

EXHIBIT P

Michael Ann Doiron Volume II - March 6, 2015
The Frederic and Barbara Rosenberg Living Trust vs. Bank of America, M.A., et al

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG)
LIVING TRUST,)
Plaintiff,)
vs.) CASE NO: A689113
DEPT NO: I
BANK OF AMERICA, M.A.; BAC HOME)
LOANS SERVICING, LP, a foreign)
limited partnership; DRAGONRIDGE)
PROPERTIES, LLC; DRAGONRIDGE GOLF)
CLUB, INC., is a Nevada)
corporation; MACDONALD HIGHLANDS)
REALTY, LLC, a Nevada limited)
liability company; SHAHIN SHANE)
MALEK, an individual; REAL)
PROPERTIES MANAGEMENT GROUP, INC.,)
a Nevada corporation; DOES I)
through X, inclusive; ROE BUSINESS)
ENTITY I through XX, inclusive,)
Defendants.)

DEPOSITION OF MICHAEL ANN DOIRON
VOLUME II
(Pages 154 to 216)

Taken at Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada

on Friday, March 6, 2015
1:41 p.m.

REPORTED BY: ANDREA MARTIN, CRR, RPR, CCR NO. 887

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BY MS. HANKS
BY MR. DeVOY

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Las Vegas, Nevada; Friday, March 6, 2015
1:41 p.m.
-oOo-

(In an off-the-record discussion held prior to the commencement of the proceedings, counsel agreed to waive the court reporter's requirements under Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

MICHAEL ANN DOIRON,

having been first duly sworn by the court reporter to testify to the truth, the whole truth, and nothing but the truth, was examined and testified under oath as follows:

EXAMINATION

BY MS. HANKS:

Q Please state your name for the record.

A Michael Ann Doiron.

Q And, Ms. Doiron, you've had your deposition taken before in this matter, so I'm not going to go over the ground rules for it. Do you feel comfortable with that?

A Yes.

Q I will ask, though, do you have any health issues or other problems that would prevent you from

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1 moving forward today, giving truthful and accurate
2 statements to my questions?
3 **A No.**
4 **Q** This is the second time we've had you
5 here, so some of my questions are going to seem
6 disjointed. There's going to be no real rhyme or
7 reason to them in terms of following a same subject
8 area.
9 I'm just going to pick up kind of in
10 pieces where we left off in the first deposition, so
11 please bear with me.
12 Did you have any involvement with the
13 design review committee for MacDonald Highlands as
14 it pertained to the approval of any plan submitted
15 by Mr. Malek for 594 Lairmont Place, which is Lot 2?
16 **A No.**
17 **Q** But you have served on the design review
18 committee at some point in time throughout your
19 employment with MacDonald Realty; correct?
20 **A Yes.**
21 **Q** During the times that you did serve on the
22 design review committee, if there was ever a
23 question as to whether something should be approved
24 or disapproved, did Richard MacDonald have the final
25 say with respect to that issue, whatever that might

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1 be?
2 **MR. GUNNERSON: Objection: Form.**
3 **Go ahead.**
4 **A I'm not quite sure. It's been several**
5 **years. I think we needed a vote.**
6 **BY MS. HANKS:**
7 **Q** And you say "several years," so it's been
8 several years since you've served on the design
9 review committee?
10 **A It's been several years since I've met in**
11 **the design review committee.**
12 **Q** And what's the difference between serving
13 on it and meeting?
14 **A Well, we used to have meetings where we'd**
15 **sit down with the owners, the builders, the**
16 **architects, an outside architect, a gal that**
17 **actually headed up the design review. And now Paul,**
18 **who is our head of construction, oversees that.**
19 **Most owners and their builders and whatnot**
20 **don't come in anymore.**
21 **Q** So in terms of the function of the design
22 review committee, it's sort of changed over the
23 years, in terms of you don't have those formal
24 meetings -- not formal, but those meetings where
25 everyone attends -- anymore?

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1 **A Correct.**
2 **Q** Are you still involved in the voting with
3 the design review committee, even though those
4 meetings have stopped? Does that still happen?
5 **A I was let go yesterday.**
6 **Q** I apologize. Up until yesterday, did you
7 still participate in any voting that had to happen,
8 even though there weren't meetings taking place?
9 **A I haven't done anything with the design**
10 **review committee in years.**
11 **Q** And just so I understand, though, to the
12 best of your recollection, however, when you did
13 have involvement with the design review committee,
14 your recollection is that you had to put stuff to a
15 vote if there was some discrepancy as to what should
16 be done?
17 **A Yes, but Rich would have the final say.**
18 **Q** When you say "Rich," you mean Richard
19 MacDonald?
20 **A Yes.**
21 **Q** Now, I read your deposition from the prior
22 time that we deposed you, and you indicated that you
23 wrote the contract for the golf course parcel that
24 Mr. Malek purchased; is that correct?
25 **A Yes.**

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1 **Q** Who did you represent in that transaction?
2 **A I represented, I believe -- I can't**
3 **remember, but I believe I represented Rich**
4 **MacDonald.**
5 **Q** And would that be through his connection
6 to DRFH Ventures, who owned the golf course?
7 **A I don't remember the ownership title.**
8 **Q** But it was in context because of his
9 ownership of the golf course --
10 **A Yes.**
11 **Q** -- whichever of his multiple companies
12 owns it?
13 **A Yes.**
14 **Q** When -- let me back up.
15 How did it come about that Mr. Malek
16 wanted to purchase a portion of the golf course?
17 **A Mr. Malek came to me and wanted to buy**
18 **that piece of land.**
19 **Q** Was this prior to him purchasing Lot 2,
20 which is 594 Lairmont Place?
21 **A I don't remember.**
22 **Q** Did Mr. Malek explain to you what he
23 wanted to do with the additional portion he was
24 seeking to buy?
25 **A He wanted to merge it with Lot No. 2.**

1 Q Did he explain anything else about his
2 intentions with that particular area of property?
3 MR. GUNNERSON: Objection: Form --
4 A I don't remember.
5 MR. GUNNERSON: -- speculation.
6 BY MS. HANKS:
7 Q When Mr. Malek approached you about
8 purchasing a portion of the golf course to merge
9 with the 594 Lairmont Place lot, what did you do
10 next?
11 A I went to Rich MacDonald, to see what he
12 wanted as far as a price and if he wanted to sell
13 that.
14 Q And did Mr. MacDonald give you a price at
15 that time?
16 A Yes.
17 Q And did he indicate that he -- I'm
18 assuming -- it's an assumption, that he wanted to
19 sell it, because he gave you a price?
20 A Yes.
21 Q What was that price?
22 A Offhand, I don't remember, but I believe
23 it was 300,000.
24 Q In speaking with Mr. MacDonald, was there
25 a discussion about exactly what portion of the golf

1 course he would agree to sell to Mr. Malek?
2 A I don't remember exactly, but it was the
3 scrubbed area. It was the dirt area, not the green
4 of the golf course, and our head of construction,
5 Paul, would have had to draw it off as far as how
6 much land that would include.
7 Q That was going to be my next question.
8 Was that the next step -- once you
9 confirmed with Mr. MacDonald he was willing to sell
10 a portion of the golf course to Mr. Malek, did the
11 next step take place in terms of actually drawing,
12 or at least mapping out in an informal way, what
13 area was actually going to be sold to Mr. Malek?
14 A Yes.
15 Q And Mr. Bykowski did that informal kind of
16 mapping out of the area that would be sold?
17 MR. GUNNERSON: Objection: Foundation.
18 A I don't remember, but I believe so.
19 Q Now, when you approached Mr. MacDonald or
20 Mr. Bykowski was figuring out what actual sections
21 of the parcel would be sold to Mr. Malek, was there
22 any discussion about having to rezone that area?
23 A Yes, but I don't remember the details.
24 Q Would it be fair to state that at the time
25 you represented -- we'll just say Richard MacDonald,

1 whatever, entity owned the golf course during this
2 transaction.
3 You were aware that prior to the sale
4 being completed, that area had to be rezoned?
5 A Yes.
6 Q Do you know if Mr. Bykowski met with
7 Mr. Malek when he was trying to determine which
8 portion of the golf course he would sell; in other
9 words, where he was kind of mapping out the lot
10 lines. Was there any meetings between those two
11 individuals to confirm this is what Mr. Malek
12 wanted?
13 A I don't believe so.
14 Q Did the individual who owned Lot 2, which
15 is 594 Lairmont Place, prior to Mr. Malek ever
16 approach you or anyone with MacDonald Realty about
17 purchasing a portion of the golf course?
18 A I don't believe so, but I don't remember.
19 Q After the golf course parcel was rezoned,
20 were you notified?
21 A I would have been notified by Paul, I
22 believe --
23 Q And that's --
24 A -- that it was completed.
25 Q Sorry. And that's so you could know that

1 you could go to the next part of the -- I guess
2 completing the sale contract?
3 MR. GUNNERSON: Objection: Foundation;
4 form.
5 Go ahead, if you know.
6 A That would mean that we would be able to
7 go forward with closing the escrow.
8 BY MS. HANKS:
9 Q Thank you. That's probably a better way
10 to say it. That's what I was getting at.
11 So do you remember the approximate time
12 the rezoning was approved by the City of Henderson?
13 A No.
14 Q But you were notified at some point
15 because that was the trigger to you to know that now
16 escrow could close on the deal between Mr. MacDonald
17 and Mr. Malek; correct?
18 A Correct.
19 Q Did MacDonald Realty change the community
20 map that's located on their website to reflect the
21 new lot lines for Mr. Malek's lot?
22 A I don't believe so.
23 MR. GUNNERSON: Objection: Form, as to
24 when.
25 MS. HANKS: And I'll correct that, then.

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1 **BY MS. HANKS:**
2 Q At any time after the rezoning for the
3 golf course parcel that was merged with Mr. Malek's
4 lot, 594 Lairmont Place, did MacDonald Realty change
5 the community map on the MacDonald Highlands
6 website?
7 A **I don't believe so.**
8 Q Is this the change that could have
9 occurred? In other words, could you have changed
10 the community map on the website if you wanted to?
11 A **Yes.**
12 Q How about the topo table? I think it's
13 topography table.
14 A **Topo.**
15 Q The topo table that is located in the
16 MacDonald Realty office; correct? And that's -- I'm
17 sorry, is that a "yes"?
18 A **Yes.**
19 Q And that's like a 3D, I guess, model of
20 the community?
21 A **Yes.**
22 Q Was that table ever changed from the time
23 that Mr. Malek's golf course portion that was merged
24 with his lot, 594 Lairmont Place?
25 A **Not yet. It's being sent to California as**

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1 **we speak.**
2 Q When was that sent to California?
3 A **I don't know. I was fired yesterday.**
4 **It's in the process of being sent to California.**
5 **There's some major changes on there, and it's**
6 **expensive, so it's done every once in a while.**
7 Q Do you recall when the last time the topo
8 table was changed?
9 A **No.**
10 Q But to your best recollection as you sit
11 here today -- I understand you don't work for
12 MacDonald Realty anymore, but it is in the process
13 of being sent to California to be changed to
14 incorporate some changes -- or you said "major
15 changes"?
16 A **What I said is I don't know. It's**
17 **supposed to get sent to California. Those are not**
18 **exact details, though. That's just a general**
19 **overview --**
20 Q Sure.
21 A **-- of the community. Because they're not**
22 **exact matches to any piece of land. It's generic.**
23 Q Is the topo table still in the office as
24 of yesterday?
25 A **Yes.**

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1 Q Will the topo table stay there until the
2 new topo table comes with the changes, if you know?
3 I know you are not there anymore.
4 A **To the best of my ability, I can tell you**
5 **that a man from California will come up with a van,**
6 **pick the topo table up, take it back to California,**
7 **and then Paul will send maps of whatever changes**
8 **Mr. MacDonald wants.**
9 Q Do you know if the maps that are going to
10 be sent to the guy from California that will change
11 the topo table includes the change to Mr. Malek's
12 lot at 594 Lairmont Place?
13 A **I have no idea.**
14 Q At the time this transaction was taking
15 place where Mr. Malek was going to purchase a
16 portion of the golf course to merge with his lot at
17 594 Lairmont Place, were there any discussions about
18 any impact that might have on Lot 3, which is 590
19 Lairmont Place?
20 A **No.**
21 Q Did you have any involvement with the sale
22 of the golf course? And I say the "golf course" --
23 DragonRidge golf course, to -- I think it's Pacific
24 Links.
25 A **No, I did not know about it for a long**

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1 **time. It was not told to me.**
2 Q So you did not represent any of the
3 parties with respect to that transaction?
4 A **No.**
5 Q And when you say it was a long time, do
6 you recall when you approximately learned that the
7 DragonRidge golf course was sold to Pacific Links?
8 A **I don't remember.**
9 Q Do you know if that sale happened before
10 Mr. MacDonald sold the portion of the golf course to
11 Mr. Malek?
12 A **In the middle of all this, my husband died**
13 **March 9th. I don't remember.**
14 Q Do you know if anyone submitted, for
15 written approval from the board, the HOA board for
16 MacDonald Highlands, to change the lot lines for
17 594 Lairmont Place?
18 A **I don't know anything about the HOA.**
19 Q Fair to say you didn't submit anything to
20 the HOA board; correct?
21 A **Correct.**
22 Q And MacDonald Realty didn't submit
23 anything to the HOA; correct?
24 A **Correct.**
25 Q Was there any discussions with anyone

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1 during this transaction? And when I say "this
2 transaction," I mean the sale of the golf course
3 portion to Mr. Malek about needing written board
4 approval to change the lot lines? Did that ever
5 come up?
6 **A I have no idea.**
7 **Q** You don't remember if that conversation
8 ever came up?
9 **A I didn't have that conversation about the**
10 **HOA.**
11 **Q** Mr. MacDonald never brought it up?
12 **A No.**
13 **Q** Mr. Bykowski never brought it up?
14 **A Not to me.**
15 **Q** Your previous deposition also mentioned
16 that the MacDonald Realty's office has sale exhibits
17 which might give a general, I guess, mapping of the
18 community; is that true?
19 **A Correct.**
20 **Q** Were those changed after Mr. Malek's golf
21 course portion of the property was rezoned?
22 **A I don't remember.**
23 **MR. GUNNERSON:** Objection as to form as to
24 which plans you're referring to.
25 **MS. HANKS:** Whatever was in the sale

