areas, we're trying to either reduce clutter in those areas.
8 It's specifically to reduce clutter, but there's also
9 restricted areas. There's different type of restricted
10 areas. Some are to reduce clutter in this instance and other
11 ones are we don't want any more boards in certain areas, like
12 west on I80 and north on 395.

13 Q. Why is that?

14 A. Those areas have always been -- were seen as
15 there's very few boards in those areas. So between Robb
16 Drive and the state line, there's very few lights out there
17 outside of Boomtown, really pretty dark out there, very few
18 street lights at all. And also north on 395, also a darker
19 portion of the community. And so they wanted to limit those
20 areas even more so than, say, Virginia Street where there's
21 24-hour lights and activities. So they were preserving those
22 even more so.

23 So whichever area they fall in, their ratio might
24 be a little bit different. So if they're in the 4-to-1 area,

1 they would have to show that they were removing four boards,
2 four existing boards in one of those restricted areas, or
3 they have entitlement to eight banked boards, banked receipts
4 from they've taken down elsewhere.

5 Q. Let's say the applicant as four boards?

6 A. Okay.

7 Q. Now, the applicant has four boards, it's in a
8 restricted area, what's the next step?

9 A. And they meet all of the other criteria, then --

10 Q. All the locational criteria?

11 A. Locational criteria and everything else, then we
12 would approve the permit.

13 Q. In terms of your discretion as a city official,
14 how much discretion do you have in approving that permit?

15 A. None or very little. I just have to follow this,
16 I have to follow what's in the ordinance. If they meet this
17 criteria, if they have what's required for the exchange ratio
18 and they meet all the criteria, I have to approve it.

19 Q. Is there any criteria in here that really requires
20 you to exercise any professional judgment about it?

21 A. No. It's all very clear.

22 Q. It's all very objective?

23 A. Yes.

24 Q. It's kind of true or false?

1 A. Correct.

2 Q. Can you just point out a few of those?

3 A. The exchange ratio, either they have the square
4 footage or they don't. The locational criteria are called
5 out, the areas are defined. They would have to show that
6 there's no cutouts. A cutout meaning any area beyond a
7 rectangle or a square. I'm not how sure how you do that on
8 digital, but anyway. That there's no equipment for sound.
9 If there is, then you deny it. If there isn't, then you
10 approve it. So you just go through each one of these to make
11 sure that they're all met.

12 Q. Is there any sort of catchall health, safety and
13 welfare provision that you're aware of? So if it's
14 detrimental to the health, safety and welfare, we can deny
15 it? Is there anything you're aware of in there?

16 A. Specifically called out? I think it's an overall
17 statement in the code. I don't know if there's one
18 specifically in here.

19 Q. Let me take a step back. Maybe on other planning
20 cases in front of you, findings might include a finding that
21 this is not a detrimental to the health, safety and welfare
22 of the community?

23 A. Correct.

24 Q. But we don't have that?

1 A. Nothing that general, no.

2 Q. Nothing from the digital billboard?

3 A. No.

4 Q. So now let's change it. Let's say that I don't
5 have four boards. Let's say I have one board.

6 A. Okay.

7 Q. What happens?

8 A. If you have one board?

9 Q. I've got one board, I'm in an approved area, I'm
10 meeting all the general standards with the exception of the
11 removal requirement, what happens?

12 A. If you only have one board, you need at least two.

13 Q. Why do you need at least two boards?

14 A. There's the special exceptions section. So N 14,
15 it lays out the exchange ratio. If you can't meet that
16 section and some of the other earlier sections on location,
17 if you can't meet those, you can apply for what's called a
18 special exception. And with that, you can propose an
19 alternate exchange ratio or locational criteria. But with
20 those, one of the findings on the special exceptions is you
21 have to have at least a 2-to-1 ratio, you're taking down at
22 least two for every sign.

23 Q. Let me make sure I understand this. So I've got
24 one billboard, for the sake argument, I've got one billboard

1 and I'm coming in and then you're going through the 905 N 14
2 section.

3 A. Yes.

4 Q. And it's in a restricted area, so how would you
5 apply it real quick? You go down there and then what?

6 A. So we wouldn't be able to issue the permit right
7 away. We would offer special exceptions.

8 Q. So now your in the N 15?

9 A. N 15. The applicant could apply for a special
10 exception.

11 Q. Okay.

12 A. N 15 identifies the process that we go through
13 that the administrator reviews it for conformance with the
14 code.

15 Q. Where is that?

16 A. Administrator, D, on page eight of the ordinance,
17 administrator shall review digital off-premise advertising
18 display special exception and provide a recommendation to
19 city council.

20 Q. So you're on COR 00012 halfway down?

21 A. Yes, under review process.

22 Q. Okay. So above that is the application
23 requirements, correct?

24 A. Yes.

1 Q. So explain that real quick. What do they have to
2 provide?

3 A. So the application shall include provisions of the
4 sections that are being requested to be excepted, an
5 explanation of why the standards cannot be met. So they'd
6 have to say which sections they are requesting an exception
7 from. Site plan showing the location of all existing and
8 proposed off-premise displays and residentially zoned
9 properties within a thousand feet, elevations of the proposed
10 signs, proposed exchange rates to install the digital
11 off-premise advertising display. Those are all the things
12 that are required within their application.

13 Q. Let's say I'm proposing a one for one. I don't
14 like the fact that it's a four for one or an 8-to-1. I'm
15 saying I want a 1-to-1 and I want a special exception.

16 A. Okay. So in your application, you would have to
17 provide all the information 1 through 4. And then once we
18 deem that you've provided all of that information, we
19 would -- the staff would then review it and make a
20 recommendation to city council. With that, we would analyze
21 whatever you're proposing. So we would say you've met all of
22 the criteria and we go through it in our staff report. And
23 then -- but we would also state, because you have to show
24 your proposed exchange rate, which is number four, and we

1 would have to analyze the findings that are required by city
2 council.

3 Q. Where are the findings?

4 A. Further down under number three, D three.

5 Q. If you could run through those real quick? I'm
6 sorry. I'll set the stage. You make the recommendation, it
7 goes to city council, city council determines based upon the
8 following findings and these are the findings?

9 A. Right. So staff would, in that case, we would
10 recommend denial, because it doesn't meet one of the
11 findings. Finding number one, the location of proposed
12 digital sign does not vary by more than two of the standards.
13 And you said the only one you're not meeting is the ratio.

14 Q. The ratio.

15 A. So you meet finding number one. Finding number
16 two, the proposed digital sign is smaller than the square
17 footage of the existing or banked off-premise advertising
18 displays being exchanged by a minimum of 672 square feet. So
19 right there, that's a 2-to-1 ratio, so you wouldn't be
20 meeting your second finding.

21 Q. So that's important. So even if you get the
22 special exception, you have to show a two for one?

23 A. Correct.

24 Q. And in the rest of the city, other than the

1 restricted areas, what is the ratio?

2 A. Two for one on digital.

3 Q. So if you -- so, essentially, the restricted areas
4 will have the same rate. If you get the same exception,
5 you'll have the same ratio that you would get for the other
6 areas?

7 A. Correct.

8 Q. And in the particular case, you're saying that you
9 would deny the application because of the one for one?

10 A. We would accept the application, but recommend
11 denial to the city council, because there's three findings
12 you have to make and you wouldn't make that second finding.
13 The second finding saying, if you're requesting to reduce the
14 ratio, but one of the findings is you can reduce it, but no
15 more than what's required everywhere else in the city.

16 Q. And then the third, C?

17 A. The third one is proposed digital sign does not
18 either fully or partially block views from any arterial
19 roadway, freeway or residentially zoned and used property of
20 the downtown Reno skyline, Mount Rose Sierra Nevada Range,
21 Peavine Mountain and the Truckee River. We would ask for a
22 visual study showing where that sign is. Some are going to
23 be easier to prove than others. If it's in an area with a
24 lot of structures around it, you're probably not going to

1 block any of those. But other ones, there's a good
2 possibility you could be blocking one of those views.

3 Q. But all of these findings are either you make them
4 or you don't, right?

5 A. Correct.

6 Q. This isn't like there has to be a finding with the
7 city council that this is detrimental or not detrimental to
8 the citizens' health, safety and well-being to put this sign
9 here?

10 A. Yes. They're yes or nos.

11 Q. They're just yes or nos. And then after that,
12 assuming I proposed a 2-to-1, so I would get my board, maybe?

13 A. Yes. If you met all three of those, then we would
14 recommend that it's approved.

15 Q. It's approved just like anywhere else in the city?

16 A. Correct.

17 Q. And then what conditions -- I mean, I'm looking at
18 the conditions. What is subsection four talking about?

19 A. Subsection four is we could add additional
20 conditions. So say they go into an area that, say, they go
21 on to the west end of I80. In that case, there's -- council
22 is allowed to add conditions regarding hours of operation,
23 structure height and size, duration of message and spacing.
24 So we could allow it out on I80, west end of I80, but you

1 have to turn it off at 10:00 to maintain dark skies out
2 there. Or if it's an area where there's very few other
3 structures out there, if it's on north 395 and there's hardly
4 other structures out there, maybe the 672-square foot sign is
5 too large compared to the surrounding environment. So we
6 could condition that the size is decreased.

7 Q. But the council is limited to these?

8 A. Yes, to those four.

9 Q. So it can't just come out and say, you could only
10 put it up if you put dog food commercials on it or something?

11 A. Right.

12 Q. Now, if it ultimately, let's say, gets denied,
13 then what's the process? So I proposed a one for one, I
14 didn't get my special exception, I didn't meet the removal
15 requirements, I'm denied because, now what happens?

16 A. They could -- there's other alternatives. They
17 could come back with another proposal with a different ratio.
18 If you only had one, you could purchase rights to another
19 board from another company.

20 Q. But just in terms of process, does the council
21 issue a decision? I guess that's only with the special
22 exceptions, right, it would come in front of council, right?

23 A. Correct, just the special exceptions. If it meets
24 the permit requirements, then the permit is approved.

1 Q. So council will never even see it if it meets the
2 standard kind of on its face?

3 A. Correct.

4 Q. So the only time that council will see it is if
5 it's a special exception. And if it's a special exception
6 and they rule, you don't meet the special exception, do they
7 have to provide some sort of written decision?

8 A. Yes, they will.

9 Q. Do you know where they do that?

10 A. They have to make the decision within 15 days.
11 City council may approve, approve with conditions or deny the
12 application or the special exception request under D two.

13 Q. That's under the D two. And then under 1816970,
14 it's on page 14 of this.

15 A. 18169 what?

16 Q. 970.

17 A. Okay. So decisions on any off-premise advertising
18 display shall be in writing and shall include an explanation
19 setting forth the reason for the decision. That goes for any
20 board, not just digital.

21 Q. But it includes digital, digital boards are
22 subject to the same provision?

23 A. Correct. Yes.

24 Q. How is that written? I mean, does the staff write

1 that?

2 A. That comes from the city clerk. That one would.
3 If it's just a building permit, then that would come from me
4 through the building official.

5 Q. Okay. So at the end of the day, they'll have a
6 writing that says, hey, you can't build your digital
7 billboards because of the following reasons?

8 A. Correct.

9 Q. So let's say I can't meet these requirements as an
10 applicant, do I have to take down my static board?

11 A. No. Your static board can stay.

12 Q. The static board is there as long as the static
13 board is there?

14 A. Yes.

15 Q. So the city is not in any way compelling a
16 billboard operator to convert to a digital?

17 A. No.

18 Q. The decision is up to the applicant, is that
19 correct?

20 A. That's correct.

21 Q. And you were talking about, you know, the operator
22 is free to purchase billboards from others?

23 A. Yes.

24 Q. That happens?

1 A. That does happen.

2 Q. Does it happen frequently?

3 A. Fairly frequently.

4 MR. SHIPMAN: One last second while I double check
5 my notes. Thank you, your Honor.

6 THE COURT: Thank you. Mr. Wray.

7 MR. WRAY: Your Honor, is this segment considered
8 like cross examination of this witness?

9 THE COURT: That's fine.

10 MR. WRAY: Thank you very much.

11 CROSS EXAMINATION

12 BY MR. WRAY:

13 Q. I think we stopped a little early. What I mean by
14 that is not we, but you and counsel stopped before getting to
15 subsection 908, right, when you were analyzing Exhibit 3?
16 You can leave the same exhibit open, just keep going. You
17 know what section 1816908 is about, right?

18 A. The relocation of existing legally established
19 permit off-premise advertising.

20 Q. I don't remember every question that was asked,
21 but did you actually discuss this section with counsel?

22 A. I think a portion of it, we did.

23 Q. You did. I missed that. I apologize.

24 A. I think we did, maybe not.

1 Q. I did not hear this particular section being
2 discussed. Isn't it true that this section, without this
3 section, none of the other sections can even work? Do you
4 understand my question?

5 A. Yes. Because this is the banking overall, how the
6 banking works. Is that what you're asking?

7 Q. Yes. I'm just trying to make a simple fact
8 evident. I think it's evident, but you would agree, would
9 you not, without the ability to do what happens here in
10 1816908, to wit, banking at relocations, you could not be
11 talking about digital billboards?

12 A. No. I don't agree with that. If you had four
13 existing boards, you wouldn't need to have banking.

14 Q. Okay. But relocation? Right? Relocation. The
15 ability to get a permit to relocate four signs into one, you
16 have to have that?

17 A. You could maintain one of the existing locations.

18 Q. I'll give you that. But in most cases -- let me
19 put it this way, you know for a fact that Mr. West was going
20 for the things the was going for that Saunders is complaining
21 about, because he has more permits banked. Clear Channel has
22 all the permits banked to put up as many digital billboards
23 as can fit in the city, right?

24 A. I don't know how many exactly, but they do have

1 quite a few banked receipts.

2 Q. 70 something, right?

3 A. I would say upper 60s.

4 Q. So banking relocation for all intents and purposes
5 is what will be used. If this case is lost by Scenic Nevada,
6 those permits will be used to put up digital billboards?

7 A. They could use those or existing boards, but, yes.

8 Q. But the vast majority of them are going to be
9 those permits, aren't they?

10 A. I don't know that for sure. I don't know what
11 their business plan is.

12 Q. Without banking and relocation, would Clear
13 Channel be able to turn in four permits or banked receipts
14 and get a new digital billboard?

15 A. Without banking, would they be turn into banked
16 receipts? No.

17 Q. I know it's silly for me to say it that way, but
18 you have to have a bank with receipts in it in order to turn
19 it in for a digital billboard?

20 A. Correct.

21 Q. They never would have been able to do that if you
22 hadn't created a bank?

23 A. That's true.

24 Q. And that bank is 1816908, which is part of

1 Exhibit 3, which is the digital billboard ordinance, correct?

2 A. Well, most of the banking information was there
3 prior to the digital billboard ordinance.

4 Q. I'll give you another one. So was the provision
5 that says there shall be -- this was also there before the
6 digital billboards ordinance, 1816902 A, the construction of
7 new off-premises advertising displays slash billboards is
8 prohibited and the City of Reno may not issue permits for
9 their construction. That was there before the digital
10 billboards ordinance, too, right?

11 A. Correct.

12 Q. And that leads to my next question. Sticking with
13 that section, I think we passed over it too fast. 1816902 A
14 is the voters initiative?

15 A. Yes.

16 Q. 1816902 B is the, as you can see, the ordinance
17 5295 passed January 22nd, 2002, right?

18 A. Yes.

19 Q. From all of your work and experience at the city
20 and your job as the planning and engineering manager and
21 before, do you know why 1816902 B is there?

22 A. I believe some of it has to do with the RETRAC
23 construction.

24 Q. Besides the RETRAC, any other reasons why 1816902

1 B is part of the law?

2 A. Specifically, no.

3 Q. Okay. Thank you. Because one of the things you
4 could have said was health, safety and welfare concerns
5 required us to put in 1816902 B, but that wouldn't be true,
6 would it? This has nothing to do with health, safety and
7 welfare concerns, does it?

8 A. That section specifically, no.

9 Q. I mean, we have this purpose and intent section
10 that everyone has -- not everyone, but some people have
11 referred to about Reno being a unique city in which public
12 safety, maintenance and enhancement of the city's aesthetic
13 qualities are important and effective in promoting the
14 quality of life for its inhabitants. And we all know that
15 1816902 B has nothing whatsoever to do with our quality of
16 life, does it, in any way? Doesn't help our quality of life
17 at all, does it?

18 MR. SHIPMAN: Objection, ambiguous.

19 MR. WRAY: Your Honor, can I inquire? Do you
20 understand my question?

21 THE COURT: It's more argumentative. See if you
22 can't rephrase the question.

23 MR. WRAY: Probably not.

24 BY MR. WRAY:

1 Q. Let's look at 1816902 B, that's my question, shall
2 we, question mark? Shall we look at it?

3 A. Okay.

4 Q. In no event shall the number of off-premises
5 advertising displays exceed the number of existing
6 off-premises advertising displays located within the city on
7 November 14th, 2000. That's an auspicious date. What does
8 that date mean to us?

9 A. It was when the results were certified by city
10 council.

11 Q. Right. It's the date from the previous paragraph
12 of the passage of the citizens initiative.

13 A. Correct.

14 Q. So immediately upon saying there shall be no --
15 that it is prohibited to have new off-premises advertising
16 displays and no permits may be issued, we see the city
17 saying, in no event shall the number exceed the number of
18 this date, November 14th, 2000, unless further provided
19 herein and then unless provided further herein talks about
20 annexation, correct?

21 A. Correct.

22 Q. Okay. So what was happening here was the city was
23 codifying, putting into law, something to qualify, modify,
24 amend, if you will, what they were saying in 902 A. In other

1 words, there's no new billboards, no permits can be issued,
2 and then in no event shall the number exceed this number,
3 right? This is a different law than 902 A. This is 902 B,
4 right?

5 A. It's 902 B.

6 Q. That's a compound question. So what I'm saying
7 here is, the city was putting something into the law about
8 the number shall not exceed a certain amount. That's not
9 found in 902 A. It's not there, is it? It's in 902 B?

10 A. Correct.

11 Q. Now, why was 902 B enacted or adopted besides
12 RETRAC?

13 A. I would say it would be to -- I didn't write that
14 portion and I wasn't involved back in 2000, I was in a
15 different division, but I would say it would be to clarify
16 more specifically how to address that, how the city looks at
17 902 A in that it established a cap.

18 Q. But why would the city need to put that in there
19 if the law says, there shall be no new billboards, no new
20 permits, why does this need to come in and, say, it doesn't
21 exceed this number? Do you have any idea?

22 A. I wasn't involved in the discussions at that time.

23 Q. Do you know from Exhibit 219 that there was a
24 settlement agreement between the city and a company called

1 Outdoor Media Distribution in the year 2000, specifically
2 December of 2000, a settlement where permits were issued?

3 A. I know of that. I wasn't involved and I haven't
4 reviewed it.

5 Q. I have a sign permit from Yesco. It's not a sign
6 permit. What I have is a banked receipt issued by the city
7 pursuant to a settlement agreement in Young Electric Sign
8 Company versus City of Reno, CV02-03571, right? This receipt
9 was issued pursuant to a settlement in a lawsuit that was
10 filed in 2002. There was a Clear Channel Outdoor lawsuit
11 against the city as well, wasn't there, in 2002?

12 A. I believe there was.

13 Q. So the city was settling lawsuits, and to settle
14 them, the sign companies were suing, the city was giving
15 permission for receipts or giving what you call banked
16 receipts, right, to settle lawsuits?

17 A. I don't know that for a fact. I was not -- like I
18 said, I wasn't involved, I was in a different division and I
19 have not reviewed the record.

20 Q. The citizens voted November 7th, certified
21 November 14th of 2000. The city settles a lawsuit December
22 of 2000 issuing permits to a sign company. So the city
23 needed to take the position that it had the right to issue
24 permits for signs that were coming down to be banked. The

1 city needed to do that, to follow through with settlement
2 agreements with the sign companies, didn't it?

3 MR. SHIPMAN: Your Honor, I'm going to object,
4 asked and answered and argumentative.

5 THE COURT: Overruled, but how would she know?

6 MR. WRAY: Because this person, your Honor, of all
7 the people we know in the city has the most personal
8 knowledge of everything that has to do with the sign
9 ordinance, specifically, the digital sign ordinance in this
10 entire City of Reno. Everyone in that building over there,
11 she has the most knowledge. If she doesn't know, she can say
12 she doesn't know.

13 THE COURT: She said she wasn't even in the same
14 division in 2000.

15 MR. WRAY: Your Honor, I wasn't aware of it either
16 and I have a lot of knowledge. Mrs. Wray was not involved
17 either and she has a lot of knowledge. The fact that she
18 wasn't there doesn't mean she doesn't have the knowledge,
19 your Honor, with all due respect.

20 THE COURT: Go ahead, ask the question. Objection
21 is overruled.

22 MR. WRAY: May I reask my question?

23 THE COURT: Yes.

24 BY MR. WRAY:

1 Q. Disregard whatever I said before, as far as the
2 question that was pending. The question is, isn't it true
3 that you, the city, made deals with sign companies that you
4 wanted to follow through on instead of taking the position
5 that no new billboards could be issued, you needed to take
6 the position, we can issue you permits?

7 A. I don't know.

8 Q. And that happened before, as in December of 2000,
9 and the banking and relocation ordinance is January 2002.
10 That's why the banking and relocation ordinance happened when
11 it did, so you could follow through on deals you made with
12 sign companies back in 2000, 2001, isn't that true?

13 A. I don't know.

14 Q. It had nothing to do, this banking and relocation
15 ordinance has nothing whatsoever to do with health, safety
16 and welfare. It has to do with settling lawsuits with sign
17 companies, doesn't it?

18 A. It could. I don't know the history of that
19 section.

20 Q. Ms. Hanson, you were present for the same meetings
21 that Mrs. Wray was presented for, weren't you? The same
22 workshops, the same planning commission, the same city
23 council, right?

24 A. Yes, most of them.

1 Q. And you remember those members of those boards,
2 the planning commission, the city council talking about,
3 isn't this part of what we agreed to in the settlement?
4 Right?

5 A. Yes. I remember my attorney at the time saying
6 that there was some relationship to them, but I don't know
7 the details of it.

8 Q. Isn't it true that on more than one occasion, and
9 I don't remember which persons, but do you remember people
10 saying, isn't this part of RETRAC, or what we had to do
11 because of RETRAC? Do you remember any of that?

12 A. I do.

13 Q. And, in fact, you mentioned it yourself, it had
14 something to do with RETRAC?

15 A. Right, which is how I answered earlier, that's the
16 part I knew about. I had some involvement in RETRAC, but the
17 lawsuits, I didn't know.

18 Q. So the agenda was the city is pursuing an agenda,
19 for example, in RETRAC or, for example, in settlement of a
20 lawsuit to make deals with sign companies that allowed them
21 to keep their inventory in the City of Reno without getting
22 paid when they took down a sign in the public right of way.
23 They could take it down and keep the right for the next ten
24 years to put that sign back up somewhere else?

1 A. That was the intent with the RETRAC, I believe,
2 yes.

3 Q. And that has nothing to do with any health, safety
4 or welfare issue whatsoever, correct?

5 A. Not really.

6 Q. In fact, if we look at all the purposes of the
7 sign code for off-premise advertising displays, none of those
8 purposes is served by allowing sign companies to perpetuate
9 billboards in the City of Reno, none of the purposes is
10 fulfilled, is it? That's 1816901 A, a unique city in which
11 public safety, maintenance and enhancement of the city's
12 aesthetic qualities are important and effective in promoting
13 the quality of life for its inhabitants.

14 MR. SHIPMAN: Objection to the extent it's opinion
15 testimony, your Honor.

16 MR. WRAY: I guess it is, your Honor. That's a
17 good objection. Sure is.

18 THE COURT: Sustained.

19 MR. WRAY: Your Honor, I'll pass the witness at
20 this time.

21 THE COURT: All right. Thank you. Mr. Gilmore.

22 MR. GILMORE: Thank you, judge.

23 CROSS EXAMINATION

24 BY MR. GILMORE:

1 Q. Ms. Hanson, I just want to clarify a couple of
2 things about that ordinance that perhaps were not as clear as
3 I thought they should be in the direct examination. If a
4 sign owner owns a sign outside of the restricted corridors,
5 that person is not available to make an application for
6 special exception, correct?

7 A. Sorry. I have to read it really quick.

8 Q. Let's walk through it. 905 N 15, you and I have
9 had already talked about N 13, right, because N 13 was the --
10 N 1 through 13 were the health, safety and welfare
11 considerations we already talked about, right?

12 A. Correct.

13 Q. And 14 was the ratio, the removal requirements,
14 right?

15 A. Correct.

16 Q. And N 15 is the special exceptions. I think it's
17 pretty easy for you and I to navigate it, because we've seen
18 it so many times. But just so it's clear, N 13 talks about
19 the operational requirements, what I'm calling health, safety
20 and welfare, and 14 talks about the ratio, right?

21 A. Correct.

22 Q. And N 15 talks about special exceptions, right?

23 A. Yes. And I know 4B, 4 through 7, is allowed for
24 special exceptions, which are the restricted areas. 904 N

1 14, A through C, is the exchange ratio for the restricted
2 areas.

3 Q. Correct.

4 A. Correct. On your original question, it would be
5 restricted areas.

6 Q. Let's take a look at a specific line of 15. N 15
7 talks about the special exceptions. It says, should you be
8 unable to make a relocation or a conversion, okay, because
9 you can't comply with either the prohibited location
10 requirement or the ratio requirement. Are you following me?

11 A. No. I'm sorry. Where are you?

12 Q. I'm on the fourth line of subsection 15.

13 A. Compliance with?

14 Q. 15 says, I'm going to paraphrase it, because it's
15 easier for me to paraphrase it than it is for me to read it
16 verbatim. 15 says, if you can't comply with the location
17 requirements or the ratio requirements, then you get to make
18 this exception for special exception, correct?

19 A. You can apply.

20 Q. Or you can make an application?

21 A. Yes.

22 Q. However, you'll note in the middle of the fourth
23 line of 15, it says that only can you apply for a special
24 exception if you cannot meet the compliance requirements of N

1 14 A through C. A through C is the ratio requirements for
2 the restricted area, right?

3 A. Correct.

4 Q. D, E and F are the removal requirements for the
5 nonrestricted areas, right? It is a little bit laborious to
6 go through this, but do you see that?

7 A. Yes.

8 Q. 14 E talks about outside restricted areas, right?

9 A. Yes.

10 Q. So this ordinance, if you own a board outside the
11 restricted areas, you don't even have the opportunity to make
12 use of an application under the special exception, do you?

13 A. Correct.

14 Q. Because special exceptions are only permitted for
15 people who have signs within the restricted areas, right?

16 A. Correct, with the ratio and is the same, but it
17 isn't changing any of it.

18 Q. But the point of it is, going back to your
19 counsel's hypothetical, if somebody has a sign out in the
20 outer lying portions of the city outside the restricted zone
21 and they have one sign and they want to upgrade to a digital,
22 they have no availability for a special exception under the
23 current ordinance, do they?

24 A. Within -- in or out of the restricted area, they

1 wouldn't have it.

2 Q. Okay. In the restricted areas, you can apply for
3 variances -- not a variance. You can apply for a
4 modification of the ratio requirement?

5 A. But you still need 2-to-1.

6 Q. Fair enough. The point is, and I think this is
7 the point trying to make, if you owned a sign out of the
8 restricted area, only one sign, you don't even have the
9 opportunity to apply for special exception at all, do you?

10 A. It's true, but it's ultimately the same.

11 Q. Turn the page and this will be my last bit of
12 questions and I'll pass this witness. On 15, sub D, which
13 talks about the review process.

14 A. Yes.

15 Q. You testified that supposing somebody comes in and
16 makes an application and they can show certain requirements
17 to meet the special exception, or they can't, planning makes
18 an original proposal to approve or deny, correct?

19 A. A recommendation.

20 Q. And a recommendation. Thank you. That
21 recommendation then goes to the city council, right?

22 A. Correct.

23 Q. And the city council can under D 2 B, the city
24 council shall hold a public hearing, right?

1 A. Yes.

2 Q. The city council shall make its decision within
3 15 days, right?

4 A. Yes.

5 Q. And then the city council can approve, approve
6 with conditions or deny, right?

7 A. Correct.

8 Q. Okay. If the city approves with conditions, they
9 have to follow the conditions that are set forth on the next
10 page, right?

11 A. Yes. They can only be one of those, under those
12 four categories, yes.

13 Q. Where in this statute does it tell the applicant
14 the basis for the findings related to a denial?

15 A. I don't understand your question.

16 Q. Let's say that the city council gets a
17 recommendation from planning to approve a special exception.
18 Maybe they want it to be closer than 300 feet to a
19 residential area and maybe it was a half a foot and so
20 planning thought that was okay, we can make a special
21 exception to meet that location requirement. And planning
22 says to council, we recommend that you approve it. In order
23 for city council to accept that recommendation, they have to
24 make a bunch of findings, don't they?

1 A. Correct.

2 Q. But what if city council wants to deny it? They
3 don't have to make any findings in the statute, do they?
4 They can just deny it.

5 A. I've never seen findings for denials in any kind
6 of cases, billboards or otherwise.

7 Q. The point is, the city council could say, you know
8 what, denied, and then the applicant is left with a denial,
9 right? Because where it talks about findings in the statute,
10 it talks about findings when those findings are approved.
11 Look at D 3, findings, in order to approve a digital, the
12 city council has to make findings, right? Turn the page, in
13 order to approve a digital, they have to meet these
14 conditions. But where's the requirement in the statute that
15 says the city council has to explain the basis for a denial?
16 It's not in the statute, is it?

17 A. That's just the -- that's just how -- that's how
18 zoning ordinances are written. If you make the finding, you
19 approve it. If you can't make the finding, then you deny it.
20 By not being able to approve it, you're denying it.

21 Q. But this is a discretionary approval, because the
22 recommendation is made by planning as to whether or not
23 they've shown sufficient alterations to allow it to go
24 forward. City council can then approve it. And if they do,

1 they have to make a bunch of written conditions, which is
2 good, I might add, for the First Amendment.

3 A. They don't have to, but they may.

4 Q. Okay. Or they could just simply deny it. They
5 could say, you know what, Mr. Saunders, we've seen you here
6 before and you've argued and you've threatened us and,
7 therefore, we're just going to deny your special exception.
8 Thank you very much. They could do that, couldn't they?

9 A. They would have to show which of the findings they
10 can't make, because it states in D 3 that in order to approve
11 it, you have to do those three things. So if you can't make
12 those three, then you would be denying.

13 Q. What it says is, if you're going to approve it,
14 you have to elaborate and enumerate findings. That's what
15 sub three says. But, curiously, the statute does not say the
16 same thing about making a denial. It just says you can deny
17 it, too bad, so sad.

18 A. I don't think you could have findings that are
19 different for an approval and a denial, I've never seen that.

20 Q. But you've made a recommendation to the city to
21 approve it. Certainly, you're given the city council reason
22 why you're deciding to approve it. The city council can say,
23 yes, we like this portion of the recommendation, or we
24 dislike this portion of the recommendation. The city council

1 doesn't have to do that. They can just say, you know what,
2 Mr. Saunders, we don't like it, denied.

3 And the last question, the statute, the ordinance
4 as it's stated does not require the city council to make
5 findings regarding a denial upon application for the special
6 exceptions, correct?

7 A. I don't think I understand the question.

8 Q. There's nowhere you can point me to in this
9 statute, this code, that says, if the city council decides to
10 deny an application for a special exception, these are the
11 findings that have to be enumerated and these are -- they
12 have to tell the applicant the reason why.

13 A. Nowhere in the code are there findings for denial
14 in any kind of case. You would have to either make the
15 findings for the approval or you deny it. Those are the two
16 choices, and they're very clear findings, the three that are
17 in there.

18 MR. GILMORE: Thank you. That's all I have.

19 THE COURT: Thank you. Mr. Shipman.

20 MR. SHIPMAN: Real quick. Just to follow up on
21 that. Just to make sure what you're saying there.

22 CROSS EXAMINATION

23 BY MR. SHIPMAN:

24 Q. So the recommendation when it goes to council from

1 planning is going to be based on what?

2 A. The findings.

3 Q. The findings that are listed in the three, the D 3
4 section?

5 A. Correct.

6 Q. So walk me through that. If you were to make --
7 would you ever recommend a denial if you couldn't -- if those
8 findings could be met?

9 A. No.

10 Q. Could the city council deny it if those findings
11 could be met?

12 A. No.

13 MR. SHIPMAN: All right. Thank you.

14 THE COURT: All right. Thank you, Ms. Hanson.

15 All right. Mr. Shipman, any other witnesses?

16 MR. WRAY: Your Honor, I'm the plaintiff.

17 THE COURT: Hang on a second. The plaintiff has
18 not rested.

19 MR. WRAY: This plaintiff, Scenic Nevada, rests.

20 THE COURT: Thank you. Mr. Gilmore.

21 MR. GILMORE: Thank you, your Honor. I would like
22 to call Mr. Dortch to the stand. And by doing that, I simply
23 want to read four or five pages of his deposition transcript
24 into the record and I have brought one of my employees here

1 to assist me with that.

2 THE COURT: That's fine. Please step forward.

3 (Witness sworn at this time.)

4 THE COURT: All right.

5 MR. GILMORE: Your Honor, I'm going to ask the
6 questions I asked of Mr. Dortch on January 16th under oath.
7 I'm going to have the answers read back.

8 THE COURT: Just a minute. Let me pull up Mr.
9 Dortch's deposition.

10 THE CLERK: Your Honor, could we get the witness'
11 name?

12 THE WITNESS: Eric Robertson.

13 THE CLERK: Thank you.

14 THE COURT: Mr. Gilmore.

15 MR. GILMORE: I'll start on page 127.

16 THE COURT: Give me a minute here. All right.
17 I'm there.

18 BY MR. GILMORE:

19 Q. Line five. Okay. In this lawsuit, I have sent a
20 couple of what we call in the business discovery requests to
21 the City of Reno and the city has responded. Are you
22 generally familiar with how those works?

23 A. Yes.

24 Q. One of those I sent was called a request for

1 admission. The idea behind that is I'm trying to get the
2 city to admit certain things I want them to admit in order to
3 make the trial process a little simpler. Admit your name is
4 Dwight Dortch. Okay, I admit it. Now we don't have to go to
5 court and establish you are in fact Dwight Dortch. Do you
6 follow me? One of the requests I sent, request number one,
7 admit that the city council made no express findings that the
8 use of an LED display upon a billboard in the City of Reno
9 was a detriment to the city's health, safety, welfare or
10 aesthetic goals.

11 The answer I got from the city was, the city
12 admits that the city council made no express findings that
13 the use of an LED display upon a billboard in the City of
14 Reno was a detriment to the city's health, safety, welfare or
15 aesthetic goals. Is that a statement with which you concur?

16 A. You want my personal opinion or what?

17 Q. Well, this isn't an opinion question. This is a
18 yes or no fact question. Which is, did the city council ever
19 make an express finding that an LED billboard just by virtue
20 of it being a digital display and has bulbs and can flip and
21 all that --

22 A. Correct.

23 Q. -- was a detriment to the city's health, safety,
24 welfare or aesthetic goals?

1 A. Did we? Did we ever make the determination it was
2 a detriment?

3 Q. Yes.

4 A. No.

5 Q. But you had the opportunity to, correct?

6 A. Yes.

7 MR. GILMORE: Judge, now I'm moving forward to
8 page 139.

9 THE COURT: Just a minute. All right. I'm there.
10 BY MR. GILMORE:

11 Q. Line 15. So do you, as you sit here today, do you
12 believe that the city's goal in implementing the ratio was to
13 reduce clutter of billboards in the city?

14 A. The council as a whole? I mean, I think the
15 compromise that we made with Clear Channel in the corridors
16 was a great compromise in getting them to offer up the
17 reduction in the corridors. To me, I think it was a win-win
18 for everybody. So in a sense, yes.

19 Q. Who was the everybody in that scenario?

20 A. Citizens.

21 Q. Clear Channel, City of Reno collectively, I
22 suppose, right? Who else?

23 A. And the citizens. I mean, it is cluttered. I
24 mean, those corridors are very cluttered with billboards.

1 Q. I heard you say when you were talking, when
2 Mr. Wray was asking you about Exhibit 13, I heard you say
3 that, you know, reduction in clutter should be accomplished
4 through land use objectives.

5 A. And I think it would have been even without, even
6 without the ratio, I mean, for them to take the billboards
7 down and be able to put it up in that corridor, there's so
8 many land use criteria that they probably couldn't meet
9 without taking additional billboards down anyway and I made
10 that argument throughout. So at that point, they could still
11 bank them. If they could find locations for them somewhere
12 else, they could take them somewhere else. To go to the
13 ratio in the corridors, to me it really didn't matter,
14 because we discussed it many times. Not you.

15 Q. Sure.

16 A. But, counsel, you know my opinion is where we were
17 solving the issues throughout the land use. The reason I
18 don't like the caps and limiting the number is you put a
19 value on the banked signs, much just like we've done with
20 pawn shops. If you limit the number of pawn shops, so if
21 someone wants to go out and buy a pawn shop license, it's
22 going to cost them a million dollars. Well, that doesn't
23 benefit anybody.

24 There's other ways to restrict it to where the

1 license, that one piece of paper doesn't have that much
2 value. In my opinion, and I think that's what your land use
3 code is for, so I'm kind of off on a tangent here.

4 Q. Because the city can take actions that genuinely
5 drive up the value of certain rights, correct?

6 A. Correct.

7 Q. If you're going to only have 100 alcohol permits,
8 then people who want alcohol permits have to go and buy them?

9 A. Right.

10 Q. The city's action has driven up the cost of that?

11 A. Right. And that's why I don't favor them.

12 Q. Okay.

13 A. Now, I don't think you can accomplish it through
14 your land use code. I think you can accomplish it -- I think
15 you can accomplish the same thing.

16 MR. GILMORE: Okay. Now we're moving to page 143,
17 judge, top of page 143.

18 THE COURT: I see.

19 BY MR. GILMORE:

20 Q. It's your testimony that we've seen in your
21 e-mails and in your comments is that you preferred the land
22 use avenue to accomplish the city's objectives in preference
23 to this ratio concept?

24 A. Absolutely.

1 Q. Okay. And do you believe and I know I'm asking
2 you to -- I'm not asking you to jump in the heads of the
3 other city council members, but I'm asking you to opine based
4 on what you've seen and heard and experienced and felt and
5 surmised that the other members of the city council disagree
6 with you on that?

7 A. Yes.

8 Q. Today we have a ratio system instead of a revised
9 enhanced land use code that --

10 A. Right. But I think if you look at what's happened
11 since we revised our code back, I mean, I think it goes back
12 to when I was on the planning commission when we first
13 started having this discussion, you know, distance
14 requirements and things like that. We have done more to
15 reduce the number of billboards in the City of Reno through
16 land use than we have through banking.

17 Q. Right. Because if you want to reduce issues
18 related to aesthetics, height, size, location, you can affect
19 that directly by making a land use ordinance, correct?

20 A. Correct.

21 Q. Okay. So it's a direct correlation from what you
22 want done?

23 A. Right.

24 Q. To how you go about doing it, correct?

1 A. I agree.

2 Q. Okay. In the -- and that's how -- do you agree
3 that that's how this process should have been evaluated from
4 the city's perspective?

5 A. Well, that's how we started the process.

6 MR. GILMORE: Judge, to page 150.

7 THE COURT: Okay.

8 MR. GILMORE: Line three.

9 BY MR. GILMORE:

10 Q. The city says in one of its filings to the judge
11 that, quote, to promote the health and safety of the
12 residents and to achieve its goals of traffic safety and
13 aesthetics, the city set forth the conversion ratios. Is
14 this a statement with which you agree or disagree?

15 A. One more time.

16 Q. Quote, to promote the health and safety of the
17 residents and to achieve its goals of traffic safety and
18 aesthetics, the city set forth the conversion ratios. Is
19 that a statement with which you agree or disagree?

20 A. I don't recall that being the discussion as to get
21 a conclusion, but --

22 Q. Okay. So you sense a disconnect, perhaps, as I
23 do? It says this sentence --

24 A. I just don't recall that being discussed. I don't

1 recall that being the discussion to get to the conclusion.

2 Q. Okay. So you've got a driver or you've got a
3 means and you've got an end, you understand that concept
4 pretty clearly?

5 A. Uh-huh.

6 Q. Somebody comes to the city and says, we have a
7 real issue, there's a lot of litter in the street, we want to
8 stop litter. Okay. And the city says, how are we going to
9 accomplish a means to get us to the end, which is to get rid
10 of litter? And the city council goes, well, okay, let's
11 consider what causes litter. Who does it? How do we get rid
12 of it? How do we penalize? And the city can make all kinds
13 of things that are going to intend to directly curb the
14 litter problem, right?

15 A. Correct.

16 Q. Okay. So you and I have talked in the last half
17 hour about how the city reviewed the concepts related to
18 health, safety and welfare as it pertains to an LED board,
19 and you agreed with me that the city came back and said, you
20 know what, we haven't given any credence to the idea that
21 digital billboards shouldn't be displayed, because they
22 provide a health, safety or aesthetic detriment to the city.
23 That's the only finding that the city has ever made is that
24 there is no detriment, do you agree with me?

1 A. Correct.

2 Q. Okay. Yet the city seems to suggest, and I just
3 want your take on this, seems to suggest that the reason they
4 created a conversion ratio system in the ordinance is to
5 address health, safety and welfare concerns. Does this make
6 sense to you?

7 A. I don't know where you're getting that conclusion.

8 Q. Okay.

9 A. I don't.

10 Q. Not in your findings?

11 A. Not that I recall.

12 Q. In your personal beliefs?

13 A. Shakes his head.

14 Q. Not in the findings of any of the memos that I've
15 seen or read in the tens of thousands of pages that have been
16 produced in this case --

17 A. Correct.

18 Q. -- can you? Okay. I have two more questions and
19 I apologize, I promise you this is it. The city said in one
20 of its filings to the court, billboard operators who either
21 have no or insufficient inventory to comply with the
22 conversion ratio are not in the same class as others who do
23 have sufficient inventory to obtain a permit by applying for
24 it. Is this a statement with which you agree or disagree?

1 A. Not same class? I --

2 Q. Okay. I guess that is a legally loaded term,
3 legally speaking. Let me ask you in a layperson way. The
4 ordinance, the ordinance deals with billboard operators
5 differently, depending on whether you own a board at all,
6 whether you own 100 boards or whether you own five boards.
7 Would you agree with that?

8 A. Yes.

9 Q. If you own zero boards, but you're looking to own
10 a board, this ordinance affects your rights -- under this
11 ordinance, your rights are differently implicated than would
12 be if you owned 100, correct?

13 A. Correct.

14 Q. Let me give you an example. If you -- go to the
15 bottom of 153, line 22. Do you see that? If you're outside
16 the restricted area and you go and acquire one banked
17 inventory and you have a spot, perfect property right against
18 the mountain, where you can shine your light up on the
19 mountain for everybody on the mountain to see, you could not
20 under this ordinance go and get a digital billboard, could
21 you?