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1 exhibits.
2 **MR. GUNNERSON:** In the what exhibits?
3 **MS. HANKS:** The sale exhibits.
4 **MR. GUNNERSON:** Form as to what the "sale
5 exhibits" are.
6 **BY MS. HANKS:**
7 **Q** I think you explained them at your last
8 deposition, but the sale exhibits --
9 **A There's a community map exhibit of the**
10 **lots, and they change periodically when there's**
11 **another planning area or neighborhood that's added**
12 **or if there's a private driveway that's put in. We**
13 **try to catch things through the years that we**
14 **remember.**
15 **Again, those are not exacts per scale.**
16 **BY MS. HANKS:**
17 **Q** Certainly. But those were not changed
18 after Mr. Malek purchased the golf course portion;
19 correct?
20 **A I don't remember.**
21 **Q** Does MacDonald Highlands keep the old sale
22 agreements?
23 **A I don't believe so.**
24 **Q** You testified in your prior deposition
25 that you gave the Rosenbergs a package of

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1 disclosures. You called it "Design Guidelines Book"
2 and "CC&Rs book."
3 **And I have the original of what I think**
4 **you handed over, but I want to let you answer if**
5 **that's true. So if you could just take a look at**
6 **this.**
7 **Is this the binder that you handed to the**
8 **Rosenbergs during that one meeting I think that you**
9 **discussed in your prior deposition?**
10 **A I have no idea. It looks like our CC&Rs**
11 **for the community.**
12 **MS. HANKS:** And I'll state for the record
13 that we have Bates stamped this document PLTF10515
14 through -10743; although, this is not the Bates
15 version. I wanted to see if she recalled the
16 original version.
17 **BY MS. HANKS:**
18 **Q** I'll show you the original version. There
19 are maps located in the front of it.
20 **Can you look at those maps and let me know**
21 **what they are?**
22 **MR. GUNNERSON:** Counsel, how are we going
23 to refer to these in the record if you don't have
24 Bates-numbered versions and this book itself is
25 not -- are these already an exhibit?

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1 **MS. HANKS:** Yes. Actually, they're in
2 Mr. Bykowski's deposition where we pulled out the
3 maps. And, remember, he indicated I had to ask her
4 why they were included in the binder.
5 **MR. GUNNERSON:** I'm not disputing that.
6 I'm just wondering how we're going to reference them
7 here so her transcript -- we can make sure we're
8 looking at -- I don't believe we're running
9 deposition exhibits consecutively.
10 **MS. HANKS:** You're right.
11 **MR. GUNNERSON:** So whether or not it was
12 in Mr. Bykowski's deposition or not -- I want to
13 make sure the record is clear as to what she's
14 referring to so when we reference it, it's going to
15 work.
16 **MS. HANKS:** What I am going to do -- what
17 I could do is -- I was going to, but I didn't bring
18 it with me.
19 **I have just the maps -- because the rest**
20 **of it is just the CC&Rs and some other things. I**
21 **just want to talk about the maps, so what I can do**
22 **is we can mark as Exhibit 1 the same exhibit that we**
23 **attached to Mr. Bykowski's deposition, because**
24 **that's what we did. We just took the maps, and I**
25 **have that exhibit.**

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1 **MR. GUNNERSON:** My problem is I don't have
2 Mr. Bykowski's deposition with me. I want to make
3 sure what we did mark, in fact, was what she's
4 referring to here and there's no discrepancy.
5 That's my concern.
6 **MS. HANKS:** Yeah. And what we can do,
7 too, is we can just have her refer to the actual
8 map. They have numbers on them. They say 2 of
9 4 sheets, 3 of 4 sheets, and this is Page 76 of
10 Book 115, so if you want to refer to it that way...
11 **MR. GUNNERSON:** I guess my question would
12 be, then -- or my request would be if we're going to
13 refer to them that way, that's fine, but I would
14 like these maps to become an exhibit then.
15 **MS. HANKS:** We can do that.
16 **MR. GUNNERSON:** So that we can reference
17 them and make sure that they're exactly the same.
18 There's no -- page number of page numbers
19 isn't necessarily a great identifier for documents,
20 but as long as we can identify these as exhibits and
21 have them included as exhibits, I'm fine.
22 **MS. HANKS:** So what we can is -- and,
23 frankly, I'm not really going to talk about the
24 exhibits too much. I just wanted to see why they
25 were included. But I want to identify them as best

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1 as I can with some of the identifiers here.
2 So the first page within this binder --
3 it's titled "Final Map, MacDonald Highlands Planning
4 Area 10, AKA the Foothills at MacDonald Ranch,
5 Lot 10, Planning Area 10. And it is Sheet No. 2 of
6 four sheets.
7 **MR. GUNNERSON:** Is there a date on them?
8 **MS. HANKS:** There's a date: 10/6/03.
9 **MR. GUNNERSON:** Okay.
10 **MS. HANKS:** And then the next page -- it's
11 titled, "Final Map, MacDonald Highlands Planning
12 Area 10, AKA the Foothills at MacDonald Ranch,
13 Lot 10, Planning Area 10," and it is Sheet 3 of 4,
14 and it has the same date as 10/6/03.
15 And then the last sheet, which I'm not
16 really concerned with, but we'll still mark it since
17 it goes with the maps.
18 This is "Final Map, MacDonald Highlands
19 Planning Area 10, AKA the Foothills at MacDonald
20 Ranch, Lot 10, Planning Area 10," and it's dated
21 March 4, 2004, and it says Book 115, Page 76.
22 **MR. GUNNERSON:** And those will be --
23 **MS. HANKS:** Exhibit 1.
24 **MR. GUNNERSON:** Exhibit 1, okay.
25 ///

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1 (Deposition Exhibit 1 was marked for
2 identification.)
3 **BY MS. HANKS:**
4 Q Do you recall putting these maps in the
5 binder prior to giving it to the Rosenbergs?
6 A No.
7 Q Is it the normal course and practice for
8 those maps to be in the binder that's titled,
9 "Governing Documents for MacDonald Highlands"?
10 A Yes.
11 Q And what do those maps typically entail?
12 A **It's a final map of the neighborhood.**
13 Q Who prepares the governing documents
14 binder?
15 A **It all depends on who's working that day.**
16 **Could be me; could have been my partner; could have**
17 **been an assistant; could have been a receptionist.**
18 Q Are they prepared on a case-by-case basis,
19 or are there multiple ones you can take off the
20 shelf?
21 A **There are multiple ones that you can take**
22 **off the shelf for the governing docs. And then we**
23 **try to update them whenever we can.**
24 Q Do you know if the original binder that I
25 have here was one that was prepared that day or

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1 taken from a shelf somewhere in the office?
2 A **Well, I'm going to assume that the book,**
3 **because they're runoff -- we'll purchase 10 or 20 at**
4 **a time to be runoff, so one of us put the maps in**
5 **there.**
6 Q Okay. So when --
7 A **And the updated HOA financials.**
8 Q So when the binder is run off, when you
9 were ordering 10 to 20 at a time, it would not
10 contain the maps?
11 A **Correct.**
12 Q When you -- anybody at MacDonald Realty
13 would hand the book to a new homeowner, they would
14 add the maps in and any updated budget with HOA; is
15 that correct?
16 A **Correct.**
17 Q How does MacDonald Realty or the employees
18 that work for MacDonald Realty know that when
19 they're putting a map in the book, it's the most
20 updated map for the community?
21 A **Well, the maps are in a file cabinet, the**
22 **final maps, and then you can also pull it off of the**
23 **Internet.**
24 Q When you say "the Internet," where would
25 you go to pull off the final map?

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1 A I would go to Clark County Assessor.
2 Q Then what do you put in?
3 A Put in the address and then pull up the
4 final map.
5 Q When you say "the address," what address
6 do you put in to pull up the final map?
7 A Whatever address of property you need that
8 book for.
9 Q Now, did you tell the Rosenbergs they
10 could go to that website to do that?
11 A No.
12 Q After Mr. Malek's golf course portion was
13 rezoned, did MacDonald Realty receive any updated
14 final maps to insert in the binders?
15 MR. GUNNERSON: Objection: Facts not in
16 evidence.
17 Final maps were created or finalized after
18 a zoning approval, so I'll object to form, I guess
19 is what I'm trying to say. Thank you.
20 BY MS. HANKS:
21 Q Do you want me to repeat the question?
22 A I want you to restate it, yeah.
23 Q After -- at any time after the golf course
24 portion that was sold to Mr. Malek was approved for
25 rezoning, did MacDonald Realty receive any updated

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1 maps?
2 A I don't remember.
3 Q Do you recall telling the Rosenbergs that
4 the final map either was changed or may be in the
5 process of being changed based on the rezoning that
6 was approved for Mr. Malek's golf course parcel
7 purchase?
8 A No. I didn't have very many conversations
9 with the Rosenbergs.
10 Q In your prior deposition, you
11 testified -- and correct me if I'm wrong -- that
12 when you handed the Rosenbergs this binder, it was
13 during their due diligence period -- correct? -- of
14 their purchase contract?
15 A I don't remember what I said, but that
16 would have been given to them during their due
17 diligence. I don't remember if their real estate
18 agent picked it up or they picked it up.
19 Q Regardless of who picked it up, what is
20 the due diligence period?
21 A It is a period of time for the buyer to
22 review everything in that book, the design
23 guidelines book, talk to their agent, or have their
24 agent help them find out everything they can on that
25 property.

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1 Q And how long is the due diligence period?
2 How long was it for the Rosenbergs?
3 A I don't remember. It would be in the
4 contract.
5 Q If during that time the Rosenbergs looked
6 at the governing documents binder that you or
7 someone at MacDonald Highlands handed to them or
8 their agent and reviewed the design guidelines and
9 saw something they didn't like, whatever that might
10 be, could they back out of the purchase contract at
11 that time?
12 A At the due diligence period, yes.
13 Q And let's make that even more specific.
14 If the Rosenbergs had learned that the lot
15 lines for Lot 2, 594 Lairmont Place, had changed
16 during that due diligence period, they could have
17 backed out of the contract?
18 MR. GUNNERSON: Objection: Foundation;
19 form.
20 BY MS. HANKS:
21 Q And it bothered them. I'll add that.
22 If they found that out and they didn't
23 like that, could they have backed out of the
24 contract during the due diligence?
25 A I believe so, but I would have to read the

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1 contract. I don't have the contract in front of me.
2 Q Okay. So there are --
3 A I don't know what the limitations of the
4 contract state.
5 Q Are there limitations in contracts during
6 that due diligence period?
7 A I don't know what the contract says unless
8 I read it. I don't have it in front of me to read
9 it.
10 MR. GUNNERSON: Let her finish her
11 question.
12 BY MS. HANKS:
13 Q I understand that. I guess I'm trying to
14 generally understand, though, in purchase agreements
15 for the residential property for MacDonald
16 Highlands, are there only certain reasons why you
17 can back out during the due diligence?
18 MR. GUNNERSON: Objection: Foundation;
19 form.
20 A I don't know what was in their total
21 contract, if there were terms in their contract
22 because I'm not reviewing the contract.
23 BY MS. HANKS:
24 Q So there might be terms within their
25 contract that prevented them from backing out during

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1 the due diligence?

2 **A Correct.**

3 Q And you would have to review the contract

4 to make sure?

5 **A Correct. And the contract was not**

6 **MacDonald Highlands Realty contract.**

7 Q Okay.

8 **A It was a contract from a real estate agent**

9 **that represented them.**

10 Q And so if there weren't -- let's assume

11 hypothetically there were no restrictions for a

12 reason why they could back out during the due

13 diligence. Then that's a period they could back

14 out?

15 **MR. GUNNERSON: Objection: Foundation;**

16 **calls for speculation; form.**

17 **A Well, you're asking me to speculate and**

18 **assume, so I would assume, yes, they could back out.**

19 **BY MS. HANKS:**

20 Q Sure. I understand. It's a hypothetical;

21 right.

22 Now, who did you represent in the

23 transaction between the Rosenbergs' purchase? When

24 I say the "Rosenbergs," I mean the Rosenberg Trust,

25 purchase of Lot 3, 590 Lairmont Place.

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1 **A Bank of America.**

2 Q I know you indicated you had very little

3 conversation with the Rosenbergs. Who did you

4 specifically ever speak to? Because I know there's

5 a couple of Rosenbergs. So if you spoke to anyone,

6 who did you speak to?

7 **A I spoke to Barbara once or twice on the**

8 **phone before I listed the property. When I handed**

9 **off the books and disclosures, I don't -- there was**

10 **a whole group of people. I don't know who they**

11 **were.**

12 Q Do you recall the substance of your

13 conversation with Barbara during the one or two

14 times before you listed the property?

15 **A She called, wanting to buy the property,**

16 **and I told her I didn't have it listed yet.**

17 **And she kept saying, "I have a real estate**

18 **agent."**

19 **And I said, "You need to talk to your real**

20 **estate agent and have them contact us."**

21 Q How about: Is that the only substance of

22 those one or two conversations?

23 **A Yep.**

24 Q How about: On the day that you handed

25 over the books, was there any substantive

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1 conversation between any of those people?

2 **A Basically, from what I remember, is their**

3 **agent was supposed to pick up the documents and add**

4 **her disclosures for her office also to that and sit**

5 **with the Rosenbergs and go over everything.**

6 Q So would it be fair to state that there

7 were no conversations, either by you or on behalf of

8 MacDonald Realty, with any of the Rosenbergs about

9 Mr. Malek purchasing a portion of the golf course?

10 **A I can't speak for my partner, who is now**

11 **dead, but I was on-site with a customer when the**

12 **Rosenbergs, a big group of them, came in and**

13 **disturbed my office several times, looking for me.**

14 Q I'm just making sure I understand, though,

15 that as far as you can remember, you individually

16 had no conversations with the Rosenbergs about

17 Mr. Malek purchasing a portion of the golf course;

18 correct?