22 A. Correct.

23 Q. So that one billboard owner is now officially an
24 industry member, doesn't have the same access to display LED

1 speech as does somebody who owns nine billboards in the
2 corridor, is that correct?

3 A. Correct.

4 MR. GILMORE: Thank you. I have nothing further.

5 THE COURT: Thank you very much. Watch your step.
6 Mr. Gilmore, anything further?

7 MR. GILMORE: I would like to call Ryan Saunders.

8 (One witness sworn at this time.)

9 RYAN SAUNDERS

10 called as a witness and being duly sworn did testify as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. GILMORE:

14 Q. Mr. Saunders, what is your name and occupation?

15 A. Ryan Saunders.

16 Q. What is your occupation?

17 A. I work for Saunders Outdoor Advertising.

18 Q. Are you a principal of that entity?

19 A. Yes, I am.

20 Q. Is Saunders how you make your living?

21 A. Yes.

22 Q. Briefly, how did Saunders come to be involved in
23 the business here in Reno?

24 A. Roughly somewhere around the early '70s, we were

1 in the Reno area. We left. We were primarily in Utah and
2 other areas of Northern Nevada. Early around 2001, 2002, we
3 entered into negotiations with a small operator, Outdoor
4 Media Dimensions, that was owned by a gentleman that was in
5 the hotel industry and he was struggling to make a go of it
6 here in the industry and was involved in a settlement with
7 the city for his locations. We acquired those locations that
8 had been built, along with locations that were unbuilt as
9 well.

10 Q. In your experience, how do billboard companies
11 operate? How do they make money?

12 A. Basically, what we do is we go to landowners and
13 we approach them and we offer them money to secure a lease
14 for their property or we purchase the property in order to
15 secure a location. We go through the proper government
16 authorities in order to secure permits and follow their
17 regulations. And then we supply engineering and that sort of
18 thing and we either have it built or we build it ourselves
19 and we build the structure. And then at that point, it's
20 ready to accept advertising to be sold to whoever wants it.

21 Q. And the outdoor advertising company sells
22 advertising to companies or marketing companies or
23 advertising companies?

24 A. That's correct.

1 Q. That's you how you generate your revenues?

2 A. Yes.

3 Q. What types of messages might be found on a
4 billboard?

5 A. There's lots of different messages that can be on
6 billboards. There's public service messages, such as Amber
7 Alerts that notify citizens of missing children. There's all
8 kinds of public service announcements, antismoking, various
9 types of public service, as well as commercial entities that
10 want to advertise their business, and that can range from
11 anywhere from car dealerships to hotels to a local
12 restaurant. So basically there's a wide range of
13 advertisers.

14 Q. Political messages?

15 A. Yes.

16 Q. Commercial messages?

17 A. Yes.

18 Q. Public service messages?

19 A. Right.

20 Q. Whatever the advertiser is willing to advertise,
21 right?

22 A. Correct.

23 Q. Very briefly, walk the Court through the
24 progression of the billboard. You've been in the business

1 how long?

2 A. About 18 years now.

3 Q. What was the billboard like 18 years ago compared
4 to what it's like today? Walk us through that.

5 A. When I started in the industry, it had even
6 changed a little bit from where it started. But when I
7 started into it, we had moved from wood structures to steel
8 structures and we were painting on wood faces that were in
9 panels, in sections. And most of the time, we would take
10 those big sections of the billboard and we would draw the
11 design by hand, we would project the image up on there and,
12 actually, that's what I did when I first came into it. I
13 painted the billboards and drew them. And so it was quite a
14 process. It was slow.

15 Q. Expensive?

16 A. Yeah. Yeah. You generally had a paint crew. And
17 then sometimes we were actually on the signs with patterns
18 and drawing up the signs and painting them. It was, yeah, it
19 was quite a process and there was -- and then from there, it
20 evolved with the computer age. And with large format
21 printers, we were able to take an image, a photograph even,
22 which was normally really hard to reproduce for artists, you
23 know, if you had somebody's face to actually take it and blow
24 it up. But now we can reproduce photography, you know,

1 perfectly, almost, and print that off on a large format vinyl
2 that wrapped around the sign.

3 Q. As soon as vinyls through printing and computers
4 became sort of economical, were all the advertisers,
5 billboard operators doing it?

6 A. Yeah.

7 Q. Why?

8 A. Everybody did it, because it's far more efficient.
9 You can send a guy out in a pickup and wrap the sign with the
10 vinyl, instead of having a crane truck go out and lift each
11 panel up on the board. So you didn't have to change the
12 panels out. You only had to change the actual advertisement
13 out.

14 Q. Did advertisers like it?

15 A. Yeah, they liked it because of the quality of the
16 print versus hand painted signs. So it was an advantage for
17 us and an advantage for the advertisers.

18 Q. When you upgraded from the wood boards to the
19 vinyl boards, did you have health, safety and welfare type
20 requirements that you had to meet?

21 A. No, because it was the same use. I mean, whatever
22 the health, safety requirements that were involved in the
23 painted signs were the same with a vinyl sign.

24 Q. Height, size?

1 A. There was still light on the sign.

2 Q. Luminosity?

3 A. We could light them all night if we wanted to.

4 Q. When you first showed up with your vinyl board to
5 replace the wood, did you ever get any, for lack of a better
6 word, static from the city about your request to upgrade from
7 wood or vinyl?

8 A. No, there wasn't any question at all.

9 Q. No additional ordinances asking the billboard
10 industry to make concessions or anything like that?

11 A. No.

12 Q. What happened from vinyls?

13 A. From vinyls, there was a new product that came out
14 called the tri-vision. And it's a mechanically operated
15 tri-face is another word for it, but basically what it does
16 is it's triangle strips or panels that could rotate, which
17 was an advantage because it gave you the ability to have
18 three different advertisements on one sign face that would
19 rotate, they would turn and you would see a new
20 advertisement.

21 So either, you know, an advertiser could have
22 three different aspects of their business advertised or you
23 can have three different advertisers on the same face, but
24 they would just rotate every few, you know, seconds or

1 minutes.

2 Q. And now we're to the point in modern technology
3 where it seems like it might be economical to upgrade to a
4 digital. Tell us about that.

5 A. So the digitals are very efficient, because you
6 don't have people climbing on signs to change it out. You
7 don't have the waste from the vinyls, you know, taking down
8 the whole vinyls and throwing them in the trash or selling
9 them off for other uses. Basically, you can take a
10 computer-generated image and within five minutes have it
11 posted on to the sign.

12 Q. If I was a local restaurateur and I wanted to
13 advertise on a digital board, I could e-mail you an image and
14 five minutes later you can put it up on the board?

15 A. Right. Not only that, it's extremely flexible for
16 those people, because, traditionally -- I mean,
17 traditionally, it took a while to change billboards out. But
18 because of the quick speed of it, along with everything else
19 in technology, it just speeds everything up. The advertiser
20 now has the ability to advertise sales or specials that they
21 were having. Because you can, basically, you can schedule
22 the different advertisements. You can have all kinds of
23 different ads for one advertiser. And they can say, you
24 know, while it's snowing, you can hurry up and change it and

1 say, get your snow tires now. So it's a big advantage.

2 Q. Restaurateur on Fourth Street could send you,
3 hey, it's spaghetti night on Tuesday and they could literally
4 advertise spaghetti night on Tuesday on your digital board,
5 right?

6 A. Correct.

7 Q. Could you have done that practically before?

8 A. Not practically. It would have cost the
9 advertiser. They could have done it, but it would have cost
10 them quite a bit to do that. The thing about digital changes
11 is that they don't really cost the advertiser anything. So
12 it does open it up to a whole new range of advertisers that
13 maybe had a barrier with the cost because of the length of
14 contract.

15 Because they are so easy to change, we can run
16 shorter contracts, run for shorter periods of time. We don't
17 have to charge as much and we don't have to charge for the
18 copy changes, because they're so quick and easy.

19 Q. Is it your testimony that prior to the
20 implementation of digitals, certain companies that would not
21 practically be advertising on vinyls can now advertise?

22 A. Oh, yes, definitely.

23 Q. Any question in your mind about the economic and
24 efficiency benefits of the upgrade from digital to static --

1 to digital from vinyl?

2 A. Rephrase that.

3 Q. Is there any question in your mind as someone who
4 has been in the business 18 years as to the advantages of
5 application of digital technology versus the old static
6 technology?

7 A. No. There's no question in my mind. Just like
8 you pointed out earlier, I mean, we use e-mail, we use all of
9 these --

10 Q. Are you aware, Mr. Saunders, that when that
11 question was asked of the city in discovery, the city
12 responded that the city acknowledges that the billboard
13 industry recognizes all of the economic advantages of the
14 digital billboard opportunity?

15 A. Yes.

16 Q. That's something you agree with, correct?

17 A. Correct.

18 Q. Let's go through a couple of quick exhibits.
19 We're only going to focus -- judge, we're only going to focus
20 on some of those issues, which I think are sort of the
21 material issues related to the basis for the ordinance. I'm
22 not going to belabor any of these.

23 THE COURT: Let's do this, let's just take a brief
24 afternoon break for about 15 minutes. We'll come back and

1 we'll start fresh.

2 MR. GILMORE: Thank you, judge.

3 THE COURT: Give you a chance to organize your
4 questions. Mr. Saunders, you may step down. Watch your
5 step.

6 (A short break was taken.)

7 THE COURT: Mr. Saunders, please resume the stand
8 and you remain under oath. Mr. Gilmore, your witness.

9 BY MR. GILMORE:

10 Q. Mr. Saunders, when we broke, I was just about to
11 ask you to crack open that exhibit binder, and I'm going to
12 ask you to turn to Exhibit 29. Most of what we will be doing
13 will be in that book, so you can keep that one handy.

14 A. Okay.

15 Q. You do recognize 29, do you not?

16 A. Where are we at on there?

17 Q. This is an agenda from February 2008 city council.
18 You recognize that, correct?

19 A. Yes.

20 Q. Do you see where it says L4 about two thirds down
21 the page?

22 A. Yes.

23 Q. Discussion and potential direction to staff
24 regarding initiation of a text amendment to allow

1 off-premises LED. Do you recall that?

2 A. Yes.

3 Q. Turn the page. About the fourth line from the
4 top, there's reference to a Susan Schulte from Juniper Creek
5 Road representing Saunders Outdoor. Susan was an employee of
6 yours, correct?

7 A. Correct.

8 Q. Was Susan directed to attend these council
9 meetings, workshops on Saunders' behalf?

10 A. Correct.

11 Q. What was her function?

12 A. She was a salesperson here in Reno, lived here,
13 and we also had her attend some of these meetings that we
14 couldn't attend so that she could, you know, represent our
15 interests at the meetings.

16 Q. Weigh-in on Saunders' behalf?

17 A. Right.

18 Q. That was 2008. Basically, back to the beginning
19 of the original initiation of the digital billboard
20 ordinance, correct?

21 A. Correct.

22 Q. So Saunders has been involved from the beginning,
23 does that sound right?

24 A. That sounds right.

1 Q. Please turn to Exhibit 31. You recognize this, do
2 you not?

3 A. Yes.

4 Q. A May 13, 2009, city council meeting. Do you see
5 J 9 about halfway through the page?

6 A. I see it.

7 Q. Staff report, discussion and potential direction
8 to staff regarding a digital off-premises display. Do you
9 see that?

10 A. Yes.

11 Q. And then about two paragraphs down, it mentions
12 the attendance of Susan Schulte again representing Saunders.
13 You had a representative that meeting, did you not?

14 A. Correct.

15 Q. Please turn the page. We're now on Bates 549. Do
16 you see that in the bottom right-hand corner?

17 A. Yes.

18 Q. About three-quarters of the way down the page,
19 there's a discussion between defense council person Gustavson
20 and Mr. Hester. Mr. Hester was from planning, correct?

21 A. Correct.

22 Q. They were talking about billboard safety studies,
23 revenue generated by digital signs and the possibility of
24 asking the vendors to trade one digital sign for one or more

1 billboards. Do you recognize that?

2 A. Yes.

3 Q. Next paragraph, discussion ensued with the
4 representatives of Saunders, Clear Channel and Yesco
5 regarding whether they would be willing to remove some of
6 their regular billboards in exchange for permission to
7 install digital billboards. Do you recall that conversation?

8 A. Yes.

9 Q. Where did that come from?

10 A. Basically, council, the city having a desire to
11 reduce clutter in the city. So they wanted us to give
12 something in order to be able to use that technology.

13 Q. In the history of billboards, in your experience,
14 from wood to vinyl, vinyl to tri-vision, tri-vision to
15 digital, is that something that you'd ever seen?

16 A. No.

17 Q. Was it something that you approved of?

18 A. No. Definitely not.

19 Q. Was it something you were eager to do?

20 A. No.

21 Q. Give up existing inventory in order to be able to
22 just take the next step towards digital advertising?

23 A. No. We didn't feel like we needed to, because we
24 had never been required to give anything up. It was the same

1 use.

2 Q. Next paragraph, council person Sferrazza stated
3 that parts of South Virginia Street are cluttered with
4 billboards and some of them should be removed. You've heard
5 council person Sferrazza opine on this issue several times,
6 have you not?

7 A. Correct.

8 Q. What is, generally speaking, your understanding of
9 her position with respect to billboards?

10 A. Well, basically, she doesn't like billboards and
11 she wanted us -- she wanted to clean up certain areas. And
12 then after a lot of discussion and later meetings, she wanted
13 to expand that. And I recall her saying in some of the
14 council meetings, what is Saunders going to give up? If you
15 want to do business in the City of Reno, you have to give
16 something. And so her position was always, you've got to
17 give something up in order to do business here in Reno.

18 Q. Is that something that you agreed with?

19 A. No.

20 Q. Is that something you believed was right?

21 A. No, I definitely don't believe that's right or
22 correct.

23 Q. Please turn to page to 550, 0550. It should be
24 just one page over. Do you see that? In the middle of the

1 page it says, Mr. Hester summarized by saying that staff will
2 examine the city's high-volume gateways such as Virginia
3 Street and Plumb Lane, discuss the possibility of
4 establishing a trade-off ratio. Is this trade-off ratio in
5 concept the idea of the ratio that is now in the ordinance?

6 A. Yeah, I believe it is. Basically, it's the same
7 thing that we've been talking about from the start and we've
8 been disagreeing with is this idea of a trade-off of some
9 sort.

10 Q. Please turn to Exhibit 32. Let me know when
11 you're there.

12 A. I'm there.

13 Q. This is a November 5, 2009 staff report from the
14 planning commission. You recognize this, do you not?

15 A. Yes.

16 Q. I'm going to turn the pages and ask you to follow
17 me briefly so we can get through this. On the second page of
18 that memo, the second to last paragraph, the last sentence
19 says, digital technology is an emerging technology that
20 increases the ability of sign companies to compete. Do you
21 recognize that? Do you see that?

22 A. Yes.

23 Q. Is that something with which you agree?

24 A. Definitely. I mean, it's a new technology, and as

1 with any industry, if you don't move along with the
2 technology, then you have a severe disability in competition.
3 I mean, in some cases, you can't compete at all if you don't
4 move along with the new technology.

5 Q. That's not simply a billboard company issue, is
6 it? Is that your experience in business generally?

7 A. Yes.

8 Q. In November 2009, the city council directed the
9 staff to go and examine various issues related to the digital
10 billboard upgrade ordinance, is that correct?

11 A. That's correct.

12 Q. Turn the page and I'd like you to look at, I'm now
13 on page 553.

14 A. I've got it.

15 Q. Which is actually page three of the report. The
16 city planning commission gives city council a staff report
17 that analyzes a number of criteria related to digital
18 billboards. Does that look right?

19 A. That's correct.

20 Q. For example, you see the analysis section about a
21 third of the way down?

22 A. Yes.

23 Q. Location criteria, the commission gives a bunch of
24 analysis regarding location, spacing, et cetera, correct?

1 A. Correct.

2 Q. Is the location criteria something that you dealt
3 with in your history as a billboard owner?

4 A. Yes, all the way through.

5 Q. Health, safety and welfare requirement?

6 A. Yes.

7 Q. Next line at the bottom of the page, display
8 criteria, it talks about dwell times, message times, et
9 cetera, flip times, right?

10 A. Yes.

11 Q. Again, one of the kinds of things that you would
12 expect to see the city analyze, correct?

13 A. That's correct.

14 Q. With respect to health, safety and welfare? Does
15 that sound right?

16 A. Yes.

17 Q. Turn the page. What about luminance?

18 A. Yes, that's something that we've dealt with all
19 away along. We have lighted signs now.

20 Q. And then we come to the bottom of the page and we
21 talk about this issue called removal requirements. Do you
22 see that?

23 A. Yes.

24 Q. City planning was asked, planning was asked to

1 opine as to whether or not the removal requirements were in
2 conformance with the ballot initiative. Do you see that?

3 A. Yes.

4 Q. In conformance with the ballot initiative passed
5 by the voters, and then they give an opinion. Turn the page
6 for their conclusion. At the top of page five, planning
7 says, this ratio of 1-to-1, meaning take down one static
8 billboard in order to place on that sign a digital face,
9 right, is consistent with the ballot initiative passed by
10 voters. By limiting their removal to nonconforming
11 billboards, it will further move all billboards to be in
12 conformance with the spacing requirements set forth in code.
13 Is that something with which you agreed at the time?

14 A. Yes.

15 Q. That you must comply with height requirements,
16 right?

17 A. Correct.

18 Q. You must comply with spacing, right?

19 A. Correct.

20 Q. You must comply with luminosity issues, right?

21 A. Right.

22 Q. Any other types of health, safety, welfare issues
23 that were addressed by planning, right?

24 A. Right.

1 Q. And that planning recommended that it could be
2 done consistently with a 1-to-1, take one down, put one up,
3 right?

4 A. Correct.

5 Q. Didn't happen that way, though, did it?

6 A. No.

7 Q. Let's go through a few more exhibits. Let's go to
8 Exhibit 34. Let me know when you're there.

9 A. I'm there.

10 Q. We have May 2011 minutes from a billboard
11 workshop. You've seen this before, correct?

12 A. Yes.

13 Q. On the second page of that exhibit, it's 571 at
14 the bottom of the page, maybe three-quarters down the page,
15 Ms. Hanson wanted clarification from Mr. West regarding the
16 exchange rate. Mr. West stated that according to this
17 version where it proposes a flat square footage for exchange,
18 he thinks, meaning Mr. West from Clear Channel, right, he
19 thinks it should be based on the multiplier of the size of
20 the board that is being proposed. Again, the assumption is
21 being made that all signs are 672 square feet. Whereas, he
22 thinks it should be driven by the digital face size that is
23 being proposed. In his opinion, whether the calculation is
24 3-to-1 or 6-to-1, it should be based off the digital face

1 size. Do you recall Mr. West being a proponent of the ratio?

2 A. Yes, most definitely.

3 Q. What is your understanding of why Mr. West was a
4 proponent of the ratio system?

5 A. Well, my opinion of that is that offered their
6 company a huge advantage, because of the amount of inventory
7 that they have. They have, as we've discussed here in the
8 court, a large amount of banked permits that don't have
9 landowner agreements and that are very easily traded in for
10 digitals.

11 Q. So those with the banked inventories would be in
12 favor of being able to utilize those banked inventories to
13 upgrade, right?

14 A. Yes.

15 Q. Page to 577 of the same exhibit. It's probably
16 five or six pages in. Let me know when you're there.

17 A. I'm on 577.

18 Q. Are you there?

19 A. Got it.

20 Q. In the middle of the page, middle of the
21 paragraph, I'm going to start in the middle, let me know if
22 you see this, where it says CCO has been very aggressively.
23 Do you see that?

24 A. Yes, I've got it.

1 Q. What is CCO?

2 A. Clear Channel Outdoor.

3 Q. It says Clear Channel Outdoor has been very
4 aggressively taking down structures where they need to be
5 taken down and trying to do our part to clean up the areas.
6 Do you have personal knowledge as to whether or not that's
7 true?

8 A. I don't know if they have or have not.

9 Q. At the end of the day, this is from Clear Channel,
10 if we have some kind of ratio for banked credits for digital
11 installation, that is, quote, the best assurance we can
12 provide that at the end of the day, we are going to reduce
13 the overall number of boards. I would say with digital, we
14 can very effective in a reducing the overall number of boards
15 in the community and the impact that you guys are worried
16 about. Do you know who you guys he's talking to?

17 A. He's talking to the city.

18 Q. You recall these kinds of conversations with Clear
19 Channel, correct?

20 A. Correct.

21 Q. In these workshops, right?

22 A. Right.

23 Q. Either you were present or one of your employees?

24 A. Right.

1 Q. What's your take on this quote that the best
2 assurance we, I don't know if he means the industry or Clear
3 Channel, can provide that at the end of the day we are going
4 to reduce the overall number of boards. What is that?

5 A. I think that's him speaking for his company and
6 not for the industry. I have personal knowledge that Yesco,
7 myself and others were not in agreement with a trade-in or a
8 use of a ratio to reduce clutter.

9 Q. Turn to Exhibit 36, please. On page 584 at the
10 bottom, which is the third page in, these are workshop
11 minutes from September 2011, correct?

12 A. Correct.

13 Q. Roughly 13 months before the ordinance was
14 approved. Three-quarters of the way down, there's a
15 paragraph that says, the exchange rate has been a hot topic.
16 Do you remember that?

17 A. Yes.

18 Q. Do you agree with that statement?

19 A. Yeah. It took up the majority of our meetings.

20 Q. Why is that?

21 A. Because I think there was so many of us in the
22 industry that were opposed to that idea. And, in fact, you
23 know, at the end of the planning commission meetings, they
24 kind of did away with the recommendation for that ratio.

1 Q. By September 2011, what were the conversations at
2 workshops, at committee, at council meetings, what were they
3 focused on? What was the conversations based on? What were
4 they focused on?

5 A. There was a lot of -- you know, I don't remember
6 if the city was involved in all of these discussions, but the
7 hot topic definitely was the ratio, at least it was for us.
8 There was a lot of talk about how it would affect us and
9 whether we would get on board. Clear Channel was always
10 trying to get us to get on board with them and push this idea
11 of a ratio and we told them repeatedly that it did not work
12 for us.

13 Q. I'm going to read a couple of sentences from this
14 page 584 and I want to ask you if you agree with it. If a
15 company puts up an electronic billboard, what they would give
16 up? They currently have to take down one or have one in the
17 bank to exchange before putting the new one up. How many
18 would they give up to obtain an electronic billboard? Five,
19 eight and ten were the options of what the exchange rates
20 could be. Is this something that Saunders was willing to get
21 behind?

22 A. No.

23 Q. Why not?

24 A. Because of the negative impact it has on our

1 business and our ability to use the next thing in outdoor.

2 Q. Turn to page nine of that same report, which is
3 590 on the bottom page, Bates stamp.

4 A. Got it.

5 Q. I'll represent to you that this is a presentation
6 at this point in the workshop minutes, this is a presentation
7 by Mr. West of Clear Channel. Three paragraphs from the
8 bottom it says this, that is what Clear Channel can bring to
9 the community. If the goal is to reduce the number of
10 billboards, then digital billboards are the best bet. I hope
11 you will consider the offer from the industry to remove three
12 conventional faces for each digital install.

13 Okay. A couple of things about that. Did you
14 understand the goal of the city in enacting this ordinance to
15 be reducing the number of billboards?

16 A. Yes.

17 Q. Or as they say clutter?

18 A. Right.

19 Q. He says, he asks the city to consider the offer
20 from the industry to remove three for one. Is this an offer
21 that Saunders was making?

22 A. No.

23 Q. Who was making this offer as far as you
24 understood?

1 A. Again, it was Clear Channel that was always making
2 this offer.

3 Q. Turn the page. We're now looking at 591. At the
4 very bottom of this page, Mr. West is making another
5 presentation to the city commission. This could be an
6 opportunity to do something about that. We do have a
7 business to run. Out of the goodness of our hearts, we
8 cannot mow down ten structures. But if we could mow down ten
9 and put up two or convert to digital, then I think it is a
10 win for the city. Do you see that?

11 A. Yes.

12 Q. Was that the discussion that was predominant about
13 September 2011?

14 A. I would think so, yes.

15 Q. Not think so, you know so because you were
16 involved, correct?

17 A. Right. I mean, yes, it definitely did, again,
18 dominate.

19 THE COURT: Mr. Gilmore, let him testify.

20 MR. GILMORE: Thank you, judge. I'm trying to
21 speed it up, too.

22 THE COURT: It's okay.

23 BY MR. GILMORE:

24 Q. You've heard this phrase before, a win for the

1 city. You've heard that before in this ordinance
2 preparation, have you not?

3 A. Correct.

4 Q. What do you understand that phrase to mean?

5 A. Well, again, the city's goal is to reduce the
6 clutter. They want to get rid of the clutter, whether, you
7 know, it's receipts or inventory. And so I think they like
8 this proposal of Clear Channel, because it was an offer on
9 the table, but it wasn't -- it was definitely not reflective
10 of the industry.

11 Q. And then the last sentence, we can come to the
12 table with offers to make this right and look forward to
13 discussing more of that in detail, but there is a tremendous
14 community benefit and we can build on it. Did he mean we
15 Clear Channel or we the industry?

16 A. Again, we Clear Channel.

17 Q. Moving right along, let's go to Exhibit 38. It's
18 page 23 of tab 38 or 0626 is the Bates stamp.

19 A. Okay. I've got it.

20 Q. Second paragraph, Commissioner Romeo wanted to
21 know what the exchange rate would be, including banked boards
22 or digital message sign. Mr. West stated that originally
23 three billboards were proposed for one digital. Given
24 opportunities and flexibility within the code and the right

1 circumstances and consideration in other areas, the number
2 could possibly go up to five billboards. Were you ever
3 involved in communications or conversations where Mr. West
4 talked about the right circumstances and consideration?

5 A. Yes. I heard him talk about that, yes.

6 Q. What was your impression of what he meant by that?

7 A. That if necessary we can push that ratio further.

8 Q. If that's what it takes to get the job done?

9 A. Right.

10 Q. Is that what you understood Clear Channel's
11 position to be?

12 A. Yes.

13 Q. And did you understand the city to have a specific
14 reaction to that?

15 A. Yeah, I think they were most definitely in favor
16 of that, because of their stated goal.

17 Q. All right. Now, turn to tab 39, please, on Bates
18 635, which is the fourth page in.

19 A. I have that.

20 Q. Under removal requirements, about three-quarters
21 through the first paragraph, there's a sentence that says,
22 the proposed ratio of 8-to-1, two comparable signs, plus six
23 banked receipts calling one digital billboard was based on
24 the information provided by the sign industry that

1 approximately eight advertisements are running at any one
2 time on a digital billboard. So now we're in November of
3 2011 and there's conversations about an 8-to-1 ratio, right?

4 A. Correct.

5 Q. In November of 2011, how many industry members had
6 six banked receipts?

7 A. As far as I know, Clear Channel.

8 Q. Anyone else?

9 A. Not as far as I know.

10 Q. So assuming that this proposal was the proposal
11 that ultimately carried the day, 8-to-1, two comparable
12 signs, plus six banked receipts, who in the industry could
13 have even complied with that?

14 A. Just Clear Channel.

15 Q. Saunders didn't have banked signs, do they?

16 A. No.

17 Q. None of the other mom and pops, I referred to,
18 have six banked signs?

19 A. No. I don't believe any of them do.

20 Q. This proposal was not even workable to anybody in
21 the industry except Clear Channel?

22 A. Correct.

23 Q. Please turn to tab 48. You recognize this, do you
24 not, a March 2012 city council meeting minutes?

1 A. Yes.

2 Q. If you turn to page three, there's a reference to
3 you at the top, Brian Saunders is present. Do you recall
4 this meeting?

5 A. Yes.

6 Q. Turn the page to 687. Now, at the top it says,
7 representatives of Yesco and Clear Channel discussed their
8 views regarding the reduction in the number of billboards.
9 The council persons discussed digital versus static. And
10 here's what I want to ask you about, encouraging digital
11 billboards to achieve an overall reduction in the number of
12 billboards and relaxing the rules for their location. Do you
13 see that?

14 A. Uh-huh.

15 Q. Keep that thought and then go down to the last
16 line of the next paragraph.

17 A. Okay.

18 Q. And providing equitable ratios for smaller
19 billboard companies. What is that, equitable ratios? You
20 were at this meeting.

21 A. As far as I understand it, they were trying to
22 work out some kind of balance between the ratios that had
23 been proposed and try to figure out something. I think they
24 were beginning to see that there was a concern that we had

1 expressed over and over and they may have even had some
2 reservations about how that would actually play out and how
3 it would affect our business.

4 Q. What concerns had Saunders raised about this ratio
5 idea?

6 A. Well, the whole concern for us is that, you know,
7 we don't even think that we would be able to comply with it,
8 because of the inventory we have. We have seven signs in the
9 entire city. And, you know, it would put us at a huge, huge
10 disadvantage in being able -- in not being able to use this
11 new technology.

12 So our concern was that by having this ratio in
13 place, that the industry giant would be the only one that
14 would be able to utilize the technology that was available to
15 everyone. It's not technology that is, you know -- that's
16 meant to be only used by one company. It's something that
17 can be applied to all the companies. And we felt like that
18 was either fair to either allow it for everyone without some
19 kind of trade-off or just simply don't allow it.

20 Q. Allow it fairly or ban it?

21 A. Correct.

22 Q. Was that the proposal Saunders made?

23 A. Yes.

24 Q. Did you start to recognize that members of the

1 city council were concerned, maybe sympathetic about
2 Saunders' position in all of this?

3 A. I think some of them were.

4 Q. Please turn to tab 50. Tab 50 is an April 2012
5 city council minutes, a meeting which you attended, correct?

6 A. Correct.

7 Q. Has your name there on the second page. On 696,
8 the bottom of page 696.

9 A. Got it.

10 Q. Last two paragraphs, council person Sferrazza
11 discussed the public process that has continued over the past
12 five years and noted that the council is dedicated to
13 eliminating billboard clutter in Reno. Is that consistent
14 with your understanding of what the city told you the purpose
15 of the ordinance was?

16 A. Yes.

17 Q. She said that the discussions need to come to an
18 end and removal of the billboards needs to begin. Is that
19 consistent with your impressions of council person
20 Sferrazza's viewpoint regarding billboards?

21 A. Yes, definitely. In fact, she's the one who said,
22 to my recollection, if you want to do business in Reno, you
23 have to give something up.

24 Q. Next paragraph, council person Zadra mentioned the

1 difficulties placed on Saunders Outdoor, because of their
2 limited billboard inventory and suggested using zoning as a
3 means of determining exchange ratios. Is that something that
4 had been discussed?

5 A. Yes.

6 Q. Did you believe that council person Zadra at this
7 meeting was somewhat sympathetic to Saunders' position?

8 A. I believe so.

9 Q. Turn the page, still discussing the ratio issue.
10 At the top, council person Dortch suggested that setting
11 higher exchange ratios in the target areas would create a
12 billboard monopoly for Clear Channel. Do you see that?

13 A. Yes.

14 Q. Is council person Dortch's statement something
15 with which you agree?

16 A. Yes.

17 Q. Why do you believe that?

18 A. Well, I believe it would. Again, as I stated
19 before, I believe that they have the ability to trade in
20 their banked receipts, which will not have as high of a
21 negative impact as it will on others and, therefore, it will
22 preclude the other industry members from using the technology
23 and so I believe that it will create a monopoly.

24 Q. And is that a conversation that you actually had

1 with council person Dortch about that?

2 A. Yes, several times.

3 Q. With that understanding, from what council person
4 Dortch said, why, then, would Clear Channel want to increase
5 the ratios?

6 A. Again, I don't think that they wanted to increase
7 the ratios just out of the goodness of their heart. They're
8 a publically traded company. They have an obligation to
9 their shareholders to increase profits. And the idea that
10 the industry giant is just proposing these higher ratios out
11 of the goodness of their heart to benefit the community is in
12 my mind kind of ridiculous. And the whole idea behind it is
13 we get to give the city something that they want and we get
14 the sole use of this technology.

15 Q. Okay. Please turn to tab 52, and I'm four pages
16 in, which is Bates 713. Let me know when you're there.

17 A. I'm there.

18 Q. About halfway through the agenda item, again, this
19 is July 2012 city council meeting in which both of us were
20 present, correct?

21 A. Correct.

22 Q. Council person Hascheff said that if the direction
23 was to realize a meaningful reduction in the number of
24 billboards, then those in restricted areas would have to give

1 up more and those in nonrestricted areas would have to give
2 up less. What does this mean direction was to realize a
3 meaningful reduction? What is your understanding of that?

4 A. They wanted to reduce the number of signs.

5 Q. City council directed staff to go and create an
6 ordinance that would realize a meaningful reduction, right?

7 A. Correct.

8 Q. And if you keep following that same line, he
9 discussed the possibility of a 2-to-1 ratio, noting his
10 sensitivity to Saunders, do you see that Councilman Hascheff?

11 A. Correct.

12 Q. Why was Councilman Hascheff, to your understanding,
13 why was he noting sensitivity to Saunders?

14 A. He had met with us and I think he understood the
15 problems it created for the smaller companies. And I don't
16 know whether he had any legal concerns, but I think he was
17 just generally concerned about how this ordinance would
18 really play out. And so I think he was trying to reach some
19 kind of compromise.

20 Q. And we'll see that again in tab 57, if you'll turn
21 there. Tab 57 is again meeting minutes from Reno City
22 Council in which I was present on your behalf, correct?

23 A. Correct.

24 Q. At the top of the second page, which is Bates 735,

1 it says council person Hascheff stated that the simple
2 solution would have been to prohibit digital billboards in
3 order to avoid complaints about things such as ratios. Do
4 you see that?

5 A. Yes.

6 Q. Do you recall that conversation?

7 A. Yes.

8 Q. Is that something with which you agree?

9 A. I agree.

10 Q. Why?

11 A. Because if there is a health, safety, wellness
12 concern, if there is a problem with digital billboards in and
13 of themselves, then the simple solution, the level playing
14 field is to continue as is and don't allow them. I mean,
15 that's been the stance of the city is we don't allow them.
16 Whether or not we agree with that, that's been their
17 position. And so if you want to keep the playing field level
18 and you find that this is a problem for the community, just
19 don't allow it.

20 Q. Okay. And then next paragraph, Vice Mayor Aiazzi
21 stated his belief. That the council did not pass the
22 ordinance to benefit the industry, but acted in response to
23 the citizens vote to reduce billboard clutter. He said that
24 even though Scenic Nevada disagreed with the way in which it

1 was done, the purpose of the ratio was to reduce the number
2 of billboards. Did you believe that to be true, that the
3 purpose of the ratio was to reduce the number of billboards?

4 A. Yes. I think some of the council members wanted
5 to score some points and try to reduce the clutter. And in
6 order to get that, they saw this opportunity. They felt like
7 the industry wanted to use it so bad, they'd be willing to
8 cut this kind of deal, and it simply didn't work for our
9 company.

10 Q. If this ordinance is approved as is, do you
11 believe it will have an impact on Saunders and other
12 similarly situated sign companies?

13 A. Yes, I definitely believe so.

14 Q. How so?

15 A. I believe we won't be able to use this technology
16 and be able to keep up with the others who will be able to
17 use it.

18 Q. And what would maybe the practical impact of that
19 be?

20 A. You know, possibly, advertisers will want to move
21 completely to digital and we won't be able to provide it for
22 them.

23 MR. GILMORE: Okay. Thank you.

24 THE COURT: Thank you, Mr. Gilmore. Mr. Wray.

1 CROSS EXAMINATION

2 BY MR. WRAY:

3 Q. Mr. Saunders, didn't I promise you I would not ask
4 you any questions once you got up there?

5 A. You did. But I have a feeling you are going to
6 reverse that.

7 Q. Well, you're so informed. You're so
8 well-informed. That's my comment. You do agree -- well, you
9 have this issue with one of the council members saying, if
10 you want to do business in town, you have to give us
11 something, correct?

12 A. Correct.

13 Q. But you do agree that the same the council member
14 could have said to you, you have no right to do business in
15 this town at all, there shall be no new billboards. You're
16 okay with that?

17 A. Well, if that's the law that you entered into.

18 Q. Let's say the citizens passed a law that says
19 there shall be no new billboards, no permits shall issue for
20 any of their construction?

21 A. If that's what the law says, yeah, we would have
22 to follow it.

23 Q. So I'm just curious what Saunders' position is
24 about that. If the city has the right to prohibit you from

1 doing business at all, period, can't the city then say to
2 you, you can't do business unless you comply with certain
3 things we want from you? Isn't that logical?

4 A. If those things treat everyone the same, then,
5 yes.

6 Q. I understand your concern about the competitive
7 disadvantage you were talking about. I just had to ask you
8 about that, because you do know, the city could say, Saunders
9 cannot put up any new billboards? It could say that?

10 A. It could. In fact, cities do it all the time,
11 they put caps on the numbers, but they have to continue to
12 allow the existing billboards to go under grandfather status.
13 So they can continue to operate under the current levels of
14 business that they have and that's what the citizens
15 initiative says.

16 Q. I need you to be frank with me about something
17 else. A digital billboard allows your company to make more
18 money?

19 A. Yes.

20 Q. And that's because instead of one advertiser per
21 side, per a period of time, you can have multiple?

22 A. Correct. And that is the same -- the same is true
23 of tri-visions, that were allowed prior to this.

24 Q. Sure.

1 A. Three and there were no ratios in that situation.

2 Q. And a tri-vision sign allows three different
3 advertisers to occupy the same side of one billboard, right?

4 A. Not the same side. There's only one advertisement
5 ever showing.

6 Q. But there's three interchanging advertisements on
7 that side, correct?

8 A. Correct, but you only view one at a time.

9 Q. Sure. But with a digital, you multiply that by a
10 factor of two and a half times, so it's really -- what is it
11 really about eight?

12 A. Six.

13 Q. Six times?

14 A. Different industry members run different amounts,
15 depending on what they feel will be the value to their
16 advertisers.

17 Q. Okay. What I'm trying to look at is this thing
18 about advertising and digital billboards and why they're
19 different. Can you see an argument from the city or from
20 people who think billboards are not necessary, let's say,
21 that in fact if you have a digital or a tri-vision sign, you
22 have three billboards for one or six billboards for one in
23 one billboard? Can you see that?

24 A. No. Because there's one structure. There's

1 only -- if you're concerned about clutter, there's only one
2 structure there. Whether the face changes, I can do the same
3 thing with a vinyl, I can change the vinyl as often as I
4 want. I could have a guy --

5 Q. Not every eight seconds?

6 A. Well, I could have a guy out there doing it as
7 fast as he can and I could have him change it.

8 Q. Really? Are you serious?

9 A. Yeah. If an advertiser really wanted to pay for a
10 guy to change the vinyl, we could do that.

11 Q. Could you do that every eight seconds?

12 A. No. I didn't say that you could.

13 Q. I mean, that would be like a cartoon, wouldn't it?
14 I mean, some guy up there, really?

15 A. It would be far more distracting than a digital,
16 let's put it that way.

17 Q. Let's just talk about the impact of what you're
18 talking about. If all the static boards became digital
19 billboards, as you propose, one for one, or no one for one,
20 just whenever you want to put up one, you can put up one,
21 right?

22 A. Right.

23 Q. Wouldn't you agree that the impact on the citizens
24 would be they would see a lot more advertising, not just one

1 times more, not 100 percent more, not 200 percent more or
2 even 300 percent, but 800 percent or 600 percent more
3 advertising from the same number of billboards?

4 A. They're going to see the same number of
5 billboards. They're only going to be able to look at one ad
6 at a time.

7 Q. That's true.

8 A. The purpose of advertising needs to be seen.

9 Q. Mr. Saunders, I understand that, but listen, isn't
10 it true that when you have a billboard up there that is a
11 digital, it acts like a TV from the standpoint if you watch
12 one commercial, then the next commercial, then the next
13 commercial on the same billboard, right?

14 A. It's not a TV and I kind of reject the idea of a
15 TV, because it suggests that these have motion. They are
16 static boards.

17 Q. I have an LED TV in my house.

18 A. I think of it like --

19 Q. Isn't there an LED television?

20 THE COURT: Just a minute, Mr. Wray. I've got a
21 great court reporter, but she can only take one voice at a
22 time. Go ahead, Mr. Wray.

23 BY MR. WRAY:

24 Q. Do you have an LED TV?

1 A. Yes.

2 Q. So these signs, whatever you're using them for now
3 are TV sets on a stick, aren't they? LED lights, right?

4 A. Okay. Yeah.

5 Q. So I'm just pointing out that from the standpoint
6 of us as the citizens of Reno, if you can take down a static
7 board, Saunders can put up a digital board, we the people of
8 Reno are going to be looking at between six and eight times
9 as much advertising as they would the static board?

10 A. I guess if you stood in one place, you could take
11 in more advertisers, but there's only one -- there's still
12 only one structure there. So you're not subjected to any
13 more clutter than you were before. And there was no
14 requirement of ratios when we tripled the advertisers from
15 static to tri-vision.

16 Q. I know, but if I'm sitting at the light on South
17 Virginia Street, I see three or four advertisements in the
18 45 seconds instead of one, right?

19 A. That's correct.

20 Q. Okay. So isn't that something that we, the
21 citizens of Reno, have a right to say we don't want more of
22 that?

23 A. Yeah. You certainly have that right.

24 Q. How do we turn it off? How do we in our car turn

1 off your billboard? We can turn off our cell phones, we can
2 turn off our computers, we can turn off our calculator, how
3 do we turn off your billboard?

4 A. Well, we could unplug it if it's a digital.

5 Q. We can't, can we? We're forced to watch it,
6 aren't we? In fact, you want us to and that's why you tell
7 advertisers, if we put up this digital billboard, the people
8 will have to watch it. They can't get out of their cars and
9 turn it off. They have to watch it. That's what you tell
10 your advertisers?

11 A. It's the same as a static board right now, you
12 can't turn it off.

13 Q. All right. Well, in this case, you would rather
14 have no digital billboards than not be able to be treated the
15 same as Clear Channel? That's your position?

16 A. Yes. And to be clear, we are interested in
17 digital billboards, obviously. Everyone in the industry is.
18 And we feel like it's a huge advantage to our advertisers and
19 to those who it kind of opens up, you know, create a
20 flexibility to be able to use it, and it's a huge public
21 benefit.

22 Q. It's a quantum change, isn't it, between a static
23 and a digital? That's why you're so interested? It's a big
24 change.

1 A. I would say it has advantages, but I would say
2 that the use is the same.

3 Q. Yes, but from the standpoint of you as the company
4 that is putting the sign up and your advertisers, there's a
5 quantum change going on from this new technology from one
6 picture on a sign for a period of time to multiple ones on
7 that same sign in a short period of time. That's a quantum
8 difference, isn't it?

9 A. In the same fashion that, you know, rotary phones,
10 going from rotary phones to touch screen phones is a quantum
11 leap. Their use is the same, it's just a better technology
12 to deliver the message.