19 **A Correct.**

20 Q Now, Jim Venable is your partner; correct?

21 Or was your partner?

22 **A Was my partner, yes.**

23 Q He may have had conversations, but as you

24 sit here today, you are not aware of any that he may

25 have had?

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1 **A Correct.**

2 Q Did you talk to Jim prior to his death as

3 to whether he did have any conversations with the

4 Rosenbergs?

5 **A No.**

6 Q How about Bank of America? Did you have

7 any conversations with Bank of America or its

8 agent -- as I understand REO management was its

9 agent for purposes of listing this property -- about

10 the sale of the golf course portion to Mr. Malek?

11 **A I don't believe so.**

12 Q Did you ever consider whether you, as a

13 real estate agent/broker, had a duty to disclose the

14 sale of the golf course portion to Mr. Malek to the

15 Rosenbergs?

16 **MR. GUNNERSON: Objection: Foundation;**

17 **form.**

18 **Go ahead.**

19 **A It never occurred to me.**

20 **BY MS. HANKS:**

21 Q How about the change in zoning? Did it

22 ever occur to you whether that needed to be

23 disclosed to the Rosenbergs, the rezoning of the

24 golf course?

25 **A Never occurred to me.**

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1 **MR. GUNNERSON:** Same objection.
2 **BY MS. HANKS:**
3 Q How about the change in lot lines? Did it
4 ever occur to you to disclose --
5 A **Never occurred to me.**
6 Q Was there any conversations with Bank of
7 America about whether or not they needed to disclose
8 the zoning changes to the golf course parcel --
9 **MR. GUNNERSON:** Objection.
10 **BY MS. HANKS:**
11 Q -- to the Rosenbergs?
12 **MR. GUNNERSON:** Sorry. Objection:
13 Foundation; calls for speculation; form.
14 A **Not that I remember.**
15 **BY MS. HANKS:**
16 Q How about the changing of the lot lines?
17 Was there any conversations with Bank of America,
18 where Bank of America expressed whether they had a
19 duty to disclose that to the Rosenbergs?
20 **MR. GUNNERSON:** Same objections.
21 A **Not that I remember.**
22 **BY MS. HANKS:**
23 Q Does the Nevada Real Estate Division have
24 a mechanism whereby you could call up and ask for
25 advice if you are confused or concerned about

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1 something with respect to a real estate transaction?
2 A **I don't know.**
3 Q Would it be fair to state you never -- if
4 they do have one, you've never used that service, if
5 they do provide it?
6 A **Correct.**
7 Q Any discussions with Jim Venable about
8 disclosing the rezoning of the golf course portion
9 to the Rosenbergs?
10 A **Not that I remember.**
11 Q Any discussions with Jim about disclosing
12 the change in lot lines to the Rosenbergs?
13 A **Not that I remember.**
14 Q How about Richard MacDonald? Any of those
15 discussions regarding whether you should disclose
16 the rezoning?
17 **MR. GUNNERSON:** And I'm going to object
18 insofar as they've been discussions after the --
19 insofar as we've had discussions after the -- after
20 the -- I guess timeline is what I'm talking about.
21 **MS. HANKS:** Yes.
22 **MR. GUNNERSON:** After the inception of the
23 case, that we're not looking for conversations then.
24 **MS. HANKS:** Correct.
25 **MR. GUNNERSON:** Okay.

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1 **MS. HANKS:** I'll clarify that.
2 **BY MS. HANKS:**
3 Q For all the questions I'm asking about any
4 discussion about whether it should be disclosed, the
5 rezoning or the lot line changes, I'm asking between
6 the time period of when the rezoning and lot line
7 change happened and the time that the 590 Lairmont
8 Place was sold to the Rosenbergs, which I believe
9 was in around May of 2013.
10 A **No, not that I remember.**
11 Q I'm sorry.
12 And so I went through Bank of America and
13 Jim, and so the same is true for Richard MacDonald
14 and Paul Bykowski, no conversations with either of
15 those individuals during that time period about
16 whether the rezoning or the change of lot lines
17 should be disclosed to the Rosenbergs?
18 A **Correct.**
19 Q How about after this lawsuit was filed?
20 And with the exception: I don't want to know if
21 your attorney was present, if you had any
22 discussions.
23 But how about after the lawsuit was filed,
24 did you think to yourself: Did I have a duty to
25 disclose the rezoning or the lot line changes to the

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1 Rosenbergs?
2 **MR. GUNNERSON:** Can you repeat that
3 question?
4 **MS. HANKS:** Sure.
5 **BY MS. HANKS:**
6 Q I'm asking if there was ever a thought
7 process on the witness -- not talking to anyone,
8 just you sitting after you got served with the
9 lawsuit, whether you grappled with the fact of
10 whether you had a duty under Nevada law to disclose
11 the re-zoning and the lot line changes.
12 **MR. GUNNERSON:** And I'm going to object
13 and instruct her not to answer, only insofar as
14 we've had plenty of conversations and insofar as I'm
15 concerned that she's not able to discern what was
16 simply a thought versus what was a result of
17 conversations and what conversations we've had or
18 not had and what part of her thought process would
19 result from more conversations. I don't want her to
20 talk about anything since we've been representing
21 her.
22 And calls for legal conclusion.
23 Go ahead.
24 A **Well, I think you're always concerned and**
25 **you think about things when you get sued.**

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1 **BY MS. HANKS:**
2 Q After you were served with the lawsuit,
3 did you call the Nevada Real Estate Division and
4 pick their brain about whether you had a duty to
5 disclose this?
6 A No.
7 Q Did you talk to anyone at MacDonald
8 Highlands, whether that be Richard MacDonald, Jim,
9 or Paul Bykowski, after the lawsuit was filed?
10 A Yes.
11 Q What did you guys discuss?
12 **MR. GUNNERSON:** I'm going to object and
13 instruct her not to answer insofar as if it was
14 discussions regarding the lawsuit, would be work
15 product.
16 They all work as employees for the same
17 company, who is named as a party in this lawsuit,
18 and so any conversations I had with one or multiple
19 or they had among themselves would be privileged
20 under attorney work product.
21 **BY MS. HANKS:**
22 Q I don't want to know any conversations you
23 had with an attorney present or if you were
24 discussing amongst yourselves what you recently
25 discussed with your attorneys, because you all are

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1 represented by the same attorney.
2 I'm just asking: Aside from any
3 attorney-client privileged communications, did you
4 talk to Richard MacDonald or Paul Bykowski or Jim
5 about whether you may have had a duty to disclose
6 the rezoning of the lot line changes?
7 A Of course.
8 Q And what was the substance of those
9 conversations?
10 A I don't know. I don't remember. There's
11 been several kind of changes in the lawsuit. The
12 first one was that I blocked The Strip view by not
13 telling them.
14 Well, The Strip is on this side of their
15 property, when they were talking about this side, so
16 I think the lawsuit was changed. So I don't
17 remember the conversations.
18 **MS. HANKS:** Let's mark this as 2.
19 (Deposition Exhibit 2 was marked for
20 identification.)
21 **MS. HANKS:** We can go back on the record.
22 **BY MS. HANKS:**
23 Q The court reporter has handed you what's
24 been marked as Exhibit 2. It's a document titled,
25 "Nevada Real Estate Division Residential Disclosure

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1 Guide."
2 Do you recognize this document?
3 A Yes.
4 Q What is it?
5 A It's a disclosure guide for new
6 homeowners.
7 Q And is it your understanding that this has
8 to be disclosed to sellers or purchasers of
9 property?
10 A Both.
11 Q Could you turn to Page -- I'll give you
12 the -- there's a Bates Stamp number at the bottom.
13 It's PLTF11175.
14 A Okay.
15 Q And before we actually get to that little
16 section, who -- of the real estate agents in this
17 transaction, the Rosenberg transaction, who's
18 responsible for disclosing this booklet to the
19 Rosenbergs?
20 A I would have put one in there for them,
21 but their real estate agent should have, so again, I
22 included a bunch of disclosures what the agent -- I
23 wanted a copy back whether it was hers or mine.
24 Q And so if you take a look at the "Building
25 and Zoning" code section, it says, "The purpose of

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1 the building and zoning disclosure is to inform the
2 buyer of transportation beltways and/or planned or
3 an anticipated land use within proximity of the
4 subject property of which the seller has knowledge.
5 Do you see that?
6 A Uh-huh.
7 Q Given this paragraph, why didn't you
8 disclose the zoning change to the golf course parcel
9 to the Rosenbergs?
10 **MR. GUNNERSON:** What time are you
11 referencing?
12 **BY MS. HANKS:**
13 Q At any time before the close of escrow for
14 the purchase of 590 Lairmont Place.
15 A I didn't think it was a material fact on
16 that property, and I didn't even think about it.
17 They were giving a zoning map and a zoning
18 disclosure if they wanted further detail.
19 **BY MS. HANKS:**
20 Q Is it your understanding, based on the
21 education and experience that you've had in the real
22 estate industry, that this provision only requires
23 that you disclose a zoning map?
24 **MR. GUNNERSON:** I'm going to object:
25 Calls for legal conclusion.

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1 **A** I don't know what it would require. They
2 **had their own real estate agent.**
3 **BY MS. HANKS:**
4 **Q** Is it their real estate agent that's
5 supposed to disclose the zoning changes?
6 **A** Well, their real estate agent is working
7 for them, so I would assume they would go over
8 everything with them. I don't sit down with them on
9 this.
10 **Q** But this says the seller has knowledge --
11 "of which the seller has knowledge."
12 Do you have an understanding of whether
13 the seller and/or the seller agent has a duty to
14 disclose zoning with -- I'm sorry, zoning within
15 proximity to the subject property?
16 **A** As I stated, I gave them a zoning map and
17 a zoning disclosure which states if you need -- if
18 you want further information on this, to contact the
19 City of Henderson.
20 **Q** No, no, no. I know what you did. I'm
21 asking what your understanding this provision
22 requires you, as the agent for the seller.
23 Is it your understanding that you just
24 have to disclose the zoning map and say, "If you
25 want further information, you can go to the City of

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1 Henderson"?
2 **MR. GUNNERSON:** You can answer, but I'm
3 going to object that it calls for a legal
4 conclusion.
5 **A** I think I did my job for the seller well
6 with the zoning and the other disclosures, and I
7 think it's up to the buyer if they want further
8 information to either find that out themselves, or
9 they've hired a real estate agent to do that for
10 them.
11 **BY MS. HANKS:**
12 **Q** And what you -- and just to clarify what
13 you did in this case that you think you did well was
14 the disclosure of the zoning map; correct?
15 **A** Correct.
16 **Q** We're getting that copied right now, so
17 we'll talk about that in a minute.
18 **MR. GUNNERSON:** Objection: Misstates
19 prior testimony.
20 **MS. HANKS:** Counsel, can we go off the
21 record for a second?
22 (Discussion held off the record.)
23 **BY MS. HANKS:**
24 **Q** Let's talk about 4, since we just left off
25 on the zoning, and get back to the written answers.

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1 **MS. HANKS:** So can you hand her 4.
2 (Deposition Exhibit 4 was marked for
3 identification.)
4 **BY MS. HANKS:**
5 **Q** This map that's a colored zoning map, it's
6 marked as Exhibit 4. It was located in the binder
7 marked "Governing Documents," and it's behind Tab 3.
8 According to the index for the binder, it says
9 "Section 3, Existing Zoning Map and City of
10 Henderson Gaming Overlay Map." And I only copied
11 the zoning map because I'm not concerned about the
12 gaming map.
13 Do you know on that map where MacDonald
14 Highlands is located?
15 **A** Right here, this general area right here,
16 Horizon Ridge Parkway, Stephanie.
17 **Q** Can your circle that on that exhibit so we
18 know where we're talking? And do a big enough
19 circle to include the area, if you could.
20 **A** Your pen is not writing very well.
21 **MR. SHEVORSKI:** Here, use mine.
22 **BY MS. HANKS:**
23 **Q** You indicated earlier that MacDonald
24 Realty would get updated final maps to include in
25 this "Governing Documents" binder.

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1 Did MacDonald Highlands also receive
2 updated zoning maps to include in the binders?
3 **A** Can you restate the question?
4 **Q** Sure. If I recall correctly, your
5 testimony was that MacDonald Realty would get --
6 from time to time would get updated final maps to
7 include in these "Governing Documents" binders?
8 **A** I don't understand what you mean by we
9 would "get." Nobody delivered those to us.
10 **Q** If the final map was updated in any way,
11 how would MacDonald Realtors obtain it in order to
12 put it in the binders?
13 **MR. GUNNERSON:** Objection: Asked and
14 answered.
15 Go ahead.
16 **A** Before the Internet, I would have Paul get
17 me a smaller version, because they came in sheets.
18 When the Internet and the City of Henderson had a
19 website for the Assessor's Office, we would pull it
20 from the Assessor's Office and print it out.
21 **Q** Okay. So you would print it out.
22 So would the same be true for the zoning
23 maps? If the zoning was altered, would you also go
24 and print off updated zoning maps to insert into the
25 binders?

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1 A Yes and no.
2 Q What's the "yes" part of that?
3 A Originally, you couldn't pull those off
4 the Internet, and you would have to drive down to
5 the City of Henderson or Clark County. I can't
6 remember which.
7 Probably the zoning came from
8 Clark -- well, no, that probably came from
9 Henderson. And then the gaming we had go down to
10 the Clark County building.
11 Q Okay. So your understanding is you had to
12 actually get the zoning map physically from the City
13 of Henderson?
14 MR. GUNNERSON: Objection: Misstates
15 prior testimony.
16 Go ahead.
17 A Years ago, yes, we would have to drive
18 down there and get it. We would have to drive down
19 to Clark County and get it.
20 BY MS. HANKS:
21 Q When did that change; do you recall?
22 A No, I don't remember.
23 Q Was it possible or was it -- did you have
24 the ability to get the maps without going in person?
25 And when I say "the maps," I mean the zoning maps --

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1 in 2012.
2 A I'm going to say yes, but I don't know for
3 certain.
4 MS. HANKS: Now we can go back to
5 Exhibit 3.
6 (Deposition Exhibit 3 was marked for
7 identification.)
8 BY MS. HANKS:
9 Q I just want you to turn to the
10 second-to-last page. It's Page No. 11 of 12.
11 Is that your signature on that page?
12 A Yes.
13 Q Before we get to these exhibits, prior to
14 your handing the "Governing Documents" binder to
15 either the Rosenbergs or the agent -- because I know
16 you are not sure what happened -- did you do
17 anything to make sure the zoning map was the most
18 up-to-date zoning map?
19 A I don't remember, but someone in my
20 office -- again, we try to get those books every six
21 months, whenever we can, make sure they're updated.
22 Q Knowing that zoning changes had either
23 occurred or were occurring with respect to the golf
24 course portion that was being sold to Mr. Malek, did
25 you do anything extra to make sure that the zoning

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1 map in the binder that was handed to the Rosenbergs
2 or their agent was updated?
3 MR. GUNNERSON: Objection: Form.
4 Go ahead.
5 A Can you restate that?
6 BY MS. HANKS:
7 Q Yeah. In other words, what I'm trying to
8 get at is I understand that you indicated that
9 generally the office had multiple binders and made
10 sure that they were up to date.
11 But I'm wondering if, because you knew
12 specifically about a particular zoning change that
13 was happening or had happened to the golf course
14 portion that was sold to Malek, before the binder
15 was provided to the Rosenbergs, was there any maybe
16 extra step that was taken to determine whether the
17 zoning map located in there was the most up-to-date?
18 MR. GUNNERSON: Objection: Misstates
19 prior testimony as to time; form.
20 Go ahead.
21 A I never even considered it relevant to the
22 sale.
23 BY MS. HANKS:
24 Q Now, let's take a look at -- I think it's
25 6. Is it 5 or 6? That's what we're going to talk

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1 about right now.
2 (Deposition Exhibits 5 and 6 were marked
3 for identification.)
4 BY MS. HANKS:
5 Q If you could go to -- before we get
6 started into the documents, if you could go to
7 Page 12 of 13 of the interrogatories, your responses
8 to Plaintiff's interrogatories --
9 MR. GUNNERSON: Can you give her an
10 exhibit number?
11 MS. HANKS: Yeah, the interrogatories are
12 5; correct?
13 MR. GUNNERSON: No, 6.
14 MS. HANKS: 6, sorry.
15 BY MS. HANKS:
16 Q So of Exhibit 6, Page 12 of 13, is that
17 your signature that appears there?
18 A Yes.
19 Q Now, if you could turn to Page 3, we're
20 going to talk about Interrogatory No. 4. And,
21 unfortunately, we're going to have to also talk
22 about Exhibit 5 at the same time, so if you could
23 turn to Exhibit 5 and open that up at the same time
24 and go to Page 3.
25 And the reason why is this request -- or

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1 this Interrogatory No. 4 was asking for you to give
2 explanations as to why you would have denied a
3 request for admissions, so we're going to talk about
4 them in tandem.
5 So the first one -- it's Request No. 9,
6 Request for Admission No. 9. It indicates -- or
7 asks, "Admit that you knew that the MacDonald
8 applications had been filed with the City of
9 Henderson before the residential purchase agreement
10 disclosed by you as MHR000136 through -145 was
11 executed by Frederic and Barbara Rosenberg. And
12 your response was denied.
13 Now, if you go to your interrogatory
14 explanation, you indicated the explanation for that
15 denial was "Defendant cannot recall whether or not
16 she knew that the MacDonald applications had been
17 filed with the City of Henderson before the
18 residential purchase agreement was executed by
19 Frederic and Barbara Rosenberg."
20 Is that still your answer today, that you
21 did not know whether the applications had been filed
22 with the City of Henderson to rezone the golf course
23 parcel before the Rosenbergs executed their purchase
24 agreement?
25 **MR. GUNNERSON:** Objection: Misstates

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1 what's stated in the documents.
2 Go ahead. You can answer.
3 **A I'm a little confused here. I don't know**
4 **what you're asking.**
5 **BY MS. HANKS:**
6 **Q** Well, I guess I'm trying to understand,
7 because sometimes we -- we issue these before we
8 depose you, and I read your previous deposition, and
9 I just want to make sure that you're not actually
10 denying that you knew zoning applications were
11 submitted.
12 You're just denying that because you don't
13 recall whether you knew at that particular time? Is
14 that a correct way to understand that denial?
15 **MR. GUNNERSON:** Objection as to form.
16 **A Again I'm not understanding your question.**
17 **BY MS. HANKS:**
18 **Q** You did know at the time the Rosenbergs
19 entered into a purchase agreement to purchase
20 590 Lairmont Place, that Mr. Malek -- Mr. Malek's
21 purchase of the golf course parcel was dependent
22 upon rezoning applications; correct?
23 **A Correct.**
24 **Q** And you also knew -- I know you don't
25 remember the exact date, but you did know at some

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1 point that those rezoning applications were
2 approved; correct?
3 **A You're going to have to restate that,**
4 **please.**
5 **Q** I understand you don't know the exact date
6 you found out, but you did, at some point, find out
7 that the rezoning applications were approved?
8 **A Correct.**
9 **Q** In relation to the Rosenbergs' purchase of
10 590 Lairmont Place, do you know when you learned
11 that the rezoning was approved for the golf course
12 parcel?
13 **MR. GUNNERSON:** Objection: Asked and
14 answered.
15 **A I don't remember.**
16 **BY MS. HANKS:**
17 **Q** If you could turn to Page 5.
18 **A Page 5 of which?**
19 **Q** I'm sorry. Page 5 of Exhibit 5.
20 If you turn to Page 4 of Exhibit 6, you
21 explain why you denied that -- I'm sorry.
22 Request No. 18 is, "Admit that after the
23 Rosenberg property sale" --
24 **A I'm lost here.**
25 **Q** Sorry. Sorry. Sorry.

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1 **MR. GUNNERSON:** She's back to Exhibit 5.
2 **BY MS. HANKS:**
3 **Q** Sorry. Request 18. I forgot to read the
4 request we're going to talk about.
5 So Page 5 of Exhibit 5.
6 **A Okay.**
7 **Q** It's Request No. 18.
8 **A Okay.**
9 **Q** It reads, "Admit that after the Rosenberg
10 property sale closed, sometime between, you
11 personally told David Rosenberg that you were not
12 required to disclose the rezoning or sale of the
13 golf course parcel to plaintiff at any time."
14 There's an objection there, but you denied
15 that request.
16 And then if you go to Page 4 of Exhibit 6,
17 you explain the denial, and your denial indicates
18 that "Defendant denied this request because she did
19 not personally tell David Rosenberg that she was not
20 required to disclose the rezoning or sale of the
21 golf course parcel to Plaintiff at any time."
22 Do you know if you've ever even met David
23 Rosenberg?
24 **A I don't know which one is which.**
25 **Q** Do you have an understanding that he may

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1 have been present during that time where you said
2 there was multiple people present in the Rosenberg
3 camp, we'll call it?
4 **A There could have been.**
5 **Q** Did you make that representation to
6 anybody in that group?
7 **A No.**
8 **Q** Have you ever made that representation to
9 anyone that --
10 We'll just go with: Since the lawsuit was
11 filed or since you realized there was an issue
12 raised as to whether it should be disclosed, have
13 you ever told anyone, besides your attorneys, that
14 you didn't have a duty to disclose that?
15 **A No.**
16 **Q** If you'd turn to Page 6 of Exhibit 6, I
17 want to address Interrogatory No. 12. It reads,
18 "Provide the date when you first became aware that
19 the golf course parcel might be rezoned."
20 And your answer was "Defendant does not
21 recall the date."
22 Understanding that you don't recall the
23 exact date, I just want to be clear that I
24 understood your testimony today that during the time
25 where Mr. MacDonald agreed to actually sell the

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1 portion, you understood at the time that that area
2 would have to be rezoned; correct?
3 **A Yes.**
4 **Q** So whatever that time frame is, whatever
5 that date is, that would be the best approximate
6 date of when you knew the area would have to be
7 rezoned?
8 **A Yes.**
9 **Q** And the same is -- we'll go to
10 Interrogatory No. 13 on that same page.
11 It reads, "Provide the date when you first
12 became aware that golf course parcel was
13 successfully rezoned."
14 And your response was "Defendant does not
15 recall the date."
16 I want to make sure I understood your
17 testimony today as well.
18 You don't recall the specific date you
19 learned it was successfully rezoned, but there did
20 actually come a point in time that you did learn it,
21 because that was your indicator that you could now
22 close escrow on that transaction; correct?
23 **A Yes.**
24 **Q** And would it be fair to state -- actually,
25 I'll back up.

Page 208

1 Do you recall generally how long it took,
2 once you did find out it was rezoned, to finally
3 close out escrow on the Malek golf course
4 transaction?
5 **A No, I don't remember.**
6 **MR. GUNNERSON:** Can we go off the record?
7 **MS. HANKS:** Sure.
8 (Pause in proceedings.)
9 **MS. HANKS:** I just have a few more
10 questions.
11 **BY MS. HANKS:**
12 **Q** Who is -- is it Mark or Lark or Lowery?
13 **A Lark Lowry used to work for Blue Heron,**
14 **which is a contractor in town that does luxury**
15 **homes. She used to be a salesperson.**
16 **Q** Do you recall having any conversations
17 with Lark Lowry -- I'll go at any time during the
18 transactions we talked about today, starting with
19 Mr. Malek's purchase of the golf course parcel.
20 So from that time all the way up until the
21 present day, have you had any conversations with him
22 about anything involving this case?
23 **A Lark is a girl.**
24 **Q** I'm sorry. Lark, okay. Her.
25 Did you talk to her at all regarding

Page 209

1 anything about this case?
2 **A Not that I remember.**
3 **Q** And then who is Kelly Barrington?
4 **A I don't know.**
5 **Q** Hypothetically speaking, if the sale of
6 the golf course portion to Mr. Malek had closed
7 prior to any sale of 590 Lairmont, is that a fact
8 that has to be disclosed to any potential purchaser
9 of 590 Lairmont?
10 **MR. GUNNERSON:** Objection: Incomplete
11 hypothetical, calls for facts not in evidence, and
12 calls for legal conclusion.
13 You can answer.
14 **A I don't believe so.**
15 **MS. HANKS:** I don't think I have any more
16 questions.
17 **MR. SHEVORSKI:** No questions from Bank of
18 America.
19 **MR. DeVOY:** Just a few from Shane Malek.
20 I think we're on Exhibit No. 7.
21 (Deposition Exhibit 7 was marked for
22 identification.)
23 **EXAMINATION**
24 **BY MR. DeVOY:**
25 **Q** Michael, just a few brief questions about

Page 210

1 this document.
2 **A Okay.**
3 **Q** Have you seen it before?
4 **A Yes.**
5 **Q** And you were responsible for the escrow
6 process for the golf parcel when Mr. Malek was
7 purchasing it; correct?
8 **A Yes.**
9 **Q** Can you turn to the last page. It's
10 Bates marked MALEK0064.
11 **A Yes.**
12 **Q** Now, do you see the lines at the end of
13 Paragraphs 1 through 8, where it's written "yes," in
14 someone's handwriting, on them?
15 **A Yes.**
16 **Q** Is that your handwriting?
17 **A No. Well, wait a minute. It looks like**
18 **it is.**
19 **Q** Do you see at the bottom, below
20 Paragraph 8 but above the final signature line,
21 where it says, "Questions asked by and answers
22 written in by," colon, and then there's a line with
23 your name?
24 **A Yes.**
25 **Q** Are you the one who wrote your name on

Page 211

1 that?
2 **A Yes.**
3 **Q** So having reviewed that, are you the one
4 who wrote "yes," on the Lines for Paragraphs 1
5 through 8?
6 **A Yes, looks like my writing.**
7 **Q** So do you recall if there's any portion of
8 this document that you didn't fill out, other than
9 Mr. Malek's signatures?
10 **A I filled out the second page.**
11 **Q** Do you recall why the \$40,000 was released
12 from escrow?
13 **A I believe Mr. MacDonald wanted the money**
14 **released.**
15 **Q** Do you know why he wanted it released?
16 **MR. GUNNERSON:** Objection: Calls for
17 speculation.
18 **A Not at this time.**
19 **BY MR. DeVOY:**
20 **Q** Did Mr. MacDonald ever have any
21 conversations with you about the release of that
22 money?
23 **A Yes. I just don't remember the**
24 **conversations.**
25 **Q** Do you recall roughly when those

Page 212

1 conversations occurred?
2 **A No.**
3 **MR. DeVOY:** I have nothing further.
4 **MR. GUNNERSON:** I have no questions.
5 **THE REPORTER:** Hard copy or --
6 **MS. HANKS:** E-Tran.
7 **THE REPORTER:** E-Tran only.
8 **MR. GUNNERSON:** E-Tran.
9 **MS. HANKS:** Thank you for your time.
10 **THE WITNESS:** Hard? E-Tran?
11 **MR. DeVOY:** E-Tran.
12 **THE REPORTER:** Thank you.
13 **MR. SHEVORSKI:** You have my order already,
14 E-Tran.
15 **THE REPORTER:** Yes, I do. Thank you.
16 (Proceedings concluded at 3:03 p.m.)
17 -oOo-
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Page 213

1 **CERTIFICATE OF DEPONENT**
2
3 **PAGE LINE CHANGE REASON**
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18 * * * * *
19 I, Michael Ann Doiron, Deponent herein, do
20 hereby certify and declare under penalty of perjury
21 the within and foregoing transcription to be my
22 deposition in said action; that I have read,
23 corrected, and do hereby affix my signature to said
24 deposition, under penalty of perjury.
25 Michael Ann Doiron, Deponent

1 STATE OF NEVADA)
2 COUNTY OF CLARK)

3 CERTIFICATE OF REPORTER

4 I, Andrea N. Martin, a duly commissioned and
5 licensed court reporter, Clark County, State of
6 Nevada, do hereby certify:

7 That I reported the taking of the deposition of
8 Michael Ann Doiron, commencing on Friday, March 6,
9 2015, at the hour of 1:41 p.m.; that the witness
10 was, by me, duly sworn to testify to the truth and
11 that I thereafter transcribed my said shorthand
12 notes into typewriting, and that the typewritten
13 transcript of said deposition is a complete, true,
14 and accurate transcription of said shorthand notes;
15 that I am not a relative or employee of any of the
16 parties involved in said action, nor a relative or
17 employee of an attorney involved in nor a person
18 financially interested in said action; further, that
19 the reading and signing of the transcript was
20 requested.