13 Q. Thank you. I didn't keep my promise about not
14 asking questions. Thank you very much.

15 THE COURT: Thank you, Mr. Wray. Mr. Shipman.

16 MR. SHIPMAN: Thank you, your Honor.

17 CROSS EXAMINATION

18 BY MR. SHIPMAN:

19 Q. I'll try to be short, too. So how many billboards
20 does Saunders have physically erected in Reno? I had heard
21 seven?

22 A. Seven.

23 Q. How many does Saunders have in the bank?

24 A. That's a good question. I've heard anywhere from

1 five to one to none. And so I know that Claudia Hanson
2 represented to the city council that we had five. When I
3 asked her to provide us with documentations, some sort of
4 receipt, she was unable to do that. So that the burden of
5 that proof was on us. And so I'm not really sure if we have
6 anything banked, short answer.

7 Q. Why is that difficult to know offhand? What's the
8 complicating factors there?

9 A. Because I don't have physical receipts. I don't
10 have anything to trade in. So I don't know what -- I've
11 never seen any criteria for what is required to prove that
12 you have a receipt. And I don't have physical pieces of
13 paper, but I believe that I have rights.

14 Q. Okay.

15 A. In certain locations.

16 Q. It's fair to say you don't know exactly how many
17 banked billboards you have, but it could be five? Is that
18 what I'm hearing?

19 A. Well, that's what was represented, but I don't
20 believe I have that much.

21 Q. You think it's a quantum leap more than that or do
22 you think that's a pretty fair estimate?

23 A. I don't think we have more than that. I think
24 there's a possibility, a great possibility that we have less

1 than that.

2 Q. How many billboards has Saunders bought or sold in
3 the last couple years, let's say since 2011, in Reno, the
4 City of Reno?

5 A. We have -- we've subleased, but we've not bought
6 any billboards.

7 Q. And can you explain sublease real quick, what that
8 means?

9 A. Well, there's another single operator who also has
10 concerns with this, obviously, because he has one billboard.
11 He can't utilize the new technology, because he has no banks
12 to trade in. And he's entered into an agreement to allow us
13 to operate his sign for him. And so that particular sign is
14 not owned by Saunders, but we rent it out to advertisers.

15 Q. So that's like even another avenue to get a sign
16 in Reno is you can essentially -- you could go to like Clear
17 Channel and sublease a sign, theoretically?

18 A. Theoretically, you could, yes.

19 Q. How many signs -- I mean, we talked about bought
20 and sold, we talked about subleasing. Have you transferred
21 any billboards to any third party, like a non-compensable
22 transfer in the last couple of years. Okay. No?

23 A. No.

24 Q. Has Saunders received any billboards from any

1 third parties in the last couple of years?

2 A. No.

3 Q. Okay. A static billboard, just in kind of, I
4 don't want to get into the weeds on this, but if you were to
5 put a static billboard, I mean, what would it cost to do that
6 just in general terms?

7 A. The structure?

8 Q. Yeah, the structure, I mean, and considering --
9 what I'm looking for is a general number for how much it's
10 going to cost to erect it, maintain it, kind of service it,
11 like a total cost of ownership type of thing?

12 A. Roughly, you know, it depends, there's
13 different -- even within the static signs, there's different
14 structures. There's --

15 Q. A range is fine.

16 A. Right. Probably a rough idea would be \$60,000 to
17 \$75,000 for a structure.

18 Q. Now, for like a digital billboard, what is the
19 cost all in when you're erecting one of those? How much
20 would that cost to erect that?

21 A. The face of a digital would be roughly about 200,
22 \$250,000 on top of any costs, you know, to upgrade it or
23 to -- I mean, to help it to support the digital.

24 Q. So as I understand it, it's something in the

1 neighborhood of maybe a four to one cost differential between
2 a static and a digital?

3 A. That would be fair to say.

4 Q. Just some quick ones. Do you have any billboards
5 in Washoe County outside the City of Reno?

6 A. We have some in Sparks.

7 Q. Do you have any digital billboards anywhere within
8 Washoe County proper?

9 A. No.

10 Q. You're aware that there are digital billboards in
11 Washoe County proper? I'm not talking about necessarily the
12 unincorporated areas, I'm just talking about the county.

13 A. Yes.

14 Q. And, in fact, in the Truckee Meadows, there's two
15 or three digital billboards that have been constructed on
16 Indian controlled land or in Sparks, are you aware of that?

17 A. Yes.

18 Q. And they tend to be located near highways, I80 and
19 I580?

20 A. Excuse me?

21 Q. I'm sorry. And those billboards are located next
22 to highways on either I80 or I580 or 395 as we call it?

23 A. That's my understanding.

24 Q. Now, we talked about, or you talked about this

1 notion of this agreement. Was there ever like a signed
2 agreement between industry types and the city council about
3 this deal?

4 A. A signed agreement?

5 Q. Yeah, like a contract.

6 THE COURT: Could you define what the deal is?

7 MR. SHIPMAN: Yeah, let me take a step back. I
8 apologize.

9 BY MR. SHIPMAN:

10 Q. The removal requirement deal, so be it 8-to-1,
11 4-to-1, 2-to-1, 3-to-1, I understood with your testimony that
12 that was a deal that was presented to the city council as an
13 offer that they accepted, as far as, you know, dealing with
14 the digital billboard issue. Is that a fair statement of
15 what your testimony was?

16 A. Yeah, because that was their words.

17 Q. My question is, other than -- I mean, we've got
18 the ordinance, but is there somewhere out there an agreement
19 that you're aware of that was signed by the city council, you
20 know, with industry representatives memorializing this
21 agreement?

22 A. No.

23 Q. Again, in your testimony, it's my understanding
24 that you recognize and acknowledge that really the purpose of

1 what the city council was doing was to reduce the number of
2 billboards within the City of Reno, correct?

3 A. Correct.

4 Q. And, in fact, if you had a higher ratio, you know,
5 so a player like a CBS or a Clear Channel would have to give
6 more up to get a digital billboard, correct?

7 A. Right.

8 Q. And then on top of that, the ordinance
9 distinguished between restricted areas and unrestricted
10 areas, correct?

11 A. Uh-huh. Yes.

12 Q. And so these ratios, as your counsel was reading,
13 you know, through Pierre Hascheff were really tailored
14 towards these areas. So a 4-to-1 and an 8-to-1 ratio was
15 tailored for the restricted area, correct?

16 A. That's correct.

17 Q. And then a 2-to-1 ratio was basically everywhere
18 else, correct?

19 A. That's correct.

20 Q. And then, in fact, you can get a special exception
21 in the restricted area. Theoretically, you could bring it
22 down to a 2-to-1 removal requirement. Is that how you
23 understand it as well?

24 A. That's how I understand it.

1 Q. So effectively across the city, at a minimum,
2 there's a 2-to-1 requirement, correct?

3 A. Correct.

4 Q. Everybody has got to comply with that at a
5 minimum, not just, you know, big billboard players and small
6 billboard players. Everybody has got to comply with that,
7 correct?

8 A. Right. That's correct.

9 Q. And, of course, if you don't own a billboard,
10 you're at an even more of a competitive disadvantage, I would
11 imagine, correct?

12 A. Correct.

13 Q. Because you're not even in the market. Almost
14 done, but so the digital billboard ordinance does not require
15 your company Saunders to convert static billboards to digital
16 billboards, correct?

17 A. That is correct.

18 Q. And if you have a static billboard, and because of
19 the cap, you don't have the sufficient billboard inventory to
20 convert to a digital billboard, you still retain your rights
21 to that static billboard, correct?

22 A. Yes.

23 Q. And the digital billboard ordinance doesn't do
24 anything or it doesn't prevent you from engaging in

1 commercial speech, correct?

2 A. Could you repeat that, please?

3 Q. I'm sorry. The digital billboard ordinance
4 doesn't engage in your ability to engage in commercial
5 speech, correct? I mean, you can still sell advertisements
6 and put them on your static billboard and speak to the
7 public, correct?

8 A. Yes. But it restricts, as I said before, it
9 restricts who you can advertise to. This opens up a whole
10 new group of advertisers that typically would advertise on
11 the radio or maybe in the newspaper. And so it does
12 restrict -- by not allowing it, it does restrict, you know,
13 who can be on there.

14 So if you put in place an ordinance that while it
15 applies to everyone, it effects one company more than another
16 company. It could potentially, you know, create the monopoly
17 that we've been talking about. And that's the concerns that
18 I believe many of the council members had as well is that,
19 you know, we're creating a monopoly for one company and we're
20 restricting -- if we restrict it altogether, then certain
21 people won't be able to advertise.

22 Q. And that certainly went into the calculus based
23 upon everything that we've seen in the record today, right,
24 the fact that certain members were concerned about the notion

1 of creating a monopoly?

2 A. Right. That's the concern.

3 Q. That was Saunders' message from the beginning, you
4 know, just like it was Scenic Nevada's message from the
5 beginning, hey, we said no new billboards and we mean no new
6 billboards, correct?

7 A. Right.

8 Q. Saunders as a company has never made an
9 application to the city to convert a static billboard to a
10 digital billboard, correct?

11 A. That is not true.

12 Q. Oh, they have. So can you give me the background
13 on that real quick?

14 A. My brother, who is also a principal of the
15 company, approximately around 2005, 2006 applied for a
16 digital billboard permit and was denied based on language
17 that the lighting, you know, we couldn't have backlit signs.
18 And everyone in the industry -- the reason we thought we
19 could still apply for that is everyone in the industry
20 understands what a backlit sign is. It's a sign that has
21 sort of a -- kind of a plastic front and it has lighting in
22 the back of it and that's how it projects out.

23 So that ordinance was written prior to LED. It
24 didn't contemplate the LED technology, and, therefore, it

1 didn't apply to LED's. So we were denied based on that.

2 And around that same time, they began discussions
3 about taking a look at the lighting and the health, safety,
4 welfare issues. And so we were kind of patient with that
5 denial and decided to work through the process. And then it
6 turned out to be about a five-year process of debating the
7 pros and cons of LED lighting.

8 Q. So we essentially had a ban in place during that
9 time when you applied and were denied?

10 A. There was no official ban from the city, as far as
11 not being able to use that. They just -- that was the city's
12 stance is that this part of the ordinance precludes you from
13 being able to put an LED face up. But there was always this
14 discussion that we want to look at that, because I think they
15 recognize that it was antiquated language, that it really
16 didn't apply to the industry at the time.

17 So, again, we were patient and wanted to work
18 through that process and hopefully come up with an ordinance
19 that would clearly, you know, allow us to use the technology
20 that was being used in other parts of the country.

21 Q. I don't want to get caught up on that word ban,
22 but I would say it was a prohibition from being able to use
23 that technology?

24 A. I don't think it was. My opinion is that the

1 ordinance at that time did not preclude us from using LED
2 technology. That was the interpretation that came back to
3 us.

4 Q. Okay. But with the enactment of the digital
5 billboard ordinance, that clearly created that mechanism,
6 that vehicle that digital billboards could be implemented,
7 correct?

8 A. Correct, if you're willing to give up something.

9 MR. SHIPMAN: That's it, your Honor. Thank you.

10 THE COURT: Thank you. Mr. Gilmore.

11 MR. GILMORE: I do have a little redirect. Thank
12 you, your Honor.

13 REDIRECT EXAMINATION

14 BY MR. GILMORE:

15 Q. Mr. Shipman asked you a question about the banked
16 inventories, and he said how many banked inventories does
17 Saunders have? I think your answer surprised everybody,
18 maybe not me, but why don't you explain that? What happened
19 there?

20 A. As far as the numbers or how we got to those
21 numbers?

22 Q. There was a city council meeting in July of 2012,
23 do you recall that?

24 A. Uh-huh.

1 Q. And the city council, we've already read the
2 meeting minutes from that meeting, I won't go back to it, but
3 the city council was inquiring about Saunders' position and
4 inquiring about Saunders' bank. Do you remember that?

5 A. Yes.

6 Q. And the city council during the closed session
7 after the public comment ceased, asked the question of
8 planning, do you remember that?

9 A. Yes.

10 Q. Tell the Court what happened to your best
11 recollection.

12 A. So, again, we brought up our concerns with the
13 ratio system, and the question was brought up, well, how many
14 banks does Saunders have? And Ms. Hanson said, they have
15 five. And one of the council members said, well, based on
16 that, then I can vote for it. Based on that information,
17 then I can go for it, because Saunders can do this.

18 Q. And what was your understanding of why that number
19 altered that particular city councilor's vote yes or no?

20 A. Well, I think he saw -- I think he thought, you
21 know, well, if they got five, they can practically update or
22 move to the new technology by trading in these banked
23 receipts.

24 Q. Was it your impression that however many banked

1 inventories Saunders actually had was a material portion of
2 that city councilor's vote? Was that a reason why the city
3 councilor decided to vote in your impression?

4 A. That was my impression.

5 Q. And then what did Saunders do after that to
6 clarify how many banked receipts they actually had?

7 A. I basically called Claudia and I said, I'd like --
8 I'd like to clarify how many we have, because I have -- I had
9 one report from the city that showed that we had four. There
10 were -- my uncle who was involved in obtaining the sign
11 company, he's 83 years old, and he didn't have a lot of real
12 clear recollection of where the locations were that we had
13 rights to and so there was ambiguity. And he had an opinion
14 on how many banks we may or may not have. And, clearly, I
15 didn't have any receipts. So I wanted to find out if the
16 city had that documentation, both the receipts that they
17 could actually physically give me and they could not produce
18 that.

19 Q. So the answer to the question, how many banked
20 receipts do you have depends on who you ask, right?

21 A. Yes.

22 Q. Exhibit 213, can you turn there real quick and
23 then we'll wrap this up. There was discussion about, Mr.
24 Shipman asked you, well, sir, if you only had one sign, you

1 could just go to your fellow competitor and buy a sign from
2 him, right?

3 A. Correct.

4 Q. Exhibit 213 is back to this e-mail from Mr. West
5 to Ms. Hanson. Middle of the page on Exhibit 213, Aaron West
6 says to Ms. Hanson, one other thought. They --

7 A. Is this the first page?

8 Q. I'm sorry. No, it's not, actually. It's on page
9 2791, which is about eight or nine pages from the back.

10 A. Is there a number at the bottom?

11 Q. 2791 -- 2971.

12 A. I'm there.

13 Q. This is an e-mail that I offered when Ms. Hanson
14 was testifying about Aaron West being curious about me. Do
15 you remember that?

16 A. Yes.

17 Q. At the bottom of that e-mail, he says, one other
18 thought, they, meaning Saunders, have billboards in Sparks,
19 which could be converted right now. If they are so fired up
20 on digital, why haven't they contemplated converting those
21 signs? That's what we did. Could it be they don't actually
22 have the money to do so and only care about this as a
23 strategy for selling their inventory? The value of their
24 inventory would at least triple. Do you know what he means

1 by that, the value of their inventory would at least triple?

2 A. With digitals?

3 Q. Yeah.

4 A. I guess he's referring to the fact that we would
5 be able to, you know, sell to more advertisers if we utilized
6 the technology. But, in fact, if we had to reduce the number
7 of boards that were available to advertisers, that would kind
8 of counteract that, wouldn't it?

9 Q. If the ordinance goes through as passed, how will
10 that in your impression impact the value of the bank?

11 A. It will significantly increase the value of the
12 banked permits.

13 Q. Why?

14 A. I've already inquired in case we lost this, if
15 there's banked receipts available from both Clear Channel and
16 others, and they're not going to sell them, because they're
17 valuable now. Before -- since they obtained the banked
18 permits, until this ordinance was contemplated, they were
19 never able to find locations to relocate to or they would
20 have built them. So, essentially, they became worthless and
21 now they're going to become valuable again if this ordinance
22 passes. And they will not sell them to us.

23 So it's not like you can walk across the street
24 and buy some banked receipts and then go trade them into the

1 city. It's extremely difficult and it will become more
2 difficult if this passes.

3 Q. You heard the testimony of Dwight Dortch where he
4 said, this is going to be like the pawn shop example where we
5 only have a certain number of pawn shops and now the pawn
6 broker's license is worth a million bucks. You heard that,
7 right?

8 A. Correct.

9 Q. What's your take on that?

10 A. It's the same thing with the banked receipts,
11 their value is going to go up exponentially, because they
12 don't have to trade in physical structures and they don't
13 have to cancel or be obligated to land leases that they don't
14 -- that they're not getting income from. So they'll be able
15 to just take in a piece of paper and get what they want. If
16 they have 70 of them, they can do it wherever they want.

17 Q. In your estimation, what is it that drove the
18 market price of those banks?

19 A. This ordinance.

20 MR. GILMORE: Thank you.

21 THE COURT: Thank you, Mr. Gilmore. Mr. Saunders,
22 you may step down. Counsel, what's your pleasure?

23 MR. WRAY: I'm here, your Honor, and you said
24 before that you would rule from the bench, I have a few

1 comments to make before you do that. But these parties
2 haven't rested.

3 THE COURT: Okay. Mr. Gilmore.

4 MR. GILMORE: I'll rest my case. Thank you.

5 THE COURT: Mr. Shipman.

6 MR. SHIPMAN: I'll rest as well, your Honor.

7 THE COURT: This is an important case. I want to
8 give some thought to all parties' position. I've had an
9 opportunity to read the cases that have been cited in your
10 briefs. I've read the record. But I'd like to issue a
11 written opinion as opposed to just ruling from the bench.

12 So we can do closing arguments now or we can come
13 back tomorrow at some time and do them then. What's your
14 pleasure?

15 MR. WRAY: Your Honor, how much time are you
16 willing to afford? We'll divide it up. I guess the city has
17 twice as long as I do, because they have two cases and I only
18 have one. Other than that, we can divide it up.

19 THE COURT: Mr. Shipman, how much time do you
20 need?

21 MR. SHIPMAN: Your Honor?

22 THE COURT: Can we do it all by 5:30?

23 MR. WRAY: I can.

24 MR. GILMORE: I can do 15 minutes, your Honor.

1 THE COURT: Mr. Shipman.

2 MR. SHIPMAN: That might be tight, your Honor.

3 THE COURT: Consider the fact that I've read the
4 whole file.

5 MR. SHIPMAN: That's true, your Honor. Yes, we
6 can make it happen.

7 THE COURT: Let's start. Mr. Wray.

8 MR. WRAY: Thank you, your Honor. In the interest
9 of brevity, I just want to say thank you to you and your
10 staff, your law clerk and everyone for allowing us to have
11 literally our day in court.

12 We presented this as an attempt to show you, first
13 of all, that everything that we put in the factual portion of
14 our first amended complaint was true. So that whatever you
15 do from there, if you were inclined to agree with the
16 position of Scenic Nevada, you could find, literally, as
17 findings of fact that all of the 50 paragraphs were true.
18 And as you know from our proposed findings and conclusions,
19 that's exactly what I presented, because of that reason.

20 Now, we talk about, based on those facts, which I
21 believe I can call largely undisputed facts, it is our
22 position that the language of the citizens initiative of 2000
23 is not ambiguous. That it is capable of only one reasonable
24 interpretation. And that when the language says the

1 construction of new off-premises advertising displays slash
2 billboards is prohibited, the language is talking about an
3 act or a process of an act; namely, the act of making
4 something. The act of building is prohibited. Because it
5 says the construction of new off-premises advertising
6 displays, billboards is prohibited. So in their wisdom, the
7 drafters of this proposed law asked the people to prohibit an
8 act or a process from happening.

9 If you look at statutes from other states that
10 define construction and define new construction, for example,
11 in California, Illinois, Iowa, I looked at these, and they
12 all come down in common. They talk about the act, or as the
13 dictionary would say, the act or process of constructing, the
14 building of something, especially a large structure such as a
15 house, a road or a bridge. By the way, the word new simply
16 means recent or recently made, created or invented.

17 So it's very simple. There's only one reasonable
18 way to construe this, and I challenge the Court or anyone
19 here, including the city, to adopt the city's interpretation
20 of this citizens initiative without adding words. In order
21 for them to prevail, in my humble opinion, they have to add
22 words like additional. They must add words like more or cap
23 to the clear words of the initiative.

24 So I don't have to do that. I can just say the

1 construction of new off-premises advertising displays,
2 billboards is prohibited and my meaning is clear. And I can
3 say, and the City of Reno may not issue permits for their
4 construction, the word again, construction. That's clear.

5 So when we showed the picture to the city's
6 witness and said, what is going on here, and the city's
7 witness said construction and a permit was issued for that
8 and Scenic Nevada testified to that, that's it. That's
9 exactly what was prohibited.

10 So the argument in my view by the city that this
11 has to be construed as merely a cap is not permissible under
12 Nevada law, because in order to make that argument, they have
13 to go away from the clear, unambiguous, one reasonable
14 interpretation and try to make it ambiguous by adding words
15 to this interpretation. We will see in the argument whether
16 they try to do that by adding words to this, but I think they
17 have to in order to make their case.

18 THE COURT: If this Court finds that, say, the
19 term new as used in this statute is ambiguous, what does it
20 rely upon to determine the proponents' intent in passing this
21 initiative?

22 MR. WRAY: You look at all the evidence in the
23 case that was presented, and, of course, you know what that
24 is. You understand Exhibit 6 is there. You know what the

1 pros and the cons were. You know the arguments that have
2 been made three times before about looking at the pro
3 version. Scenic Nevada arguing, yes, it's a cap in a way,
4 because you can't build any more. So whatever it is now is
5 obviously the cap. You can't build more. So we're saying
6 yes.

7 But they have to add words to that. They can say
8 it's only a cap or it's merely a cap. You won't find that in
9 the pro arguments. You won't find that. What you'll find in
10 the pro arguments is this caps the number of billboards at
11 the present amount. There can't be more.