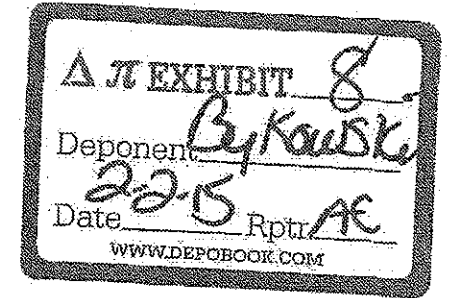
21 IN WITNESS WHEREOF, I have hereunto set my hand
22 in my office in the County of Clark, State of
23 Nevada, this 13th day of March, 2015.

24
25 ANDREA N. MARTIN, CRR, CCR NO. 887

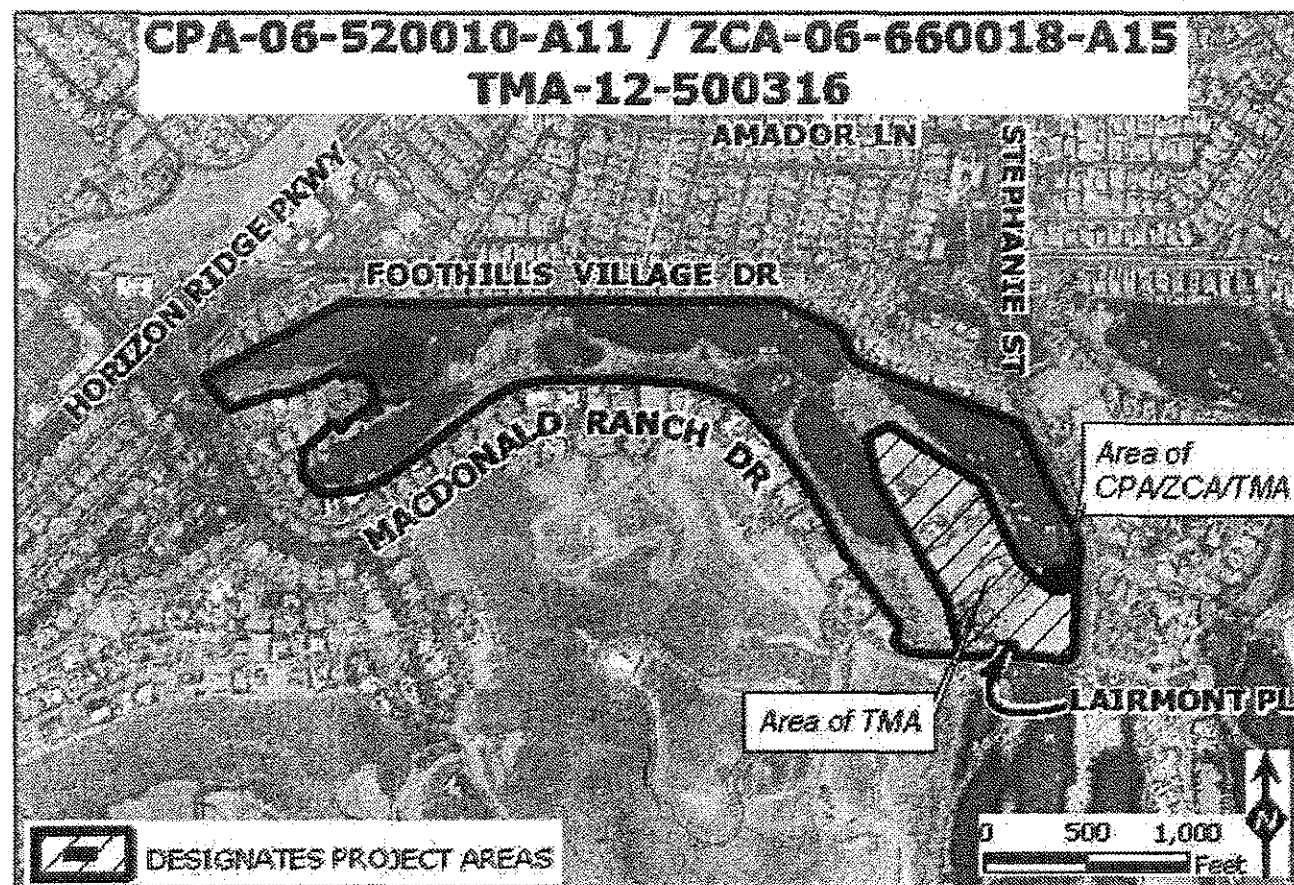
EXHIBIT Q

**CITY OF HENDERSON
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

PLANNING COMMISSION DATE: November 15, 2012
AGENDA ITEM NUMBER: 7
APPLICATION NUMBERS: A. CPA-06-520010-A11
B. ZCA-06-660018-A15
C. TMA-12-500316
PROJECT APPLICANT: MacDonald Properties
PROJECT DESCRIPTION: MacDonald Highlands aka Foothills @ MacDonald Ranch (Golf Hole #9)



- A. Amend the Land Use Policy Plan from PS (Public/Semipublic) to VLDR (Very Low-Density Residential) on 0.34 acres;
- B. Amend an approved master plan by rezoning a 0.34-acre portion of a 1,162-acre master plan from PS-MP-H (Public/Semipublic with Master Plan and Hillside Overlays) to RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays) and remove the 0.34-acres (14,841 square feet) from Planning Area 3 (Golf Hole #9) and add it to Lot 2 of Planning Area 10; and
- C. An 18-lot residential subdivision (16 single-family, 2 common); located within the MacDonald Highlands master plan, off MacDonald Ranch Drive and Stephanie Street, in the MacDonald Ranch Planning Area.



STAFF RECOMMENDATION

- A. CPA-06-520010-A11 RECOMMENDED APPROVAL, subject to a finding of fact.
- B. ZCA-06-660018-A15 RECOMMENDED APPROVAL by ordinance, subject to findings of fact, conditions, and waivers.
- C. TMA-12-500316 RECOMMENDED APPROVAL subject to conditions

PLTF6376

PROJECT INFORMATION

PROJECT NUMBERS

A. CPA-06-520010-A11
B. ZCA-06-660018-A15
C. TMA-12-500316

PUBLIC HEARING NOTIFICATION

Notice Published	November 5, 2012
Notice Mailed	November 5, 2012
Total Notices Sent	462 (includes any registered HOAs within buffer area)
Notice Radius	775 feet
Sign Posted	November 5, 2012
Neighborhood meeting	October 22, 2012

EXISTING ZONING

PS (Public/Semipublic)
RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlay)

EXISTING LAND USE

PS (Public/Semipublic)
VLDR (Very Low-Density Residential)

NEIGHBORHOOD CHARACTERISTICS

	Zoning	Land Use	Existing Use
North	PS-MP-H	PS	Dragon Ridge Golf Course
South	RS-2-MP-H	VLDR	Undeveloped Residential Lot
East	RS-2-MP-H	VLDR	Single-Family Residence
West	PS-MP-H	PS	Dragon Ridge Club House

BACKGROUND AND PRIOR ACTIONS

Date	Action
6/20/07	City Council approved Comprehensive Plan Amendment CPA-06-520010-A9 and an amendment to Zone Change ZCA-06-660018 (A12) for Planning Areas 18 and 20.
8/5/08	City Council approved Comprehensive Plan Amendment CPA-06-520010-A10 and an amendment to Zone Change ZCA-06-660018 (A13) for Planning Areas 18 and 20.
10/22/12	The applicant held a neighborhood meeting. A summary of the meeting is in the backup material for this item.

PLTF6377

ANALYSIS

The land use and zoning applications are necessary to transfer 0.34 acres from the golf course and add the area to the adjacent residential lot to create a larger home site. The tentative map is necessary to amend Lot 2 to include this new area and remove it from the golf course.

CPA-06-520010-A11

The applicant is requesting approval of a Comprehensive Plan Amendment to change the land use designation from public/semipublic to low-density residential on approximately 0.34 acres generally located to the north of 594 Lairmont Place. The proposal is to add this land to the adjacent residential lot. The addition of the 0.34 acres will make the lot larger with more buildable area for the prospective buyer. A zone change application and tentative map application accompanies this request.

The proposed land use is compatible with surrounding uses. Single-family residential and a golf course surround the site to the north, south and east. The Dragon Ridge Golf Clubhouse is located to the west of the site.

The proposed land use change complies with the Comprehensive Plan Amendment themes as provided in the Comprehensive Plan. Below is the applicant's analysis of each theme as it pertains to this request.

Comprehensive Plan Analysis:

Theme 1 – Balanced Land Uses

The existing master plan has a balanced land use including residential and public/semipublic land uses. MacDonald Highlands is a community that is balanced in its land use mix.

Theme 2 – Quality Developments

Since its inception, the master plan has emphasized quality development and exists as one of the City's premiere neighborhoods.

Theme 3 – Integrated Desert Environments

This hillside community has integrated the natural desert environment throughout its development and has reserved areas of undisturbed open space that are in compliance with this theme.

PLTF6378

Theme 4 – Connected Places

While this is a gated community, multimodal connectivity for its residents has been provided since its inception.

Theme 5 – Arts and Culture

The master plan provides many opportunities for residents to engage in community cultural and artist events (centered around the Dragon Ridge golf course, fitness facility and clubhouse).

Staff finds the proposal meets the Comprehensive Plan vision including providing Balanced Land Uses, Quality Development, and Connected Places. Based upon meeting the Comprehensive Plan themes and recognizing that events, trends or facts after adoption of the Comprehensive Plan have changed the character or condition of an area, staff recommends approval of this amendment.

ZCA-06-660018-A15

The applicant is requesting approval of a zone change amendment from PS-MP-H (Public/Semipublic with Planned Unit Development and Hillside Overlay) to RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays) on 0.34 acres to be added to an existing single-family lot. The addition of the 0.34 acres to Lot 2 will increase the lot size for buildable area.

The site is bound by similarly zoned RS-2-MP-H (Low-Density Residential) to the east and PS-MP-H (Public/Semipublic) to the north, south and west. The subject parcel is located on the Dragon Ridge Golf Course. The master plan still exceeds open space requirements with the removal of the 0.34 acres from the golf course.

Community Development finds that this proposal meets the approval criteria outlined in Section 19.6.4.C.7 of the Development Code for zoning map amendments. Staff further finds the addition of this area to the residential lot will not have any negative impacts on the area with regard to traffic, noise, public safety or services, or the environment, and therefore, recommends approval.

TMA-12-500316

The applicant is requesting approval of an amended tentative map for an 18-lot (16 single-family and 2 common). The applicant is adding 14,841-square-feet (.34 acres) from the Dragon Ridge Golf Course to Lot 2 of the tentative map.

The proposed amended tentative map does not create any potential adverse impacts to the neighborhood nor does it conflict with other approval criteria. Staff recommends approval of this request.

PLTF6379

RECOMMENDATION

CPA-06-520010-A11

RECOMMENDED APPROVAL, subject to a finding of fact.

FINDINGS OF FACT

- A. Events, trends or facts after adoption of the Comprehensive Plan have changed the character or condition of an area so as to make the proposed amendment necessary.

RECOMMENDATION

ZCA-06-660018-A15

RECOMMENDED APPROVAL by ordinance, subject to findings of fact, conditions, and waivers.

FINDINGS OF FACT

- A. The proposal is consistent with the Comprehensive Plan.
- B. The planned unit development is necessary to address a unique situation or represents a substantial benefit to the City, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards, based upon the purposes set out in Section 19.1.4.
- C. The planned unit development complies with standards of Section 19.6.4.
- D. The proposal mitigates any potential significant adverse impacts to the maximum practical extent.
- E. Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development.
- F. The same development could not be accomplished through the use of other techniques, such as re-zonings, variances or administrative adjustments.
- G. The proposed hillside plan preserves the integrity of and locates development with the least impact upon sensitive peaks and ridges.
- H. Locates development compatibly with the natural terrain.
- I. Provides for development standards in excess or equal to those required by this ordinance.
- J. The proposed master plan corrects an error or meets the challenge of some changing condition, trend or fact.
- K. The proposed master plan is consistent with the Comprehensive Plan and the stated purposes of Section 19.1.4.

PLTF6380

- L. The proposed master plan will protect the health, safety, morals or general welfare of the public.
- M. The City and other service providers will be able to provide sufficient public safety, transportation, and utility facilities and services to the subject property, while maintaining sufficient levels of service to existing development.
- N. The proposed master plan will not have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.
- O. The proposed master plan will not have a significant adverse impact on other property in the vicinity.
- P. The subject property is suitable for the proposed master plan.
- Q. The need exists for the proposed master plan at the proposed location.

PUBLIC WORKS DEPARTMENT CONDITIONS

- 1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits.
- 2. Applicant shall submit a drainage study for Public Works' approval.
- 3. Applicant shall submit a traffic analysis to address traffic concerns and to determine the proportionate share of this development's local participation in the cost of traffic signals and/or intersection improvements and dedicate any necessary right-of-way.
- 4. Applicant shall construct full offsites per Public Works' requirements and dedicate any necessary right-of-way.
- 5. Applicant shall revert and/or merge acreage of existing parcels per Public Works' approval and provide proof of completed mapping prior to issuance of a certificate of occupancy.
- 6. Applicant must apply for and receive approval to vacate unnecessary rights-of-way and/or easements per Public Works' requirements and provide proof of vacation prior to issuance of a certificate of occupancy.
- 7. FHA Type B drainage shall be allowed only where lots drain directly to public drainage facilities, public parks, or golf courses.
- 8. Streets shall be privately owned and maintained.
- 9. Applicant shall show the limits of the flood zone and submit a letter of map revision to FEMA prior to the Shear and Tie inspection.
- 10. Applicant shall update the master traffic study.

PLTF6381

DEPARTMENT OF UTILITY SERVICES CONDITIONS

11. Applicant shall submit a utility plan and a utility analysis for Utilities' approval.
12. Applicant shall comply with the requirements of the master utility plan established for the project location.
13. Applicant shall provide an approved update to the utility master plan prior to submitting civil improvement drawings. (Amended A12)
14. Applicant shall finalize the access and maintenance agreement covering public utilities traversing Dragon Ridge Golf Course.
15. Applicant shall participate in the MacDonald Ranch 2370 Refunding Agreement. (A-14)
16. Applicant shall provide an approved update to the utility master plan prior to submitting civil improvement drawings for Planning Area 18. (A-14)
17. Applicant may be required to provide a water and/or sewer system capacity analysis covering the overall water and/or sewer system providing service to the project, prior to submitting civil improvement plans to the City. Preparation of said capacity analysis shall be coordinated with the Department of Utility Services. (A-14)
18. Applicant may be responsible for performing water and/or sewer system upgrades in accordance with the results of the system capacity analysis or, at a minimum, applicant shall be responsible for participating in a proportionate share of the costs to complete these system upgrades. (A-14)

FIRE DEPARTMENT CONDITIONS

The authority for enforcing the International Fire Code is NRS 477.030 and Ordinance Numbers 2649 and 2738 as adopted by the City of Henderson. Fire Department approval is based upon review of the civil improvement or building drawings, not planning documents.

19. Applicant shall submit plans for review and approval prior to installing any gate, speed humps (speed bumps not permitted), and any other fire apparatus access roadway obstructions.
20. Applicant shall submit fire apparatus access road (fire lane) plans for Fire Department review and approval.
21. Applicant shall submit utility plans containing fire hydrant locations. Fire Department approval is based upon the review of the civil improvement drawings, not planning documents. Fire hydrants shall be installed and operational prior to starting construction or moving combustibles on site.
22. Projects constructed in phases shall submit a phasing plan describing the fire apparatus access roads and fire hydrant locations relevant to each phase.
23. Applicant shall provide a dual water source as approved by Public Works and the Fire Department.

PLTF6382

24. Applicant shall provide a minimum turning radius of 52 feet outside and 28 feet inside for all portions of the fire apparatus access road (fire lane). This radius shall be shown graphically and the dimensions noted on the drawings.
25. Applicant shall install an approved sprinkler system in all buildings/homes per the Hillside Ordinance.
26. Applicant shall provide an approved Fire & Life Safety Report prior to submitting for building permits. This report shall address fire access issues for the proposed school site. (A-14)

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

27. All private open space, landscaped areas within public rights-of-way, landscaping along public rights-of-way, and landscaping within drainage channels (arroyos) shall be installed by the developer and maintained by a property owners association, unless otherwise approved by City Council. Water conservation shall be a primary design element in the planning, design and construction of landscaped projects.
28. Developer shall submit a revised master development plan report, after City Council approval, listing all conditions of approval and waivers.
29. Permitted uses, prohibited uses, restricted uses, limited uses (uses) and property development standards shall be as approved by this application. In the case of a conflict between the approved uses as referenced in the Master Plan and the Development Code in effect at the time of master plan approval, and property development standards and City ordinances, unless specifically approved as a waiver, the most restrictive shall prevail.
30. Developer shall conform with the multifamily provisions of Title 19 with a maximum build-out of 370 multifamily and 680 single-family dwelling units.
31. Approval does not endorse the site plan, uses or exhibits presented in support of this application.
32. Applicant shall submit two detailed private park plans for the Parks and Recreation Advisory Board, Planning Commission, and City Council approval. This condition is not a waiver of the park construction tax, which shall be collected from the individual homebuilders within the project. Specific improvements and timing for installation shall be determined as part of a park agreement.
33. Applicant shall comply with the current design standards for the development of all the RM-8-H zoned parcels to be consistent with the Hillside Ordinance and the adopted MacDonald Highlands Master Plan Design Guidelines.
34. All private open space, landscaped areas within private rights-of-way, landscaping along public or private rights-of-way and landscaping within drainage channels (arroyos) and slope easements shall be installed by the developer and maintained by the Property Owners Association unless otherwise approved by City Council. Water conservation shall be a primary design element in the planning, design and construction of landscaped projects.

PLTF6383

35. The developer shall submit revised design guidelines (book form) for City Council approval. Any amendments to the guidelines that are determined to be minor by Community Development may be revised at staff level.
36. Each subdivision approved shall be credited with common usable open space from the development of the two proposed private park sites and trails to be provided by the master development. Each subdivision approved as a planned unit development shall attempt to provide the minimum amount of common usable open space within the physical boundaries of, or immediately adjacent to, the subdivision. Private open space improvements shall be determined through the approved development standards and design guidelines for the entire Master Plan Overlay District.
37. The applicant shall work with staff to determine unit counts and that the percent of land disturbance is in accordance with the Hillside Ordinance, not only for the overall master plan but also on a planning area by planning area basis. If transfer of units and disturbance is proposed, applicant shall provide information on the sending and receiving planning areas to demonstrate that the site disturbance and unit counts balance for the overall master plan. Prior to any additional master plan amendments or subdividing any planning area, the applicant shall submit a Hillside Development Plan, which is subject to review and approval per Section 19.5.9.D.25 of the Development Code.
38. Planning Area 1 shall be permitted a maximum of 67 units; Planning Area 18 shall be permitted a maximum 150 units; and Planning Area 18A shall be permitted a maximum of 144 dwelling units. (Amended A-12)
39. Prior to issuance of building permits, applicant shall receive design review approval for Parcel 18A.
40. Total master plan site disturbance is limited to 713 acres. (Added A-12)
41. Parcel 20 shall be permitted a maximum of 236 dwelling units.

WAIVERS

- a. Reduce front-yard setback to 14 feet for side-loaded garages and living areas of the house for Planning Areas 11 and 17.
- b. Allow maximum building height of 59 feet for Parcel 18A.
- c. Allow maximum cul-de-sac length of 2,530 feet for Parcel 18A.
- d. Allow gated streets for Parcel 18A.
- e. Allow Buildings 23 and 24 to be constructed within the sensitive ridgeline.
- f. Allow two kitchens within a dwelling unit. (A-12)
- g. Allow a maximum combined casita (guesthouse) area, with multiple structures allowed, of up to 25 percent of the gross living area of the primary residence. (A-12)
- h. Allow a maximum cut height of 63 feet, a maximum fill height of 66 feet, and no maximum cut/fill length for Planning Areas 18 and 20. (A-12)
- i. Allow fully vertical cut slopes with no additional stabilization in areas approved by a geotechnical report; allow 2-to-1 fills in areas approved by a geotechnical report. (A-12)

PLTF6384

- j. Allow natural undisturbed areas to include areas of disturbance with revegetation and varnishing. (A-12)
- k. Allow rockery walls a maximum height of 18 feet, with horizontal offsets to be determined by the geotechnical and structural engineers. (A-12)
- l. Allow a reduced curve radius of 50 feet within a modified knuckle. (A-12)
- m. Allow 12 percent maximum grade for all roadways within 50 feet of a house. (A-12)
- n. Allow streetlights to be placed only at intersections. (A-12)
- o. Allow a minimum of 125 feet between intersections, measured centerline-to-centerline. (A-12)
- p. Allow 26 dwelling lots/dwelling units to be constructed within the sensitive ridgeline setback.
- q. The maximum height of the cuts and fills shall not exceed 56 feet on the cut height and 48 feet on the fill height as shown on the grading plan. The maximum Cut/Fill length shall not exceed 950 feet. (A13)
- r. The minimum centerline radius for roadways shall be 140 feet without super elevation. (A13)
- s. Allow a maximum fill height (depth) of 85 feet for the school site.
- t. Allow a private street section of 29 feet back-of-curbs without the 6.5-foot aprons for Planning Areas 18 and 20, and a public street section of 37 feet back-of-curbs without the 4-foot aprons to access the school site.

RECOMMENDATION

TMA-12-500316

RECOMMENDED APPROVAL, subject to conditions.

PUBLIC WORKS DEPARTMENT CONDITIONS

- 1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits.
- 2. Applicant must apply and receive approval to vacate unnecessary rights-of-way and/or easements per Public Works' requirements and provide proof of vacation prior to approval Final Map.
- 3. Applicant shall revise Civil Improvement Plans per Public Works' requirements.

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

- 4. Approval of this application requires the applicant to comply with all Code requirements not specifically listed as a condition of approval but required by Title 19 of the Henderson Municipal Code, compliance with all plans and exhibits presented

PLTF6385

- and amended as part of the final approval, and compliance with all additional items required to fulfill conditions of approval.
5. Approval of this tentative map shall be for a period of four years from the effective date of approval.
 6. Prior to issuance of a building permit for homes, the applicant shall submit to Community Development and Neighborhood Services a copy of the Owner's Association's (i.e., Homeowners Association or Landscape Maintenance Association) articles of incorporation to include association name, officers, addresses, and resident agent (if applicable).
 7. All grading and construction/staging activity must remain completely on-site, or will require the approval of any and all affected adjacent property owner(s).

ARM/slj/CW2

PLTF6386

**CITY OF HENDERSON
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

PLANNING COMMISSION DATE: November 15, 2012
AGENDA ITEM NUMBER: 7
APPLICATION NUMBERS: A. CPA-06-520010-A11
B. ZCA-06-660018-A15
C. TMA-12-500316
PROJECT APPLICANT: MacDonald Properties
PROJECT DESCRIPTION: MacDonald Highlands aka Foothills @ MacDonald Ranch (Golf Hole #9)

- A. Amend the Land Use Policy Plan from PS (Public/Semipublic) to VLDR (Very Low-Density Residential) on 0.34 acres;
- B. Amend an approved master plan by rezoning a 0.34-acre portion of a 1,162-acre master plan from PS-MP-H (Public/Semipublic with Master Plan and Hillside Overlays) to RS-2-MP-H (Low-Density Residential with Master Plan and Hillside Overlays) and remove the 0.34-acres (14,841 square feet) from Planning Area 3 (Golf Hole #9) and add it to Lot 2 of Planning Area 10; and
- C. An 18-lot residential subdivision (16 single-family, 2 common); located within the MacDonald Highlands master plan, off MacDonald Ranch Drive and Stephanie Street, in the MacDonald Ranch Planning Area.



STAFF RECOMMENDATION

- A. CPA-06-520010-A11 RECOMMENDED APPROVAL, subject to a finding of fact.
- B. ZCA-06-660018-A15 RECOMMENDED APPROVAL by ordinance, subject to findings of fact, conditions, and waivers.
- C. TMA-12-500316 RECOMMENDED APPROVAL subject to conditions

PLTF1774

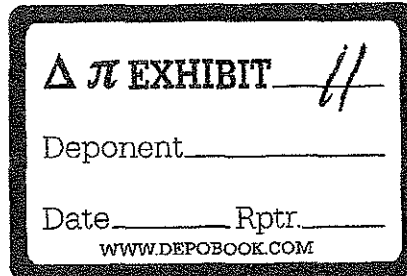
13

EXHIBIT R

A.P. N.: 178-28-520-001
R.P.T.T.: \$1,020.00

Escrow #12-08-0699-RLB

Mail tax bill to and
When recorded mail to:
Shahin Shane Malek
544 Regents Gate
Henderson, NV 89012



Inst #: 201306260005003

Fees: \$20.00 N/C Fee: \$25.00

RPTT: \$1020.00 Ex: #

06/26/2013 03:16:09 PM

BOOKING: 0671325

Requestor:

NEVADA TITLE LAS VEGAS

Recorded By: KGP Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH, That DRFH Ventures, LLC, a Nevada limited liability company f/k/a Dragonridge Properties, LLC, a Nevada limited liability company, for a valuable consideration, the receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to Shahin Shane Malek, a married man, as his sole and separate property man all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

SEE LEGAL DESCRIPTION ATTACHED HERETO
AND MADE A PART HEREOF AS EXHIBIT "A".

COMMONLY KNOWN ADDRESS:
Bare Lot, , NV

SUBJECT TO:

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any;
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

TOGETHER WITH all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

MALEK0054

APP00347
JA_0579

IN WITNESS WHEREOF, this instrument has been executed this 8 day of
APRIL, 2013

DRFH Ventures, LLC, a Nevada Limited liability
company f/k/a Dragonridge Properties, LLC, a
Nevada limited liability company


By: Richard C. MacDonald, Manager

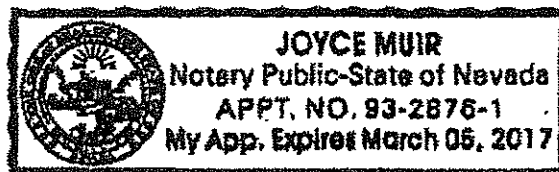
Richard C. MacDonald

State of NEVADA }
County of Clark } ss:

This instrument was acknowledged before me on APRIL 8, 2013

by Richard C. MacDonald, Manager of DRFH Ventures, LLC, a Nevada Limited liability company
f/k/a Dragonridge Properties, LLC, a Nevada limited liability company


NOTARY PUBLIC
My Commission Expires: 3-5-2017



Joyce muir
#93-2876-1
Exp: March 5, 2017

MALEK0055

APP00348
JA_0580

EXHIBIT S

Paul Bykowski - February 3, 2015
The Fredric and Barbara Rosenberg Living Trust vs. Bank of America, N.A., et al.