12 THE COURT: Okay.

13 MR. WRAY: But what is interesting is as you know
14 from the arguments that happened three times now, we keep
15 pointing out to the city, if you want to go to that and talk
16 about what the voters were looking at in Exhibit 6 at the
17 time they passed this initiative and say to the voters, you
18 must have been thinking this, because this is what these
19 people wrote, you have to go past the bold printed language
20 of the initiative and into these arguments and believe that
21 every voter or most voters read them.

22 And that means if you believe that, they read the
23 con arguments that says, hey, by the industry, there's no
24 question, this ain't no cap. We can't build billboards.

1 That's what it says. Even the industry knows that. So
2 that's where you would start.

3 And then you would go to things like the city
4 attorney's memo in 2003 quoting Doug Smith who says,
5 emphatically, or something like that, or adamantly, or
6 vociferously, I forget what the adverb was, this was not a
7 mere cap. This was to stop construction.

8 And I think you simply say, it says what it means,
9 it means what it says, it stops the process of construction.
10 That's why we focused on that photo. We think that's the
11 best evidence, the photo itself. So we ask you to consider
12 that.

13 Please remember, and I don't know if this is going
14 to be intimidated, we are not asking for any vested rights of
15 any company or any person to the least bit be affected, in
16 the least bit. It would simply invalidate an ordinance
17 allowing digital billboards. That means the old ordinance
18 under which all these people were operating before stays in
19 effect.

20 They still have their banked -- well, they think
21 they have banked receipts. They should have. Whatever their
22 banked receipts are, they should have the signs that are on
23 the street. All of those things stay. Nothing about any
24 vested rights is affected whatsoever. I say that to dispel

1 in advance any opportunity for someone to try to say that
2 we're trying to take away something that was already there.

3 It goes to that argument about, well, we were
4 bringing it up in 2013 or 2012 and not in 2002, that
5 argument. It goes to that. Because in 2002 and 2003 when we
6 were objecting to this ordinance and saying this isn't what
7 it means, we didn't bring a lawsuit, so there was no decree
8 establishing the constitutionality of what they were doing
9 under Article 19, section two and section four. There was no
10 decree. But there was certainly an unconstitutional act.
11 And as we know, the continuing enforcement of an
12 unconstitutional law cannot be insulated by a statute of
13 limitations, Brown Versus Board of Education.

14 So to us, we're simply asking for the city to
15 recognize the reality that the people's vote means something
16 to them and that they should follow it and they should adopt
17 it. And it would avoid the very complex Exhibit 3 that you
18 had to read to prepare for today's proceedings or that
19 Ms. Claudia Hanson had to explain to us in some detail, which
20 has very complicated regulatory framework for a process that
21 is subject to debate before it's even for formally
22 implemented. And we pointed out was so unnecessary and that
23 we would tell people like the Saunders family from Utah,
24 folks, we're just not going to be in that business anymore.

1 What is, it is, but we're not going to be in that business
2 anymore and not put them in the position of being mistreated
3 or feeling mistreated, because they're not treated like they
4 should be by the guy from California for Clear Channel.

5 And that truly is the how we feel. We don't want
6 anyone to feel unequally treated or have their rights
7 affected. So let's just get rid of that argument and just
8 say the digital billboards ordinance in all of its flaws and
9 all of its complexity is a bad law and violates the citizens
10 initiative.

11 In the middle of our -- I'm going to be done in
12 four minutes -- in the middle of our presentation to the
13 planning commission in November of 2011, Lori Wray found
14 through her connections with Scenic America this Scenic
15 Arizona case, and it's been oversimplified what our position
16 is.

17 Our position is that the Scenic America case came
18 as a bolt out of the blue, because it pointed out that we
19 were overlooking something obvious, which was that
20 intermittent lighting, which is what characterizes digital
21 billboards, they do go on and off intermittently, in fact,
22 every eight seconds in this city, is going to be in violation
23 of the federal law which is implemented through state
24 agreements called federal state agreements and adopted in

1 Nevada statutes in NRS 410, et. seq.

2 We point that out, because of the fact that we
3 never thought of it until it came up in Arizona and a case
4 called Scenic Arizona in Phoenix did what we probably should
5 have done and argued the intermittent lighting thing is a
6 violation of federal law as implemented through the State of
7 Nevada.

8 And just to anticipate whatever the city attorney
9 might say about this, we've gone all the way through that
10 process of the federal, the federal state agreement, the NRS
11 410, the regulations and the NAC, down to the current
12 adoption of AB 305 in 410 to allow the Department of
13 Transportation of Nevada to define what a digital billboard
14 is. We've gone through all of that process and we cannot
15 find, and this is what I would challenge the city attorney to
16 tell you, any record of a single exhibit in all of these
17 6,000 pages that had produced to us, that the State of Nevada
18 has told the federal government that the Reno ordinance
19 controls as opposed to state law.

20 In the absence of that evidence, that's the -- the
21 end of the line is, if you look at the FSA from 1972 and
22 1999, and I have a copy if you want as a courtesy, the end of
23 the line is if they can't show that, there is no authority
24 for the City of Reno to be adopting digital billboards within

1 660 feet of a federal highway and we have two bisecting our
2 town.

3 Did you notice in the testimony of Ms. Hanson when
4 she was talking about areas where no digitals were permitted
5 and she was talking about dark skies and she was talking
6 about the area west of Robb Boulevard and north on 395
7 somewhere, isn't that interesting? Those are the areas that
8 the Ladybird Johnson Act protected. Those are the areas
9 outside incorporated city limits.

10 Now we think of them as incorporated, because we
11 an annexed it. But before it was annexed, it was protected
12 by federal law. And now the city is saying, we've annexed
13 it, we're steamrolling right over federal law and putting up
14 billboards, or in this case, the present council has allowed
15 a dark sky area there and a dark sky area there. But they're
16 asserting their right to do that, and that's wrong. That's a
17 violation of federal law. And that's why it is dark skies
18 out there, because there was a federal law protecting it all
19 these years until Reno annexed it.

20 I mean, Reno is in the process of opening the door
21 to a Pandora's Box of advertising on TV screens on a stick
22 everywhere. This is just the first step. This is just the
23 first step. We have to stop them in their tracks right now,
24 because what they're doing is the same thing they did in the

1 year 2000, 2001 and 2002, your Honor. In those years, what
2 happened was the city made deals with billboard companies and
3 then adopted an ordinance after the fact to sanctify and
4 ratify what they were doing, which was making deals with
5 billboard companies. The same thing that Mr. Saunders was
6 complaining of in 2014.

7 They're making deals with billboard companies
8 behind the backs of the people and then trying to foist this
9 ridiculous interpretation of the citizens initiative on us by
10 saying, that's really what the voters wanted, when really
11 they know, we didn't want that at all. We didn't want any
12 more construction, period. They know that.

13 But they also know that they had to settle
14 lawsuits and they thought at the time they needed money for
15 \$300 million hole in the ground out here, instead of to buy
16 off billboards, which was a much better use of that \$300
17 million in my humble opinion. If they had to spend money,
18 get rid of an eyesore and a public nuisance.

19 Now, I said public nuisance, because there's two
20 different statutes in Nevada that say billboards are public
21 nuisances. Two different statutes say that in two different
22 chapters. One of them is Chapter 405.020. That's one
23 section. The other section is 410.360. So anyone who starts
24 talking about the benefit of billboards has to run to the

1 fact that we have two statutes in Nevada saying that these
2 billboards that not erected according to the requirements of
3 state law, which includes the Highway Beautification Act as
4 adopted by Nevada and implemented through its regulations are
5 public nuisances. And 410.410 says, the most restrictive of
6 Chapter 405 or 410 applies.

7 By the way, just so you know, 405.050 says this,
8 this is one that I haven't cited to you before, 405.050, no
9 permit for a billboard may be issued, which measurably
10 destroys the natural beauty of the scenery. That's the
11 language of the our legislature talking about billboards.
12 And in case there's something in anyone's mind about whether
13 or not our legislature believes that billboards are a public
14 nuisances and that they are in fact capable of destroying the
15 natural beauty of our beautiful state. So the legislature
16 has already spoken about this. Let's not have a debate.
17 Billboards are a public nuisance unless they're within strict
18 guidelines.

19 And, finally, on the sign code itself, as you
20 know, 902 A says the voter initiative. 902 B says, we, that
21 is, the city council, adopted this in 2002 interpret this as
22 a cap. And then 908 has the banking and relocation
23 ordinance. These are absolutely built into the concept of
24 having digital billboards. You cannot have digital

1 billboards in Reno without this banking and relocation
2 concept, which was unconstitutional at the time it was
3 adopted in 2002 and is still unconstitutional today and it
4 can't be enforced, because it's unconstitutional.

5 And Mr. Saunders is right about that. They should
6 be treated that way. They should be treated equally. He is
7 correct. We disagree on whether billboards should be here in
8 Reno at all, but we do agree on that.

9 So I appreciate very much, and if you have any
10 questions for me, please.

11 THE COURT: No. It's all right. You touched upon
12 all the points.

13 MR. WRAY: Thank you very much and thank you again
14 for your accommodating all of us.

15 THE COURT: That's quite all right, Mr. Wray.
16 Mr. Gilmore.

17 MR. GILMORE: Judge, I've just handed counsel what
18 is kind of a summation by virtue of slide and I'd appreciate
19 it if I could hand it to Madam Clerk.

20 THE COURT: Go ahead.

21 MR. GILMORE: Judge, I also appreciate your
22 willingness to give this your full attention and I'm thankful
23 for your staff and your hard work. And I do appreciate, I've
24 told you this before, I appreciate trying cases in your court

1 for the respect you show the attorneys. And I think counsel
2 here both sides did a fine job, so I'm appreciative of my
3 brethren of the bar.

4 In Exhibit 234, Dave Aiazzi said to the newspaper
5 people, we're going to do a digital upgrade, because we've
6 got an industry asking for a favor in order to make money.
7 The industry is looking for a favor.

8 Now, what's the favor? Judge, Saunders Outdoor
9 Advertising's constitutional First Amendment claim is very
10 nuanced. And if you don't understand the First Amendment and
11 if you haven't had to try these cases before, which I've
12 done, you can swim right by it and not even see it. So I'm
13 going to focus specifically on the First Amendment argument
14 and how nuanced it is.

15 I love this quote, because it tells you exactly
16 the mindset of the City of Reno in enacting the ratio. They
17 believe that allowing the billboard industry to use a medium
18 of expression is a favor to the citizens. Another way of
19 saying that, is displaying speech in a medium that is
20 available a favor to the citizens of the City of Reno?

21 And the question is, does the city get to say, you
22 know what, we will allow you to speak, but only with our
23 permission and we will do you a favor by allowing you
24 different types of expression. Well, guess where we've seen

1 that before, judge? We saw that before in the '60s when
2 cities opposed parade applications by disenfranchised
3 citizens who wanted to express their rights by marching down
4 Main Street and the city saying, you know what, no, we're not
5 going to give you permission to express yourself that way.
6 The Supreme Court overturned it.

7 We had cities oppose mass sit-ins by people who
8 disapproved by the war effort. The Supreme Court overturned
9 that. We had cities say you can't express yourself by
10 putting expletive language on your jacket when you're walking
11 into the city hall, because you disapprove of the draft. And
12 the Supreme Court said, no, you can't do that.

13 We had cities opposing different versions of
14 obscenity, the way in which people wish to express
15 themselves, the medium in which they choose to express
16 themselves and the Supreme Court overturned that.

17 And then, finally, recently we have cities
18 opposing expressions of affection for couples of the same
19 gender and we have the Supreme Court overturning that city by
20 city.

21 This is an expression case in the very meaning of
22 the word. The city says, we will allow the expression of
23 speech on a certain medium, but only if you're willing to
24 give up rights in order to do that. That quid pro quo is

1 illegal.

2 First slide, this is a very, very important tenant
3 of constitutional law as it applies to the Central Hudson
4 test. It's the city, judge, not Saunders that has the burden
5 of showing that the ordinance passes the Central Hudson test.
6 The quote from Edenfield, a really, really good restriction
7 of medium of speech case from the Supreme Court, 1993. It's
8 the party seeking to uphold the restriction on commercial
9 speech carries the burden of justifying it. This is a
10 restriction case.

11 The City of Reno says, you did not used to be able
12 to express yourself through digital medium. Now you're going
13 to be able to, but we're going to restrict your free ability
14 to do that. This is a restriction of speech. That's why it
15 falls under Central Hudson. I think counsel agrees with me
16 on that.

17 The next slide, a court cannot escape the task of
18 assessing the First Amendment interest. There must be a
19 weighing of the public interest allegedly served by the
20 regulation. Here is the crux of Saunders' case, performance
21 of this task requires a particularized inquiry into the
22 nature of the conflicting interest at stake here. Key right
23 here, beginning with a precise appraisal of the character of
24 the ordinance as it affects communication.

1 This is not a garden variety ordinance. This is
2 an ordinance that restricts the ability of citizens to speak.
3 Therefore, it is entitled to specific and particularized
4 inquiry as to how this restriction affects the ability to
5 communicate.

6 The character of this ordinance is to allow a
7 medium of expression, to provide it to some and not to
8 provide it to others. And they do so, this is the important
9 part I'm going to get to in a minute, they do so with
10 non-health, safety, welfare conditions. This is what the
11 Supreme Court says. The Supreme Court says if you want to
12 display, if the city wants to restrict the ability of
13 somebody to speak, then they have to ensure that the
14 restriction goes towards the evil in which that speech is
15 intended -- is likely to create.

16 So, for example, if you want to have a parade down
17 Main Street to oppose the war effort, the city is allowed
18 under the First Amendment to say, you know what, we aren't
19 allowed to regulate the content, but we can regulate things
20 like the time of day, what streets you're going to go down,
21 those kinds of things.

22 Now, if the city says -- if the city wants to
23 restrict speech by limiting health, safety and welfare
24 factors, they can do so. Okay. Because they've identified

1 an evil that is associated with parading, for example. The
2 evil is that it could just be massive chaos and they don't
3 know what street they're going to be on, they don't know what
4 they're going to be doing, they don't know what time of day.

5 So the city says, we are going to restrict those
6 kinds of issues, time, location, manner. You can protest on
7 one side of the street, but not the other side of the street.
8 Those are the kinds of restrictions of speech that are
9 directly related to the evil in which they're trying to
10 curtail. That's the nuance of this case.

11 So that brings us to the third prong of Central
12 Hudson. Does the restriction on speech directly advance the
13 state interest? Here's what ordinance does, the ordinance
14 prohibits the natural flow of the expression of speech of the
15 billboard. It used to be wood. It used to be wave a hand on
16 a sign on a street, and then they got a wood sign, and then
17 they have a vinyl sign, and then they have a tri-vision sign,
18 and now they have a digital sign. And now the city says, if
19 you want to utilize that expression, then you have to give us
20 something. Okay.

21 Does that restriction of speech directly advance
22 the state interest? Well, what are the state interests?
23 This is the super nuance of Saunders' argument. What is it,
24 judge, that's inherent in the upgrade from a static to a

1 digital that the city could possibly be worried about? Well,
2 there are a few things. There is something inherent about
3 the upgrade from static to digital that the city could be
4 worried about. And that is things like location, lighting,
5 spacing, whether or not it's going to beep, whether or not
6 it's going to emit noises, whether or not it's going to be
7 animated. Those are the evils that the city might identify
8 in its efforts to restrict that medium of speech. Okay.

9 When the Supreme Court talks about the substantial
10 governmental interest, what they're talking about is the
11 government identifying the evils that are associated with the
12 type of speech that -- or the medium of speech that is going
13 to be displayed. That's what the Supreme Court talks about.

14 So what the city says is, we want to make a
15 restriction so you can't use that medium of speech. And then
16 they go ahead and don't identify a single evil associated
17 with that medium of speech. They don't do it and they
18 admitted it.

19 We have request for admissions, we have several
20 statements from the city councilors, we have the live
21 testimony of the witnesses, not a single one has come into
22 court today, and there isn't a single exhibit, where the city
23 council said, you know what, we think we're going to restrict
24 the upgrade to digital speech, because there's some things

1 about digital speech we simply don't like. We don't like the
2 fact that it's bright. We don't like the fact that it
3 distracts drivers. We don't like the fact of all of that.
4 They could have said that and had they made those findings,
5 then they could enact an ordinance that directly targets the
6 evils associated with digital billboards, but they didn't do
7 that.

8 They said, we acknowledge that there might be some
9 inherent health, safety and welfare issues related to the
10 upgrade. And then they completely ignore it and they say, we
11 are going to utilize a ratio system that addresses not a
12 single one of the health, safety, welfare requirements.

13 Now, the city would say, well, yeah, but if we
14 enact a ratio system, then the practical and natural flowing
15 affect is to reduce clutter. Well, that's true. That's
16 true. And guess how many times that kind of argument has
17 been made in the Supreme Court? A lot. And every time it
18 fails.

19 The case of Snyder versus New Jersey, 1939, the
20 city says we, the State of New Jersey, wants to reduce
21 litter. This is on about the fifth or sixth slide.

22 THE COURT: Go ahead.

23 MR. GILMORE: The city wants to reduce litter,
24 because littering has become a problem. So what do they do?

1 They say, nobody is permitted to pass out handbills in the
2 city limits. So they say, we address littering as being an
3 issue we want to resolve. That's the ends upon which we're
4 trying to reach, and the means are we're going to prevent
5 hand billing.

6 What do you think the Supreme Court said to that?
7 The Supreme Court said, yeah, you're right, State of New
8 Jersey, if you prohibit hand billing, it's probably going to
9 have a natural flowing reduction in the amount of litter.
10 Because if people aren't out hand billing, then one less hand
11 biller drops a piece of paper on the ground, you have one
12 less piece of litter.

13 But then they said, yeah, but think about the fact
14 that it's not merely an incidental restriction on speech,
15 it's an absolute restriction on speech. And there's not a
16 significant tie between the claim that they wish to reduce
17 litter and the idea that they're going to restrict the
18 ability to express speech through the medium of hand billing
19 and the Supreme Court overturned the ordinance. That's
20 exactly what we have here.

21 The city would say, well, it flows. If you want
22 to reduce clutter, then simply make a ratio system that the
23 industry members will voluntarily in order to utilize the new
24 speech will reduce clutter, and there you go, wham, bam,

1 done.

2 First Amendment does not permit that, because the
3 ratio system is not specifically tied to any finding that the
4 upgrade from static to digital provides in terms of the
5 evils. That's the nuance of this argument.

6 We're talking about the prescription on the
7 ability to upgrade from static to digital. What are the
8 evils associated with that? If the city does not spend the
9 time to make findings that show that there are evils or
10 drawbacks, health, safety and welfare drawbacks associated
11 with that upgrade, then they can't legislate and restrict
12 that speech.

13 Anymore than they could say, we don't like people
14 using cardboard instead of newspaper in the street. If you
15 want to make newspapers, you can't use cardboard, you have to
16 use newspapers. Why? What does that got to do with
17 anything? It has no rational connection. Same issue here.

18 Just simply because they want to reduce clutter
19 does not mean they get to restrict a medium of speech for
20 which they have not identified specific health, safety,
21 welfare factors. I admit, judge, it's a very nuanced
22 argument.

23 The city's response, well, if you want to utilize
24 the speech that we are making available to some, simply buy

1 in. You heard that and you'll probably hear it again. Guess
2 what? That sounds familiar, too. If you want to vote, you
3 have to own property. We've heard that before, right?
4 Sorry. Fifteenth Amendment overruled that.

5 If you want to vote, then you just have to go
6 learn how to read or maybe you have to have a grandfather who
7 voted. Remember the old grandfather clause voting cases from
8 the South? Overturned by Guinn v. United States. If you
9 want to broadcast a political message, go buy a TV station,
10 or better yet, go buy real airtime from your competitors.
11 Overturned by FCC fairness doctrine.

12 If you want to place a newspaper box on city
13 property to advertise your special quirky newspaper, then go
14 get permission from the Mayor. Wrong. Overturned by the
15 City of Lakewood. Telling somebody if they want to speak,
16 simply buy in is not something that the constitution can
17 permit. And that is an argument the city will make, rest
18 assured of that.

19 The fourth prong in Central Hudson. Is it
20 narrowly tailored? There are a couple of cases I want to
21 talk about and I'm going to spend two minutes talking about
22 one case, and then, your Honor, I will rest.

23 There was a case in 1993 called the Edenfield
24 case, and the Court probably recalls something about this.

1 The Edenfield case, the city said, we do -- the State said,
2 we do not want to allow CPAs to directly solicit their
3 clients. They entered an ordinance that prohibited CPAs from
4 soliciting clients directly. And they said the reason we
5 don't want to do that is we want to prevent fraud on the
6 public.

7 They went to the Supreme Court and the Supreme
8 Court said, wait a minute, we understand you want to prevent
9 fraud and we understand that that is an honorable goal and
10 that's an honorable mission is to prevent fraud. But how is
11 it that preventing CPAs from directly soliciting clients is
12 narrowly tailored enough to ensure that you're preventing
13 fraud? Isn't there something else you can do that is far
14 less restrictive on CPAs than simply telling them that they
15 can't solicit directly on their clients? And the Supreme
16 Court threw out the ordinance.

17 In 1995, here's a really good one, 1995 the
18 federal government said you cannot advertise the quantity of
19 your alcohol in your alcoholic beverage. You can't put five
20 percent or 3.5 percent or double or triple. You just
21 couldn't do it, federal law. Coors sued and in the United
22 States Supreme Court, the solicitor general said, we have an
23 interest in ensuring that we don't have strength wars between
24 the brewers. Your brew is too weak and our brew is strong,

1 buy ours. The Supreme Court said, how is that possibly
2 narrowly tailored enough to restrict the type of advertising
3 in order to prevent a strength war? The Supreme Court said,
4 we see absolutely no connection between the two.

5 If you want to address the problem of strength
6 wars, enter a regulation that controls the amount of alcohol
7 content in the beverage. Don't just tell them they can't
8 advertise it. The Supreme Court said that's how you narrowly
9 tailor it.

10 The Edenfield case and the Rubin case, compare
11 that to the City of Reno case. They want to reduce clutter.
12 So what do they do? They say, we are not going to allow you
13 to use the natural progression and your ability to express
14 your speech in a medium that is available. Totally
15 counterintuitive to the city's stated purpose. It's more
16 restrictive than necessary.

17 I will submit the rest of this case on the briefs,
18 your Honor. I appreciate your time and I will ask that,
19 respectfully, that the Court enter judgment in favor of
20 Saunders and a permanent injunction enjoining the city from
21 enforcing this ordinance. Thank you, judge.

22 THE COURT: Thank you, Mr. Gilmore. Mr. Shipman.

23 MR. SHIPMAN: Thank you, your Honor. I'm going to
24 start with addressing the Saunders case first, kind of in the

1 interest of time.

2 THE COURT: Let me get my notes caught up. All
3 right.

4 MR. SHIPMAN: Your Honor, real quickly, Central
5 Hudson, again, you must assert a substantial interest to be
6 achieved by the restrictions on commercial speech is the
7 first prong. Second prong, the restrictions must directly
8 advance the State's interests involved. And third prong, it
9 must not be more extensive than necessary to serve that
10 interest.

11 What the Supreme Court has also said is that what
12 precedence requires is a fit between the legislature's ends
13 and the means chosen to accomplish those ends. A fit that is
14 not necessarily perfect, but reasonable. That represents not
15 necessarily the best disposition, but one whose scope is in
16 proportion to the interests served. That employs not
17 necessarily the least restrictive means, but a means narrowly
18 tailored to achieve the desired objectives.

19 Again, what the Court is saying there is that it's
20 not one answer. I mean, we've got different parties at the
21 table right now. Each of them have different ways of
22 addressing these problems, the billboard clutter, the
23 proliferation problem. And the Court is not requiring the
24 city to come up with the actual one solution that works. It

1 just has to be reasonable, your Honor.

2 The city has already stated that it has
3 substantial government interests in traffic and safety and
4 aesthetics, and I think all the parties concede that. And I
5 think going to the notion of the nuance, we heard that notion
6 over and over, the nuance is kind of the important thing to
7 talk about here, because that's where we need to break it
8 down and really understand what we're looking at.

9 So the first point we want to make is the Reno
10 voters enacted the off-premises billboard ban when they
11 adopted the initiative in 2000. They didn't place a similar
12 ban on on-premises advertising displays. That was some of
13 the charges in the complaint was that there was some sort of
14 discrimination going on there.

15 But we have the Metro Media case, which again has
16 been backed up by just a legion of Ninth Circuit cases,
17 including the Ackerly Communications v. Prochellis, 108
18 federal third, 1095; the Outdoor Systems, Inc. versus City of
19 Mesa, 997 F. Second, 604; Desert Outdoor Advertising versus
20 Moreno Valley, 103 F. Third, 814; and Members of the City
21 Council of the City of Los Angeles v. Vincent, 466 U.S. 789.
22 Which basically say, that's okay, you can ban billboards. So
23 the ordinance that was adopted by the voters in 2000 was
24 totally appropriate in light of the Metro Media.

1 So the banning of off-premises billboards, but
2 leaving on-site billboards intact, it is a reasonably narrow
3 tailoring means to accomplish the ends of advancing the
4 city's traffic and safety concerns and that's what the Metro
5 Media and its progeny really talks about.

6 THE COURT: Slow down.

7 MR. SHIPMAN: Twice the cases in half the time.
8 The removal requirements, again, the city's position is that
9 the removal requirements directly advance the city's interest
10 in decreasing billboard clutter and they're not more
11 extensive than necessary to serve the city's billboard
12 clutter interests.

13 So prior to the adoption of the digital billboards
14 ordinance in 2012, the City of Reno prohibited digital
15 billboards ordinances. I mean, it was just between 2000 and
16 2012, you couldn't, and you've heard Mr. Saunders testify to
17 that, he could not put up a digital billboard. And that's
18 the way, even with the moratorium that lasts today, but for
19 the digital billboard ordinance.

20 Like the initiative petition that was done in
21 2000, the conforming and banking ordinances, which were,
22 again, in 2002 and 2003, the city imposed the removal
23 requirements for digital billboards to further the traffic
24 and safety and aesthetics goals. So like you heard Scenic

1 Nevada testify to, you know, the city council's intent was to
2 clear billboard clutter by allowing trades. Some traditional
3 billboards might be removed to erect a digital billboard.
4 That's kind of what we've been talking about.

5 The digital billboard ordinance established a
6 tailored removal requirements for different parts of the
7 city. So you had in areas that had significantly more
8 billboard clutter, the restricted areas, that's in 904 B 5,
9 they had higher removal requirements. They had the four to
10 one, you had to remove four existing to get one digital, or
11 an eight to one, you had to eliminate eight banked to get one
12 digital. And then the unrestricted areas, which is
13 essentially the rest of the city, it was a two to one removal
14 requirement and that could either be banked or existing.

15 So by implementing these removal requirements, the
16 ordinance directly reduces the number of legal nonconforming
17 billboards and decreases the billboard clutter in targeted
18 areas of the city. So you have in more clutter areas, the
19 removal requirements are higher. In the less cluttered
20 areas, the removal requirements are lower.

21 You heard testimony that the billboard operators
22 are not required by law to convert their static billboards to
23 digital billboards. Nobody is holding a gun to their head.
24 That's their decision to make based upon their business

1 model. The decision to convert remains with the operator and
2 the removal requirement only comes into play in cases where
3 an operator decides that it's in his best business interest
4 to do that.

5 And this is the part I think the city disagrees
6 the most with Saunders' characterization. The removal
7 requirement does not suppress an operator's ability to engage
8 in commercial speech. That is just not the case. In the
9 litany of cases that were read off today, you were talking
10 about handbills. So, you know, the ordinance said, no, you
11 cannot do handbills in order to eliminate litter. That is
12 not what is happening in our case at bar, your Honor.

13 In our case at bar, if you don't get a digital
14 billboard, you still have a static billboard. The city is
15 not restricting the ability of the operator to engage in
16 commercial speech. So that, I think, is a specious argument
17 and you see that throughout.

18 The digital billboard ordinance does not treat
19 operators differently based upon the number of billboards
20 they own or they have banked. Regardless of the number of
21 billboards an operator owns, all operators seeking to
22 construct a digital billboard must comply with the minimum
23 two to one removal requirement. So you can get the special
24 exception in the restricted area. You won't have to comply

1 with the eight to one or the four to one. But you will have
2 to comply with the two to one, which is the same thing that
3 everybody else in the city has got to comply with. I think
4 that's important, your Honor.

5 And the fact that you have a special exception, if
6 you can't comply with the four or the eight is important,
7 too, because, again, that shows this is really narrowly
8 tailored to trying to really reduce the clutter in these
9 restricted areas and really tailor those removal requirements
10 to specific problem areas that are in the city. That's
11 really what the council was trying to do.

12 It's been characterized as a deal, it's been
13 characterized as, you know, a compact, what have you, but at
14 the end of the day, I think the evidence has shown, and we
15 saw it in the minutes, that really what the city was trying
16 to do and what council was trying to do collectively was to
17 reduce that billboard clutter and these tailored requirements
18 do exactly that.

19 The digital billboard ordinance does not grant
20 city officials unbridled discretion in approving or denying
21 digital billboard applications. This is not a City of
22 Lakewood case. This is not, you know, where we're going to
23 have the -- we're going to have the Mayor decide whether or
24 not these billboards go up.

1 We had testimony of Claudia Hanson that said,
2 look, if you meet the locational requirements, if you meet
3 the removal requirements, if you meet these general
4 standards, you get it, you're done. The building permit is
5 issued. The city council never sees it. The only time that
6 the city council comes into play is when, look, you want to
7 put something in a restricted area and you can meet some of
8 these and you can get into the special exception, well, as
9 long as you can meet these objective criteria, then you're in
10 the game. And the city council is going to have to approve
11 that application if you can show that these objective
12 criteria are met.

13 And again, it's a two to one. You can go down to
14 two to one. So you're going to be treated the same in the
15 restricted area that you are outside the restricted area.
16 And that's the ability to have access to that special
17 exception is important. That shows the narrow tailoring.

18 Of course, an eight to one, a four to one is
19 great, because when CBS or Clear Channel comes in, you're
20 going to get four to one or eight to one number of boards
21 taken off the market. That's a huge benefit, too, and that
22 helps out Scenic Nevada. So we're not going to have 300.
23 We're going to have, boom, you put five billboards in,
24 potentially you've got 40 taken out of the bank. That's

1 significant.

2 Now, we talked about the findings. We talked
3 about how it's -- and that two to one is important, because,
4 again, that 1816905 D 3 B, that 672-foot requirement where
5 you have to show at least that operates as a two to one. I
6 just want the Court to really understand that or make that
7 point.

8 Okay. And then the conditions, the conditions
9 that the city council can place on it. They're highly
10 articulated. And we don't see anywhere in those conditions
11 public health, safety, welfare. Nobody has to make a
12 determination. There was testimony, nobody has to make
13 determination that this in the benefit of the health, safety,
14 welfare of the city. You could not deny the application.
15 The city council could not deny the special exception based
16 upon that sort of finding, because it just simply was not
17 included.

18 As far as going back to Scenic Nevada's piece,
19 their argument in a nutshell is the constitution says that
20 you cannot amend the ordinance, the initiative ordinance
21 within three years after it being passed. And they rely on,
22 you know, Article 19, section 2.3 and section four. They
23 talked about section four and they talked about section 2.1,
24 but the reality is section 2.3 is the section that has the

1 three-year prohibition contained within it.

2 And if you look at the top, essentially it's a
3 self-executing, you know, provision of the constitution and
4 it talks in minute detail from, you know, it has to go to the
5 secretary of state, it has to go to the Supreme Court, the
6 statute. But the difference here is the ordinance that was
7 passed by the Reno voters in 2000 was not a statute. It was
8 an ordinance. And that's important. That's a distinction.
9 It was local, special and municipal legislation under section
10 four.

11 And under section four, there is no discussion of
12 a three-year prohibition. It only talks about that within
13 the context of a statute. And, again, based on standard
14 statutory construction rules, when interpreting the
15 Constitution, specific provisions should be read in light of
16 the whole Constitution. When the words -- used words have a
17 definite plain meaning, the words will retain that meaning.
18 If the language is plain and unambiguous, it must be given
19 effect.

20 And, again, in Nevada the rule, unius est exclusio
21 alterius, which translates to the expression of one thing is
22 the exclusion of the other. It talks in 2.3 specifically
23 about statutes, not about ordinances. So based upon those
24 statutory rules of -- those canons, it naturally follows that

1 after -- that three-year prohibition does not apply to the
2 vote. So the city council had the ability in 2002, 2003 and
3 2012 to reinterpret what the voters did in 2000.

4 And to the extent that it has been portrayed as
5 being inconsistent with the intent of the original vote,
6 quite frankly, that's immaterial. It is what it is. The
7 council has that right. It's not constitutionally forbidden
8 from revisiting that statute. It did revisit that statute.
9 So what we have today is what we have today. And what we
10 have today is a cap, your Honor. It is not a no new
11 billboards forever. It's been interpreted by both council
12 and over time as a cap.

13 And in general, this interpretation is bolstered
14 by NRS 295.200, which requires municipal initiatives to be
15 treated in all respects in the same manner as ordinance of
16 the same kind adopted by the council. Council can adopt an
17 ordinance on one day and repeal it on the next, adopt another
18 ordinance. And what the voters passed in 2000 is exactly the
19 same character and variety as an ordinance passed by the city
20 council any day at any regular meeting.

21 This interpretation is also bolstered by the
22 holding of Horn versus City of Mesquite, 120 Nevada 700,
23 where initiative petitions passed by the voters of a city are
24 treated same in all respects as ordinances passed by the city

1 council of that city and that the citizens have only those
2 legislative powers that the local governing body possesses.

3 The local governing body cannot change the city
4 charter. Similarly, the petition that was approved by the
5 voters in 2000 cannot change the city charter. The city
6 charter says we can repeal, amend ordinances on day one, and
7 on the next day, we can do another amendment. So to the
8 extent that that three-year prohibition is somehow amounting
9 to a charter change to saying you cannot change this
10 ordinance, because it becomes a direct conflict with straight
11 law and that, again, Horn v. City of Mesquite case is good
12 thing on that.

13 I'm not going to go into the statute of
14 limitations, but at the end of the day to the extent that it
15 applies for seven to ten years beyond the statute of
16 limitations, you pick your statute. And, you know, the fact
17 that the conforming ordinance and the banking ordinance were
18 passed in 2002, 2003 and we have testimony that there hasn't
19 been any testimony from Ms. Wray that Scenic Nevada had not
20 filed any legal action up until the present on the digital
21 billboard ordinance ever challenging those interpretations.
22 So the extent that they've festered for the last seven to
23 eleven years, that's where we are.

24 Even under Scenic Nevada's arguments, you know,

1 three years after the petition was passed, the city had a
2 right to go back and amend it. Right. Because even if
3 Article 19, 2.3 protected that ordinance for three years,
4 come November 14th, 2003, then the city council had a right
5 even under the constitution to change it at that point in
6 time. So they did, and nobody challenged it, and that's
7 where we are today.

8 Federal Highway Beautification Act, we heard
9 several witnesses testify that in the Truckee Meadows near
10 highways, we have two or three digital billboards currently
11 in Washoe County and they're constructed on Indian controlled
12 land or in Sparks. These are not billboards -- they exist
13 today, they just don't exist within the City of Reno limits,
14 but they do exist near highways within Washoe County.

15 Under the FHA memo, changeable signs, including
16 digital displays, they are acceptable for conforming
17 off-premises signs and found to be consistent with the
18 federal, state agreement and with the acceptable approved
19 state regulations, policies and procedures.

20 And under NDOT regulations, digital billboards
21 complying with the standards set forth in the FHA memo are
22 permitted and they're not considered flashing intermittent
23 signs. And consistent with those standards that are in the
24 FHA memo, the digital billboard ordinance allows digital

1 billboards and they comply with the same standards.

2 For instance, each message or copy shall remain
3 fixed for a minimum of eight seconds. That's federal law
4 requires that. That's what our ordinance requires. Maximum
5 time allowed for transition between messages shall be one
6 second. Displays shall not be presented in motion or appear
7 in video. Illumination shall not change during a display
8 period. All of these things are okay under the FHA memo and
9 these are essentially what we have in the digital billboard
10 ordinance when you look at it. So we're not in conflict in
11 that regard.

12 The Scenic Arizona case is different and shouldn't
13 be judged under that case in a couple of ways. First, Nevada
14 NDOT regulates along the highways. We have concurrent
15 jurisdiction in Nevada. So both NDOT and the City of Reno
16 can exercise jurisdiction over land use planning in those
17 areas for billboards.

18 The fact of the matter is, though, if the federal
19 or the State of Nevada through NDOT, if their regulation is
20 more restricted than our regulation, our regulation can't
21 pre-empt it, and it says that in our code. To the extent
22 that the restriction, so, for instance, if the restriction
23 said intermittent lighting is not allowed or digital
24 billboards are not allowed within 600 feet of a highway, and

1 that was the NDOT regulation, the fact that our law would
2 allow that would not pre-empt that. And our law says that.
3 And it says that in RMC 1802109 A. If the provisions of this
4 title are inconsistent with those of the state or federal
5 government, the more restrictive provisions will control to
6 the extent permitted by law.

7 Even assuming that the ordinance is in violation
8 of the FHBA, there's already language in our code that says
9 we can't -- we don't have the legal capacity to pre-empt the
10 FHBA.

11 So that's totally different from what was seen in
12 Scenic Arizona. In Scenic Arizona, you had a state law that
13 said you can't have intermittent lighting on billboards. And
14 the city said, yes, you can. And the Court said, huh-uh, you
15 can't do that, because the state law is on point. So that's
16 how our law differs. We have concurrent jurisdiction, but at
17 the end of the day, if our law is less restrictive than
18 NDOT's, they just won't issue their permit and they won't get
19 their billboard. It's that simple.

20 And then, finally, you know, the notion that the
21 digital billboard ordinance does not violate the law against
22 LED bulbs using flashing or intermittent lights to display
23 advertising messages. And, again, this is one of statutory
24 construction in looking at the sign code. So when you look

1 at cases like Gilman versus Nevada State Board of Veterinary
2 Medical Examiners, 120 Nevada 263; City Council of Reno
3 versus Reno Newspapers, 105 Nevada 886, you have to read the
4 sign code as being consistent with itself. You can't ignore
5 parts of it. You can't read it in a way that's unreasonable.

6 So directed by those cases, the Court must
7 consider the 905 N 5 in harmony with other subsections of the
8 ordinance to determine the meaning and the purpose of it. So
9 when you look at 905 N 5, that must be read in concert with
10 905 N 4 and with 905 N 1. So 905 N 5 prohibits flashing or
11 moving during a display period, quote. 905 N 4 prohibits
12 changing illuminations during a display period. And,
13 finally, 905 N 1 states that each message or copy shall
14 remain fixed for a minimum of eight seconds.

15 When you read all of those together, it's clear
16 that the city council intended to prohibit intermittent
17 lighting on billboards in periods of less than eight seconds
18 during a display period, not an across the board ban. It
19 could have done that easily. In RMC 1816907, it could have
20 said LED billboards are prohibited. They didn't do that. In
21 fact, they put in 905 N, which said, here's what you have to
22 do to have digital billboards.

23 So I think it's a hyper-technical, unreasonable
24 reading to say that the digital billboard ordinance violates

1 the sign code, because at the end of the day, you have to
2 read those two things together. So, your Honor, the city
3 rests. I'm sorry.

4 THE COURT: It's all right. Any reply? All
5 right. Thank you very much. We'll take this under
6 submission. It's an important case to everybody and it
7 deserves more than a cursory order from the Court.

8 But before I retire, I'd like to make some
9 personal remarks. I understand that everybody has more than
10 a personal stake in the outcome of this case. Anything that
11 affects the general welfare of the public, the economic
12 welfare of individual companies, the lifeblood of America,
13 and the aesthetic value of our beautiful environment are all
14 important factors and they're all important and laudable
15 goals and each of them deserves consideration.

16 People don't truly appreciate the hard work that
17 lawyers put in on behalf of their clients. For those who
18 have sat through proceeding, you've seen some of the best
19 lawyers we have here. These are skilled professionals that
20 can take a complex matter, multi-layered constitutional
21 analysis, command of the facts, and present it in a forceful,
22 compelling, convincing manner on behalf of their client's
23 interests. It's not just the clients that benefit from the
24 good work of these lawyers, but it's the courts, indeed, it's

1 all of us. So I want to take this time to thank all the
2 lawyers and the parties. I know it's been a hard slough,
3 it's been a long one, and I certainly appreciate the stake
4 and the investment everybody has made here. And we'll take
5 it from here and do the best we can. All right. Thank you
6 very much. This Court's in recess.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on February 24, 2014, at the hour of
8 9:00 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the trial in the matter of SCENIC
10 NEVADA, INC., et al., Plaintiffs, vs. CITY OF RENO, a
11 Political Subdivision of the State of Nevada, Defendant, Case
12 No. CV12-02863, and thereafter, by means of computer-aided
13 transcription, transcribed them into typewriting as herein
14 appears;

15 That the foregoing transcript, consisting of pages 1
16 through 312, both inclusive, contains a full, true and
17 complete transcript of my said stenotype notes, and is a
18 full, true and correct record of the proceedings had at said
19 time and place.

20
21 DATED: At Reno, Nevada, this 26th day of September 2014.

22
23 S/s Stephanie Koetting
24 STEPHANIE KOETTING, CCR #207

CASE NO. CV12-02863

SCENIC NEVADA, INC. et al. vs. CITY OF RENO

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/24/14

NON-JURY TRIAL

HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

Mark Wray, Esq., was present in Court on behalf of Plaintiff Scenic, Nevada, Inc., with representative Lori Wray being present.

Frank Gilmore, Esq., was present in Court on behalf of Plaintiff Saunders Outdoor Advertising, Inc., with representative Ryan Saunders being present.

Deputy City Attorney Jonathan Shipman was present in Court on behalf of Defendant City of Reno, with representative Claudia Hanson being present.

9:07 a.m. – Court convened with Court, counsel and respective parties present.

Counsel Wray, on behalf of Plaintiff Scenic, Nevada, Inc., addressed the Court and presented opening statement.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., addressed the Court and presented opening statement.

Deputy City Attorney Jonathan Shipman, on behalf of Defendant City of Reno, addressed the Court the Court and presented opening statement.

Counsel Wray moved for the admission of all stipulated exhibits; no objection(s) stated.

COURT ORDERED: Exhibits 1 – 71, Exhibits 100 – 102 and Exhibits 200 – 237 ADMITTED.

Counsel Wray, on behalf of Plaintiff Scenic Nevada, Inc., called **Lori Wray**, who was sworn and direct examined.

10:33 a.m. – Morning Recess.

10:50 a.m. – Court reconvened with Court, counsel and respective parties present.