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25	Defendants.		24	
			25	
	DEPOSITION OF PAUL BYKOWSKI			
	Taken at the Law Offices of			
	Howard Kim & Associates			
	1055 Whitney Ranch Drive			
	Suite 110			
	Henderson, Nevada 89014			
	Tuesday, February 3, 2015			
	8:57 a.m.			
	Reported by: Angela Campagna, CCR #495			
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1	APPEARANCES:		1	Whereupon--
2	For the Plaintiff:		2	PAUL BYKOWSKI,
3	KAREN L. HANKS, ESQ.		3	was called as a witness, and having been first duly
4	MELISSA BARISHMAN, ESQ.		4	sworn, was examined and testified as follows:
5	Howard Kim & Associates		5	EXAMINATION
6	1055 Whitney Ranch Drive		6	BY MS. HANKS:
7	Suite 110		7	Q. Please state your name for the record.
8	Henderson, Nevada 89014		8	A. Paul Bykowski.
9	Karen@hkimlaw.com		9	Q. And, Mr. Bykowski, you're here today as
10			10	a NRCP 30(b)(6) on behalf of the following entities.
11	For Sahahin Shane Malek:		11	The Foothills Partners, DRFH Ventures, LLC, formally
12	JAY DEVROY, ESQ.		12	known as Dragon Ridge, LLC, FHP Ventures and
13	The Firm, P.C.		13	MacDonald Properties Limited.
14	200 East Charleston Blvd.		14	Is that your understanding?
15	Las Vegas, Nevada 89104		15	A. Yes.
16	Jay@thefirm-lv.com		16	MS. HANKS: Okay. Go ahead and mark that.
17			17	MR. GUNNERSON: I'll note there's a couple
18	For Bank of America:		18	small alterations we discussed. If it becomes an
19	STEVEN G. SHEVORSKI, ESQ.		19	issue, I'll let you know, otherwise hopefully it
20	Akerman LLP		20	won't, and we can move through it.
21	1160 Town Center Drive		21	MS. HANKS: What I was going to do was read
22	Suite 330		22	through, and so if you wanted to add it, I thought I
23	Las Vegas, Nevada 89144		23	included everything. But if I missed something...
24	Steven.shevorski@akerman.com		24	MR. GUNNERSON: Okay.
25			25	(Exhibit 1 marked.)
	For MacDonald Highlands Realty, LLC and Michael			
	Doiron:			
	SPENCER H. GUNNERSON, ESQ.			
	Kemp, Jones & Coulthard			
	3800 Howard Hughes Pkwy.			
	17th Floor			
	Las Vegas, Nevada 89169			
	Sgunner@kempjones.com			

<p style="text-align: right;">Page 5</p> <p>1 MS. HANKS: So we'll go through each of the 2 topics, and we can adjust it, but I don't think it's 3 going to be an issue. 4 So the court reporter handed you 5 what's been marked as Exhibit 1. This is the notice 6 for the NRCP 30(b)(6) witness for those following 7 entities. 8 And within that notice there are 9 12 sub areas that we're going to address today in 10 some form. And I just want to make sure that you 11 were the person that has the knowledge regarding 12 those subject areas. 13 So the first one reads "Procedure 14 for changing, updating or otherwise altering 15 established real property lines, plot lines, zoning 16 and building envelopes in MacDonald Highlands." 17 Do you have knowledge regarding 18 that subject area? 19 A. Yes. 20 Q. And on behalf of these entities that 21 are listed in the notice? 22 A. Yes. 23 Q. And, number two, reads "All documents 24 submitted, received and/or mailed in connection with 25 the request to the Henderson City Council for zoning</p>	<p style="text-align: right;">Page 7</p> <p>1 to the five properties. 2 BY MS. HANKS: 3 Q. Oh, I'm sorry. So we'll just put 4 limited to the five properties referenced in your 5 prior deposition. 6 Do you remember that? 7 A. Yes. 8 Q. The St. Croix property, we talked about 9 that. Okay. So you are the person with respect to 10 knowledge in that subject area? 11 A. Yes. 12 Q. Number five reads "Any and all 13 easements whether express or implied that exist 14 and/or existed over APN 17828520001." 15 Are you the individual with 16 knowledge regarding that subject area? 17 A. Yes. 18 Q. Number six reads "The MacDonald design 19 guidelines and any amendments thereto." 20 Are you the person with knowledge 21 regarding that subject area? 22 A. Yes. 23 Q. Number seven reads "Any and all 24 documents submitted by that Sahahin Malek to design 25 committee regarding any construction intended to be</p>
<p style="text-align: right;">Page 6</p> <p>1 change comprehensive plan amendment, tentative map 2 and revised land use designation related to APN 3 17828520001 from August 2012 to the present." 4 Are you the person with knowledge 5 regarding that subject area? 6 A. Yes. 7 Q. Number three, reads, "Any and all 8 information regarding the design and review 9 committee as that term is used in the master 10 declaration of the covenants, conditions, and 11 restricts for the Foothills at MacDonald Ranch aka 12 MacDonald Highlands, including but not limited its 13 members and duties from 2010 to the present." 14 Are you the person with knowledge 15 regarding that subject area? 16 A. Yes. 17 Q. Number four reads, "Any and all 18 requests for zoning changes submitted by the 19 Foothills Partners, DRFH Ventures, LLC, FHP 20 Ventures, and/or MacDonald Properties Limited to the 21 Henderson City Council from 2005 to the present 22 including the five properties referenced in Paul 23 Bykowski's deposition." 24 MR. GUNNERSON: Counsel, if I could just -- 25 that's one where I thought we were going to limit it</p>	<p style="text-align: right;">Page 8</p> <p>1 completed on the parcels he owns within MacDonald 2 Highlands and any approvals or rejections of the 3 same." 4 Are you the person most 5 knowledgeable regarding that subject area? 6 A. Yes. 7 Q. Number eight reads "The master 8 declaration of covenants, conditions, and 9 restrictions for the Foothills at MacDonald Ranch 10 aka MacDonald Highlands and any amendments thereto." 11 Are you the person with knowledge 12 regarding that subject area? 13 A. Yes. 14 Q. Number nine reads "Documents contained 15 in MacDonald Highlands governing documents binder," 16 and we put in parentheses the Bates stamp is 17 PLTF0515 through 10743. 18 MR. GUNNERSON: That was one where I don't 19 think those governing documents are over 10,000 20 pages. So I think there might be a mistake. 21 MS. HANKS: A typo? 22 MR. GUNNERSON: A typo there. 23 MS. HANKS: Yeah. Sorry. 24 MR. GUNNERSON: I think it's probably 1,074 or 25 73 or 43 or something. But I think there's probably</p>

Page 9	Page 11
<p>1 four or 500 documents, but I don't think there is 2 10,000 I want to make sure it's clear, he's not 3 prepared to speak on 10,000 documents. 4 BY MS. HANKS: 5 Q. You're probably right. That's a typo. 6 You can obviously see I'm getting tired when I do 7 things at the end of the day after a long 8 deposition. 9 So with respect to any documents 10 contained in that binder that I'm referencing, are 11 you the person with knowledge regarding that 12 subject? 13 A. I would have to see the binder. 14 Q. The binder? 15 A. Or at least the title pages, because I 16 don't know what is contained that you're 17 referencing. 18 MS. HANKS: You know what, let me grab it 19 quickly. I don't have the one with Bates stamp on 20 it. 21 MR. GUNNERSON: We talked about using Bates 22 numbers. We didn't get them until late last night. 23 BY MS. HANKS: 24 Q. I'm going to pull the binder. They 25 don't have the Bates numbers on them, but there is a</p>	<p>1 contained in the MacDonald Highlands governing 2 documents binder, it's going to be the PA-10 maps 3 for whatever reason were located in that binder. 4 A. Makes sense. 5 Q. The number ten is "Impact neighbor 6 statement including but not limited when this 7 document is required and whether any such document 8 was submitted in connection with the properties 9 purchased by Defendant Malek." 10 Are you the person with knowledge 11 regarding this subject area? 12 A. Yes. 13 Q. Number 11, "All restrictive covenants 14 that exist and/or existed on properties that are 15 subject to this action within MacDonald Highlands 16 from 2005 to the present." 17 MR. GUNNERSON: This was another one where we 18 had discussed the fact that there wasn't any 19 reasonable way to necessarily know all restrictive 20 covenants that may or may not exist. You agreed 21 that it would be all covenants to which the witness 22 is aware, if you recall us discussing that. 23 MS. HANKS: We're only going to talk about the 24 subject property, right, on this action? 25 MR. GUNNERSON: On the subject property but to</p>
Page 10	Page 12
<p>1 few documents we're going to discuss. 2 A. That's fine. 3 Q. So, again, I'm handing you the binder 4 that I'm referencing in the notice, but these don't 5 have the Bates stamped documents on them. And, 6 actually, we're only going to talk about those maps 7 that are right there in the front. 8 A. These three maps in the front? 9 Q. Correct. The rest of that binder, I 10 think, mainly contains the copies of the CC&R's? 11 A. That is why this is confusing, because 12 these three maps don't have anything to do with this 13 binder. So I don't know who put them together. 14 Q. Oh, okay. All I know is that's the 15 binder that I'm told my clients were handed at 16 Michael's office. 17 A. Okay. 18 Q. So I have no idea why. 19 A. Would you like me to explain? 20 MS. HANKS: Do you want to go off the record? 21 MR. GUNNERSON: Yes. Let's go off the record. 22 (Off the record.) 23 BY MS. HANKS: 24 Q. So we're going to edit number nine 25 subject area. Rather than having these documents</p>	<p>1 which he was aware. 2 BY MS. HANKS: 3 Q. Well, are you the person that does have 4 knowledge regarding that? 5 A. Yes. 6 Q. Okay. And then number 12, "The design 7 process that took place with any and all owners of 8 590 Lairmont Place prior to May 15, 2013 including 9 but not limited to all plans submitted, 10 communications, rejections, and approvals." 11 Are you the person with knowledge 12 regarding that subject area? 13 A. Yes. 14 Q. Okay. So I do want to start off that 15 we had you here, I think, a couple weeks ago in your 16 individual capacity. And there might be some 17 repeats of some of those questions. So I apologize, 18 but because you're here as the 30(b)(6) witness on 19 behalf of certain entities. For legal purposes, 20 it's different. So it comes a little bit 21 repetitive, I apologize. We're going to probably 22 cover a little bit of same ground that we covered in 23 your previous deposition but not all of it. 24 Okay? 25 A. Okay.</p>

Page 13

1 Q. So what is your affiliation with
2 Foothills Partners?
3 A. They're my employer.
4 Q. And who is Foothills Partners?
5 A. From my understanding Rich MacDonald.
6 Q. And maybe I can clarify it, and I can
7 kind of lead there. They are the developer of
8 MacDonald Highlands. That's my understanding.
9 Is that correct?
10 A. Yes.
11 Q. And they're also the declarant under
12 the master declaration of covenants, conditions, and
13 restrictions for MacDonald Highlands, correct?
14 A. Yes.
15 Q. Now, who is DRFH Ventures, LLC?
16 A. Dragon Ridge Foothills. It's the owner
17 operator of the golf property which was also Rich
18 MacDonald.
19 Q. Okay. And, so if I understand
20 correctly, DRFH Ventures, LLC used to be Dragon
21 Ridge, the name of the company?
22 Is that your understanding?
23 A. Yes.
24 Q. And that at one point they owned the
25 golf land within MacDonald Highlands?

Page 14

1 A. Yes.
2 Q. They don't own it now, correct?
3 A. Correct.
4 Q. And then who is FHP Ventures?
5 A. That is the same as Foothills Partners.
6 Just stands for Foothills Partners Ventures.
7 Q. Is that the current name of Foothills
8 Partners, or was that the previous name for
9 Foothills Partners?
10 A. That's the current name.
11 Q. So anytime we see the term "Foothills
12 Partners" in any of these documents, the current
13 company name for that entity is now FHP Ventures?
14 A. Yes.
15 Q. And then who is MacDonald Properties
16 Limited?
17 A. I guess -- do you want to know who owns
18 it? It is Rich MacDonald. Are you just looking for
19 a description?
20 Q. Yeah. How the relation to everything.
21 A. Macdonald Properties is the developer
22 of Rich MacDonald's commercial interest -- property
23 interests outside of the MacDonald Highlands
24 borders.
25 MS. HANKS: Okay.

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1 MR. GUNNERSON: Counsel, just so we're clear
2 since we're doing three or four, however you got it
3 termed 30(b)(6) witness simultaneously, I assume for
4 the record when you ask a question about a specific
5 entity, you're asking him as a 30(b)(6) for that
6 entity.
7 So when you asked him, What does
8 Macdonald Properties do," you're asking him as the
9 30(b)(6) for MacDonald Properties, I guess my only
10 question is going to be when we get later on in the
11 deposition, are you maybe going to differentiate? I
12 don't know if you're going to be able to or not.
13 MS. HANKS: I almost think my take on that, I
14 think it's almost impossible, but that's why I
15 thought if we notice it the way we did, put today as
16 when he's talking, everything he says is binding
17 these companies in the context of what he's talking
18 about. So if Foothills Partners is doing something
19 with respect to, let's say, CC&R's and he's talking
20 about that --
21 MR. GUNNERSON: Okay. But his comment perhaps
22 on a Foothills Partners issue is not going to bind
23 MacDonald Properties.
24 MS. HANKS: Of course not.
25 MR. GUNNERSON: Okay. Just so we're all in

Page 16

1 the clear and we're on the same page, because I
2 think DRFH Ventures, although you have some
3 questions probably regarding them, because they were
4 the previous owner/operator of the golf course. I
5 think most of your questions are probably going to
6 be towards FHP Ventures.
7 MS. HANKS: Correct.
8 MR. GUNNERSON: The MacDonald Properties,
9 there probably shouldn't be any.
10 MS. HANKS: Other than they submitted the
11 zoning applications. Once we get there, maybe we
12 can kind of get an understanding of why.
13 MR. GUNNERSON: You'll get a clarification as
14 to what that was.
15 MS. HANKS: But you're right. I agree. I
16 think this is primarily going to be a Foothills kind
17 of show today.
18 MR. GUNNERSON: Okay.
19 BY MS. HANKS:
20 Q. Okay. So what is McDonald Highlands?
21 A. High end residential community.
22 Q. And for clarification, sometimes we see
23 it referred to as the Foothills at MacDonald Ranch;
24 is that correct?
25 A. Yes.