Lori Wray resumed the stand, heretofore sworn and further direct examined; cross-examination conducted by counsel Gilmore, cross-examination conducted by counsel Shipman; re-direct examination waived; the Court inquired of the witness, who in turn responded.

11:58 a.m. – Noon Recess.

1:31 p.m. – Court reconvened with Court, counsel and respective parties present.

CASE NO. CV12-02863

SCENIC NEVADA, INC. et al. vs. CITY OF RENO

Page Two

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/24/14
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

NON-JURY TRIAL

Counsel Wray called **Claudia Hanson**, who was sworn and direct examined; counsel Gilmore conducted cross-examination; counsel Shipman conducted cross-examination, followed by direct examination; counsel Wray conducted cross-examination; counsel Gilmore conducted cross-examination; counsel Shipman conducted re-direct examination; no re-cross examination conducted; witness excused.

Counsel Wray, on behalf of Plaintiff Scenic Nevada, Inc., rested their case.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., read portions of the Deposition Transcript of **Dwight Dortch** (Exhibit 200) into the record, with the assistance of Eric Roberson, who was sworn to accurately read the testimony given in the deposition transcript to the best of his ability.

Counsel Gilmore called **Ryan Saunders**, who was sworn and direct examined.

3:22 p.m. – Afternoon Recess.

3:40 p.m. – Court reconvened with Court, counsel and respective parties present.

Ryan Saunders resumed the stand, heretofore sworn and further direct examined by counsel Gilmore; cross-examination conducted by counsel Wray; cross-examination conducted by counsel Shipman; counsel Gilmore conducted re-direct examination; no re-cross examination conducted; witness excused.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., rested their case.

Counsel Shipman, on behalf of Defendant City of Reno, rested their case.

Counsel Wray, on behalf of Plaintiff Scenic Nevada, Inc., conducted closing argument.

Counsel Gilmore, on behalf of Plaintiff Saunders Outdoor Advertising, Inc., conducting closing argument.

Counsel Shipman, on behalf of Defendant City of Reno, conducted closing argument.

CASE NO. CV12-02863

SCENIC NEVADA, INC. et al. vs. CITY OF RENO

Page Three

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/24/14
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

NON-JURY TRIAL

COURT ORDERED: This case will be taken under advisement. The Court will issue a written decision.

The Court thanked counsel and the respective parties for their courtesy and professionalism.

5:52 p.m. – Court stood in recess.

JA 460

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al.
DEFT: CITY OF RENO

PATY: Mark Wray, Esq./Pltf Scenic Nevada
PATY: Frank Gilmore, Esq./Pltf Saunders
DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863

Dept. No. 7

Court Clerk: Kim Oates

Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
1	Defendant	Certification of Clerk's Office (COR 1-3)	02-18-14	Stipulated	02-24-14
2	Defendant	Section 18.16.902. Restrictions on Permanent Off-Premises Advertising Displays (COR 4)	02-18-14	Stipulated	02-24-14
3	Defendant	Ordinance No. 6258 passed and adopted on October 24, 2012 (COR 5-26)	02-18-14	Stipulated	02-24-14
4	Defendant	Ordinance No. 5295 passed and adopted on January 22, 2002 (COR 27-61)	02-18-14	Stipulated	02-24-14
5	Defendant	Staff report for Item 14A for Reno City Council Meeting from August 15, 2000 (COR 62-71)	02-18-14	Stipulated	02-24-14
6	Defendant	Question No. R-1 (Billboard Ballot Question) (COR 72-74)	02-18-14	Stipulated	02-24-14
7	Defendant	Agenda for Reno City Council Meeting from November 14, 2000 (COR 75-79)	02-18-14	Stipulated	02-24-14
8	Defendant	Staff report for Item 6A for Reno City Council Meeting from November 14, 2000 (COR 80-99)	02-18-14	Stipulated	02-24-14
9	Defendant	Staff report for Item 13E for the Reno City Council Meeting from November 14, 2000 (COR 100-104)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al.
DEFT: CITY OF RENO

PATY: Mark Wray, Esq./Pltf Scenic Nevada
PATY: Frank Gilmore, Esq./Pltf Saunders
DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863

Dept. No. 7

Court Clerk: Kim Oates

Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
10	Defendant	Agenda, Ordinance & Staff report for Item 13E1 for Reno City Council Meeting from November 14, 2000 (COR 105-116)	02-18-14	Stipulated	02-24-14
11	Defendant	Ordinance No. 5208 passed and adopted on November 17, 2000 (COR 117-129)	02-18-14	Stipulated	02-24-14
12	Defendant	Minutes for Reno City Council meeting from November 14, 2000 (COR 130-140)	02-18-14	Stipulated	02-24-14
13	Defendant	Section 18.16.901 of the Reno, Nevada Land Development Code (COR 141-142)	02-18-14	Stipulated	02-24-14
14	Defendant	Agenda for the Reno City Council Meeting from December 18, 2001 (COR 143-151)	02-18-14	Stipulated	02-24-14
15	Defendant	Staff report for Item 13C1 for Reno City Council Meeting from December 18, 2001 (COR 152-169)	02-18-14	Stipulated	02-24-14
16	Defendant	Staff report for Item 13C for Reno City Council Meeting from December 18, 2001 (COR 170-174)	02-18-14	Stipulated	02-24-14
17	Defendant	Minutes for Reno City Council Meeting from December 18, 2001 (COR 175-189)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al.
DEFT: CITY OF RENO

PATY: Mark Wray, Esq./Pltf Scenic Nevada
PATY: Frank Gilmore, Esq./Pltf Saunders
DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863

Dept. No. 7

Court Clerk: Kim Oates

Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
18	Defendant	Staff report for the Reno City Planning Commission Meeting from January 4, 2012 (COR 190-339)	02-18-14	Stipulated	02-24-14
19	Defendant	Continuation of Staff report for the Reno City Planning Commission Meeting from January 4, 2012 (COR 340-351)	02-18-14	Stipulated	02-24-14
20	Defendant	Agenda for the Reno City Council Meeting from January 8, 2002 (COR 352-358)	02-18-14	Stipulated	02-24-14
21	Defendant	Staff report for Item 15A for Reno City Council Meeting from January 8, 2002 (COR 359-380)	02-18-14	Stipulated	02-24-14
22	Defendant	Staff report for Item 15A1 for Reno City Council Meeting from January 8, 2002 (COR 381-402)	02-18-14	Stipulated	02-24-14
23	Defendant	Draft Minutes for Reno City Council Meeting from January 8, 2002 (COR 403-419)	02-18-14	Stipulated	02-24-14
24	Defendant	Minutes for Reno City Council Meeting from January 8, 2002 (COR 420-437)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al.
DEFT: CITY OF RENO

PATY: Mark Wray, Esq./Pltf Scenic Nevada
PATY: Frank Gilmore, Esq./Pltf Saunders
DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863

Dept. No. 7

Court Clerk: Kim Oates

Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
25	Defendant	Agenda for the Reno City Council Meeting from January 22, 2002 (COR 438-444)	02-18-14	Stipulated	02-24-14
26	Defendant	Minutes and Staff report for Item 8B for Reno City Council Meeting from January 22, 2002 (COR 445-477)	02-18-14	Stipulated	02-24-14
27	Defendant	Staff report for Item 8B for Reno City Council Meeting from January 22, 2002 (COR 478-523)	02-18-14	Stipulated	02-24-14
28	Defendant	Minutes for Reno City Council Meeting from January 22, 2002 (COR 524-538)	02-18-14	Stipulated	02-24-14
29	Defendant	Partial Minutes for Reno City Council Meeting from February 13, 2008 (COR 539-541)	02-18-14	Stipulated	02-24-14
30	Defendant	Agenda for Reno City Planning Commission from May 6, 2009 (COR 542-547)	02-18-14	Stipulated	02-24-14
31	Defendant	Partial Minutes for Reno City Council Meeting from May 13, 2009 (COR 548-550)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

PLTF: SCENIC NEVADA, INC. et al. PATY: Mark Wray, Esq./Pltf Scenic Nevada
 DEFT: CITY OF RENO PATY: Frank Gilmore, Esq./Pltf Saunders
 DATY: DCA Jonathan Shipman/Deft City of Reno

Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
32	Defendant	Staff report for Case No. AT-32-07 for Reno City Planning Commission from November 5, 2009 (COR 551-556)	02-18-14	Stipulated	02-24-14
33	Defendant	Partial Minutes for Reno City Planning Commission from November 5, 2009 (COR 557-569)	02-18-14	Stipulated	02-24-14
34	Defendant	Draft Minutes for Billboards Workshop from May 24, 2011 (COR 570-579)	02-18-14	Stipulated	02-24-14
35	Defendant	Agenda for Reno City Planning Commission Workshop from September 20, 2011 (COR 580-581)	02-18-14	Stipulated	02-24-14
36	Defendant	Minutes for Reno City Planning Commission Workshop from September 20, 2011 (COR 582-599)	02-18-14	Stipulated	02-24-14
37	Defendant	Minutes for Reno City Planning Commission Workshop from September 20, 2011 Exhibit 2 (COR 600-617)	02-18-14	Stipulated	02-24-14
38	Defendant	Partial Minutes for Reno City Planning Commission from October 5, 2011 (COR 618-631)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863

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Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
39	Defendant	Staff report for Case No. AT-32-07 for Reno City Planning Commission from November 2, 2011 (COR 632-636)	02-18-14	Stipulated	02-24-14
40	Defendant	Partial Minutes for Reno City Planning Commission from November 2, 2011 (COR 637-648)	02-18-14	Stipulated	02-24-14
41	Defendant	Appeal from Scenic Nevada for Case No. AT-32-07 received on November 14, 2011 (COR 649-650)	02-18-14	Stipulated	02-24-14
42	Defendant	Partial Minutes for Reno City Planning Commission from December 8, 2011 (COR 651-653)	02-18-14	Stipulated	02-24-14
43	Defendant	Memorandum from Reno City Attorneys (Exhibit 7) from December 19, 2011 (COR 654-668)	02-18-14	Stipulated	02-24-14
44	Defendant	Staff report for Case No. AT-32-07 for Reno City Planning Commission from January 4, 2012 (COR 669-674)	02-18-14	Stipulated	02-24-14
45	Defendant	Partial Minutes for Reno City Planning Commission from January 4, 2012 (COR 675-677)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863

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Exhibit	Party	Description	Marked	Offered	Admitted
46	Defendant	Appeal from Scenic Nevada for Case No. AT-32-07 received on January 9, 2012 (COR 678-679)	02-18-14	Stipulated	02-24-14
47	Defendant	Partial Agenda for Reno City Council Meeting from February 8, 2012 (COR 680-683)	02-18-14	Stipulated	02-24-14
48	Defendant	Minutes for Special Session Reno City Council Meeting from March 6, 2012 (COR 684-688)	02-18-14	Stipulated	02-24-14
49	Defendant	Staff report for Item A.6 for Special Session Reno City Council Meeting from March 6, 2012 (COR 689-692)	02-18-14	Stipulated	02-24-14
50	Defendant	Minutes for Special Session Reno City Council Meeting from April 25, 2012 (COR 693-699)	02-18-14	Stipulated	02-24-14
51	Defendant	Staff report for Item A.5 for Special Session Reno City Council Meeting from April 25, 2012 (COR 700-709)	02-18-14	Stipulated	02-24-14
52	Defendant	Partial Agenda for Reno City Council Meeting from July 18, 2012 (COR 710-715)	02-18-14	Stipulated	02-24-14
53	Defendant	Staff report for Item N.2 for Reno City Council Meeting from July 18, 2012 (COR 716-718)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863

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Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
54	Defendant	Partial Minutes for Reno City Council Meeting from August 22, 2012 (COR 719-721)	02-18-14	Stipulated	02-24-14
55	Defendant	Staff report for Item G.3 for Reno City Council Meeting from August 22, 2012 (COR 722-725)	02-18-14	Stipulated	02-24-14
56	Defendant	Staff report for Item I.1.1 for Reno City Council Meeting from September 12, 2012 (COR 726-732)	02-18-14	Stipulated	02-24-14
57	Defendant	Partial Minutes for Reno City Council Meeting from October 10, 2012 (COR 733-735)	02-18-14	Stipulated	02-24-14
58	Defendant	Staff report for Item I.1.1 for Reno City Council Meeting from October 10, 2012 (COR 736-738)	02-18-14	Stipulated	02-24-14
59	Defendant	Staff report for Item I.1.2 for Reno City Council Meeting from October 10, 2012 (COR 739-745)	02-18-14	Stipulated	02-24-14
60	Defendant	Staff report for Item G.6.1 for Reno City Council Meeting from October 24, 2012 (COR 746-750)	02-18-14	Stipulated	02-24-14
61	Defendant	Staff report for Item G.6.2 for Reno City Council Meeting from October 24, 2012 (COR 751-755)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863

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Exhibit	Party	Description	Marked	Offered	Admitted
62	Defendant	Staff report for Item G.6.3 for Reno City Council Meeting from October 24, 2012 (COR 756-757)	02-18-14	Stipulated	02-24-14
63	Defendant	Staff report for Item G.6.4 for Reno City Council Meeting from October 24, 2012 (COR 758-759)	02-18-14	Stipulated	02-24-14
64	Defendant	Agenda for Reno City Council Meeting from October 24, 2012 (COR 760-779)	02-18-14	Stipulated	02-24-14
65	Defendant	Ordinance No. 6258 passed and adopted January 24, 2013 (COR 780-801)	02-18-14	Stipulated	02-24-14
66	Defendant	Staff report for Item G.6.1 for Reno City Council Meeting from October 24, 2012 (COR 802-806)	02-18-14	Stipulated	02-24-14
67	Defendant	Staff report for Item G.6.2 for Reno City Council Meeting from October 24, 2012 (COR 807-830)	02-18-14	Stipulated	02-24-14
68	Defendant	Minutes for Reno City Council Meeting from October 24, 2012 (COR 831-882)	02-18-14	Stipulated	02-24-14
69	Defendant	Memorandum from City Attorney dated December 19, 2011 (COR 883-897)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Exhibit	Party	Description	Marked	Offered	Admitted
70	Defendant	Partial Minutes for Reno City Council Meeting from December 12, 2012 (COR 898-901)	02-18-14	Stipulated	02-24-14
71	Defendant	Assembly Bill No. 305 (COR 902-903)	02-18-14	Stipulated	02-24-14
100	Plaintiff Saunders	City of Reno's Responses to Saunders' First Set of Requests for Admission (Depo. Ex. 23)	02-18-14	Stipulated	02-24-14
101	Plaintiff Saunders	May 24, 2011 Billboards Workshop Draft Minutes (Depo. Ex. 24)	02-18-14	Stipulated	02-24-14
102	Plaintiff Saunders	City of Reno's Responses to Saunders' First Set of Interrogatories (Depo. Ex. 25)	02-18-14	Stipulated	02-24-14
200	Joint	Deposition Transcript of Dwight Dortch	02-18-14	Stipulated	02-24-14
201	Joint	Deposition Transcript of Claudia Hanson	02-18-14	Stipulated	02-24-14
202	Plaintiff Scenic Nevada	RETRAC publication with project start date Sept. 13, 2002 (Depo. Ex. 5, SN 1187, SN 509, SN 762, SN 1034-1045, COR 696)	02-18-14	Stipulated	02-24-14
203	Plaintiff Scenic Nevada	Ordinance 5461 of June 11, 2003 (Depo. Ex. 7, SN 1053-1060)	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Exhibit	Party	Description	Marked	Offered	Admitted
204	Plaintiff Scenic Nevada	Jan. 30, 2008 Reno City Council Outfall (Depo. Ex. 8, SN 58-69, SN 72-73, SN 48-50)	02-18-14	Stipulated	02-24-14
205	Plaintiff Scenic Nevada	March 10, 2008 RGJ article about activists targeting LED billboards (Depo. Ex. 9, SN 87-88)	02-18-14	Stipulated	02-24-14
206	Plaintiff Scenic Nevada	March-April 2009 letters and articles about digital ordinance (Depo. Ex. 10, SN 302, SN 188-189, SN 202, SN 1076-1078, SN 77, COR 4041, SN 294-295)	02-18-14	Stipulated	02-24-14
207	Plaintiff Scenic Nevada	Sept. 20, 2011 Planning Commission workshop minutes with photo (Depo. Ex. 11, SN 501, SN 485)	02-18-14	Stipulated	02-24-14
208	Plaintiff Scenic Nevada	Jan. 31, 2012 Dortch email to Barrett (Depo. Ex. 12, COR 5018)	02-18-14	Stipulated	02-24-14
209	Plaintiff Scenic Nevada	July 19, 2012 RGJ Article "Electronic Billboards OK'd" (Depo. Ex. 14, SN 765)	02-18-14	Stipulated	02-24-14
210	Plaintiff Scenic Nevada	Jan. 31, 2008 meeting with stakeholders at sign in Sparks (Depo. Ex. 15, COR 5571)	02-18-14	Stipulated	02-24-14

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Exhibit	Party	Description	Marked	Offered	Admitted
211	Plaintiff Scenic Nevada	New billboard construction permits in 2011 and 2012 (Depo. Ex. 16, SN 480-81, SN 1174-76, COR 3923-24, COR 3959, COR 3979, COR 3983)	02-18-14	Stipulated	02-24-14
212	Plaintiff Scenic Nevada	May 11, 2011 Hanson emails with Clear Channel (Depo. Ex. 17, COR 4261-4262)	02-18-14	Stipulated	02-24-14
213	Plaintiff Scenic Nevada	Hanson emails in 2011-2012 to keep Clear Channel informed about Scenic Nevada (Depo. Ex. 18, COR 4304-4305, 4482-83, 4353-54, 4535, 4368-71, 4387, 2971-72, 4366-67, 4555, 4042-44)	02-18-14	Stipulated	02-24-14
214	Plaintiff Scenic Nevada	Jan. 2012 Hanson emails about billboard appeals (Depo. Ex. 19, COR 4144-45, 4152)	02-18-14	Stipulated	02-24-14
215	Plaintiff Scenic Nevada	March 2012 Hanson emails with Bill Thomas (Depo. Ex. 20, COR 4221, COR 703)	02-18-14	Stipulated	02-24-14
216	Plaintiff Scenic Nevada	July 2, 2012 Turnier email re billboards for July 18 council meeting (Depo. Ex. 21, COR 3812)	02-18-14	Stipulated	02-24-14
217	Plaintiff Scenic Nevada	Moana billboard project by Clear Channel -2012 (SN 1207-1346)	02-18-14	Stipulated	02-24-14

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Exhibit	Party	Description	Marked	Offered	Admitted
218	Plaintiff Scenic Nevada	Feb. 4, 2014 Finance & Commerce Article (SN 1347-1348)	02-18-14	Stipulated	02-24-14
219	Plaintiff Scenic Nevada	OMD Settlement Packet – COR 99, Docket in OMD v. Reno, Settlement Agreement and Mutual Release (Saunders 252-255)	02-18-14	Stipulated	02-24-14
220	Plaintiff Scenic Nevada	May 8, 2003 City Attorney memo to council on billboard relocations (City's Response to SN request for production)	02-18-14	Stipulated	02-24-14
221	Plaintiff Scenic Nevada	Dec. 17, 2002 Nevada Supreme Court decision in Eller Media, 118 Nev. 767	02-18-14	Stipulated	02-24-14
222	Plaintiff Scenic Nevada	Scenic Nevada's First Amended Complaint (Depo. Ex. 4)	02-18-14	Stipulated	02-24-14
223	Plaintiff Scenic Nevada	April 1, 2002 Scenic Nevada billboard history (SN 26-38)	02-18-14	Stipulated	02-24-14
224	Plaintiff Scenic Nevada	Sept. 20, 2011 Chris Wicker comments to Planning Commission (COR 582, 586)	02-18-14	Stipulated	02-24-14
225	Plaintiff Scenic Nevada	Feb. 2012 video of Scenic Nevada's exhaustion of administrative remedies before filing suit	02-18-14	Stipulated	02-24-14

Non-Jury Trial Exhibits

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Case No. CV12-02863 Dept. No. 7 Court Clerk: Kim Oates Date: 02/24/14

Exhibit	Party	Description	Marked	Offered	Admitted
226	Plaintiff Scenic Nevada	Corporate records of Scenic Nevada and predecessor entities	02-18-14	Stipulated	02-24-14
227	Plaintiff Scenic Nevada	April 25, 2008 workshop emails, agenda and discussion items (SN 296-301)	02-18-14	Stipulated	02-24-14
228	Plaintiff Scenic Nevada	April, 2011 digital billboard poll and Aug. 7, 2011 RGJ news article (SN 470-474, SN 477)	02-18-14	Stipulated	02-24-14
229	Plaintiff Scenic Nevada	Dec. 5, 2011 Lori Wray email and testimony to Planning Commission (SN 601-603, SN 1-9)	02-18-14	Stipulated	02-24-14
230	Plaintiff Scenic Nevada	Scenic Arizona v. City of Phoenix opinion Nov. 2011 (SN 560-600)	02-18-14	Stipulated	02-24-14
231	Plaintiff Scenic Nevada	July 11, 2012 Scenic Nevada letter to City Council (SN 746-752)	02-18-14	Stipulated	02-24-14
232	Plaintiff Scenic Nevada	Aug. 16, 2012 Scenic Nevada letter to City Council (SN 788-790)	02-18-14	Stipulated	02-24-14
233	Plaintiff Scenic Nevada	Oct. 5, 2012 Staff email to stakeholders (SN 868)	02-18-14	Stipulated	02-24-14
234	Plaintiff Scenic Nevada	May 15, 2009 article in RGJ "City Wants to Trade with Sign Companies," (SN 326)	02-18-14	Stipulated	02-24-14

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Print Date: 2/25/2014

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