Page 17	Page 19
<p>1 Q. And it's my understanding at some 2 point, though, there was a name change to just 3 MacDonald Highlands for advertising purposes or just 4 it was a better name? 5 A. Yes. 6 Q. And I think we've already established 7 this, but the developer of MacDonald Highlands is 8 Foothills Partners or now FHP Ventures, correct? 9 A. Yes. 10 Q. Has that always been the case since the 11 inception of MacDonald Highlands? 12 A. Yes. 13 Q. And there is a golf course within the 14 MacDonald Highlands community, correct? 15 A. Yes. 16 Q. And that's known as Dragon Ridge Golf 17 Course? 18 A. Yes. 19 Q. In 2012, who owned the golf course? 20 A. I believe it was DRFH Ventures. 21 Q. I understand it's been sold since then. 22 Do you know when DRFH Ventures sold the golf course? 23 A. Yes. 24 Q. When? 25 A. February 2014.</p>	<p>1 Q. In 2012, was the golf course private? 2 A. Yes. 3 Q. And what does it mean to be private at 4 that time? 5 A. Private golf course means that you have 6 to be a member, have some sort of affiliation. You 7 just can't drive up and play. 8 Q. If a person -- and we're going to limit 9 it to the 2012 timeframe since I know we can do 2012 10 and 2013, because it was sold in 2014. 11 In 2012 and 2013, if you purchased 12 property in MacDonald Highlands, did you have to 13 become a member of the golf course? 14 A. No. 15 Q. In order to become a member of the golf 16 course, did you have to have an address within 17 MacDonald Highlands? 18 A. No. 19 Q. So just so I understand from the 20 private perspective, you couldn't just drive in off 21 the street and play the course, but you could live 22 outside of MacDonald Highlands and become a member 23 of the golf club? 24 A. Yes. 25 Q. Do you know what percentage of</p>
Page 18	Page 20
<p>1 Q. Now, as part of that sale, were there 2 any conditions with respect to what could be done 3 with the golf course property? 4 In other words, could the golf 5 course change it from the new company, change it 6 from a golf course to a water park as an example? 7 A. Is the question whether there are 8 restrictions or whether they can change it? 9 Q. Well, I guess, were there restrictions 10 in terms of what they could do with the golf course 11 land? 12 A. Yes. 13 Q. What was the restriction? 14 A. The restriction was it had to be 15 continued as a private golf course. 16 Q. Do you know when the golf course was 17 completed within MacDonald Highlands? 18 A. Completed as in initially opened for 19 play? 20 Q. Yes. 21 A. I can't tell you the exact date. 22 Q. Would it be prior to 2012? 23 A. Oh, yes. Prior to my employment. 24 Q. When did your employment start? 25 A. 2003.</p>	<p>1 MacDonald Highlands community members were members 2 of the golf club versus outside people who lived 3 outside of the Highlands? 4 A. No. 5 Q. Was the golf course advertised as part 6 of the MacDonald Highlands community when you were 7 advertising to people to buy property within 8 MacDonald Highlands? 9 A. Could you clarify what you mean "as 10 part of"? 11 Q. Was it advertised as a golf course 12 community? 13 A. Yes. 14 Q. And is it your understanding that the 15 developer has always intended MacDonald Highlands to 16 be a golf course community? 17 MR. GUNNERSON: Objection. Foundation. Calls 18 for speculation. 19 THE WITNESS: I can't speak to the intent of 20 the developer prior to my employment. 21 BY MS. HANKS: 22 Q. How about after your employment, is it 23 your understanding that after your employment that 24 the intent of Foothills Partners was to keep 25 MacDonald Highlands as a golf course community?</p>

Page 21	Page 23
<p>1 A. Yes.</p> <p>2 Q. Now, in 2012, if you purchased property</p> <p>3 within MacDonald Highlands, you bought it subject to</p> <p>4 a set of CC&R's; is that correct?</p> <p>5 A. Yes.</p> <p>6 MS. HANKS: And let's talk about those CC&R's.</p> <p>7 (Exhibit 2 marked.)</p> <p>8 BY MS. HANKS:</p> <p>9 Q. Okay. The court reporter has handed</p> <p>10 you what's been marked as Exhibit 2. This is not a</p> <p>11 complete set of the CC&R's, because I have been</p> <p>12 using them extensively, I tried not to kill as many</p> <p>13 trees. So I've only attached the portions we're</p> <p>14 going to discuss today.</p> <p>15 But I think we discussed this</p> <p>16 before, I want to make sure we clarify this, here on</p> <p>17 the front page it indicates these are the Master</p> <p>18 Declaration of Covenants, Conditions, and</p> <p>19 Restrictions for the Foothills at MacDonald Ranch,</p> <p>20 and that's just another term for MacDonald</p> <p>21 Highlands, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Now, are these CC&R's referenced in the</p> <p>24 deeds when people purchase either vacant or improved</p> <p>25 property within MacDonald Highlands?</p>	<p>1 Q. I know it references resort property.</p> <p>2 So there must be some other -- is there some other</p> <p>3 properties that are included in resort properties in</p> <p>4 addition to the golf club or the golf course?</p> <p>5 A. Currently or at the time the CC&R's</p> <p>6 were created?</p> <p>7 Q. Let's go at the time the CC&R's were</p> <p>8 created.</p> <p>9 A. At the time the CC&R's were created,</p> <p>10 the resort properties included the golf club and</p> <p>11 additional potential resort properties.</p> <p>12 Q. And if you go to the next page, it</p> <p>13 should be page seven. Cabana, 142. They actually</p> <p>14 defines resort properties. "Means all or any</p> <p>15 portion of the real property described in Exhibit D1</p> <p>16 or such other real property in the Foothills as may</p> <p>17 from time to time be designated on the master plan</p> <p>18 as one golf course property or developed as a golf</p> <p>19 club in accordance with city zoning and land uses;</p> <p>20 and/or, two, as the hotel or resort property or</p> <p>21 developed as a resort in accordance with city zoning</p> <p>22 and land use ordinances."</p> <p>23 So just for our purposes today,</p> <p>24 I'm only concerned with the actual golf club that's</p> <p>25 referenced here under "resort properties" and then</p>
Page 22	Page 24
<p>1 MR. GUNNERSON: Objection. Foundation.</p> <p>2 THE WITNESS: I believe so.</p> <p>3 BY MS. HANKS:</p> <p>4 Q. I want to draw your attention to page</p> <p>5 five.</p> <p>6 MR. GUNNERSON: Counsel, again, you're talking</p> <p>7 about the page -- the document titled page five, not</p> <p>8 the fifth page of the exhibit, right?</p> <p>9 MS. HANKS: Correct. The actual page five.</p> <p>10 MR. SHEVORSKI: So on 140?</p> <p>11 BY MS. HANKS:</p> <p>12 Q. Yes.</p> <p>13 Towards the middle of that page</p> <p>14 there is a term that defines golf club.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And defines it as any portion of the</p> <p>18 resort properties operator are used as a private</p> <p>19 membership golf club or golf course and related</p> <p>20 amenities and facilities.</p> <p>21 Is it your understanding that</p> <p>22 "golf club", as that term is defined in the CC&R's</p> <p>23 means at least a portion of the Dragon Ridge Golf</p> <p>24 Course?</p> <p>25 A. Yes.</p>	<p>1 defined here on page five is the Dragon Ridge Golf</p> <p>2 Club within MacDonald Highlands, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Now, if you stay on page seven, it</p> <p>5 defines the word "perimeter strip."</p> <p>6 Do you see that term?</p> <p>7 A. Yes.</p> <p>8 Q. And it means "a five foot strip located</p> <p>9 within the resort properties consisting of the area</p> <p>10 between the perimeter of the resort properties</p> <p>11 abutting the common elements or a unit and a</p> <p>12 distance of five feet from the boundary of the</p> <p>13 applicable common element or unit."</p> <p>14 When I read that definition, I</p> <p>15 read it to mean that a five foot strip between an</p> <p>16 owner's lot and the golf course is what the</p> <p>17 perimeter strip is.</p> <p>18 Is that your understanding?</p> <p>19 A. No.</p> <p>20 Q. Then what is the perimeter strip, if I</p> <p>21 misread that or misunderstood it?</p> <p>22 A. It's located within the resort</p> <p>23 properties, so it's not between. It's the five foot</p> <p>24 of resort property closest to a resident or common</p> <p>25 area.</p>

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<p>1 Q. Okay. And, so is a better way to 2 describe it is a five foot strip bordering the golf 3 course that abuts the unit owner's property? 4 A. Yes. 5 Q. And then just on that same page, since 6 I know we used different terms, when we talk about 7 an owner's piece of property, at the bottom it 8 defines unit. "Means a portion of the property 9 whether improved or unimproved that may be 10 independently owned and conveyed." And I'll stop 11 there. 12 I just want it make sure we're 13 basically talking about another term you could use 14 as lots, correct? Unimproved unit would be another 15 term as lot that we've used in this case? 16 A. A lot is a unit, but not all units are 17 lots. 18 Q. Right. Some units could include 19 properties that have a house located on them, 20 correct? 21 A. That is another unit. 22 Q. Now, if you turn to page 21, should be 23 the next page. In Subsection C, it says "other 24 property." 25 Do you see that?</p>	<p>1 A. No. They still maintain that. The new 2 owner maintains that area, because it's their 3 property. 4 Q. Now, if you turn to the next page, it's 5 page 46. It's BANA181. There's a subsection, 12.9. 6 And I apologize, this is the best copy I have or 7 that I can find of the CC&R's. And maybe you can 8 help me determine some of the words I might not be 9 able to read. 10 Is there a better copy in that 11 binder? Probably should have looked there first. 12 Let me know if I read it incorrectly. 13 For 12.9 it says "subdivision of 14 the unit and timesharing. No unit shall be 15 subdivided or its boundary lines changed except with 16 the prior written approval of the board of 17 directors. Declarant, however, for" -- what's that 18 word there? 19 A. Itself. 20 Q. "For itself and any transferee of 21 developmental rights pursuant to section 15.1 hereby 22 expressly reserves the right to subdivide, change 23 the boundary line of and re-plat any units or other 24 portions of the" -- what's that next word? 25 A. Of the project.</p>
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<p>1 A. Yes. 2 Q. And it indicates that "the association 3 may maintain other property which it does not own 4 including the perimeter strip." 5 So as of 2012 and 2013, was the 6 association responsible for maintaining the 7 perimeter strip? 8 A. No. 9 Q. Who was responsible for maintaining the 10 perimeter strip in 2012 and 2013? 11 A. DRFH Ventures. 12 Q. If the CC&R's provide the association 13 may provide for, is there any reason why DFRH 14 decided to? 15 Did I say that name right? 16 A. Yes. 17 MS. HANKS: DRFH? I'll get it eventually? 18 MR. GUNNERSON: You got it this time. 19 BY MS. HANKS: 20 Q. What was that agreement? I mean, why 21 did the golf course decide to maintain that 22 perimeter strip as opposed to the association? 23 A. Because it was their property. 24 Q. Has that changed in 2014 with the new 25 ownership of the golf course?</p>	<p>1 Q. "Of the project owned by declarant or 2 such transferee. Any such division boundary line 3 change or re-platting shall not be in violation of 4 the applicable subdivision and zoning regulations." 5 Now, the declarant which is 6 Foothills did not own any portion of Dragon Ridge 7 Golf Club in 2012, correct? 8 A. That calls for a legal conclusion. 9 Q. Do you know if Foothills Partners owned 10 any part of the golf course property in 2012? 11 A. Foothills Partners did not. 12 Q. And when the term "board of directors" 13 is used in this subsection, that's referring to the 14 board of directors of the homeowner's association, 15 correct? 16 A. Correct. 17 Q. Now, it's my understanding that the lot 18 lines for 594 Lairmont Place were changed, correct? 19 A. Correct. 20 Q. And they were changed to include a 21 portion of the golf course; is that correct? 22 A. Correct. 23 Q. Do you know if any prior written 24 approval of the board of directors was received 25 prior to those boundary lines being changed?</p>

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<p>1 A. Board of directors, no.</p> <p>2 Q. If someone were to back up -- sorry.</p> <p>3 Who is supposed to submit the</p> <p>4 request for written approval? It doesn't seem to</p> <p>5 indicate that in this section.</p> <p>6 Do you know?</p> <p>7 A. No.</p> <p>8 Q. Do you know why written approval was</p> <p>9 not received from the board of directors for the</p> <p>10 change of boundary line for 594 Lairmont Place if it</p> <p>11 was required by the CC&R's?</p> <p>12 A. It was done through the declarant, not</p> <p>13 through the board of directors.</p> <p>14 Q. Why was it done through the declarant</p> <p>15 if 12.9 requires it to be done through the board of</p> <p>16 directors?</p> <p>17 A. I don't read that it's required by the</p> <p>18 board of directors.</p> <p>19 Q. It says "No unit shall be subdivided or</p> <p>20 it boundary line changed except with prior written</p> <p>21 approval of the board of directors."</p> <p>22 A. That's not the entire section.</p> <p>23 Q. And then it says, "Declarant, however,</p> <p>24 for itself and any transferee of developmental</p> <p>25 rights pursuant to section 15.1 hereby expressly</p>	<p>1 entities, correct?</p> <p>2 MR. GUNNERSON: Objection. Calls for legal</p> <p>3 conclusion, but you can answer if you know.</p> <p>4 THE WITNESS: I can't speak to the exact</p> <p>5 relationships of the companies, but there is some</p> <p>6 sort of an umbrella group of companies together.</p> <p>7 BY MS. HANKS:</p> <p>8 Q. What is that company?</p> <p>9 A. I think the Foothills had DRFH as part</p> <p>10 of the company. I know they -- I don't know the</p> <p>11 exact technical relationship between the companies,</p> <p>12 but there is subsidiaries and cross relationships</p> <p>13 between Foothills and DRFH.</p> <p>14 Q. Who would be the best person to know</p> <p>15 the actual relationship in terms of whether it's a</p> <p>16 subsidiary?</p> <p>17 A. Rich MacDonald.</p> <p>18 Q. What is the Design Review Committee?</p> <p>19 A. That's the committee that reviews and</p> <p>20 approves the initial construction within MacDonald</p> <p>21 Highlands.</p> <p>22 Q. And who serves on that committee</p> <p>23 currently?</p> <p>24 A. Myself, Rich MacDonald, and Michael</p> <p>25 Doiron.</p>
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<p>1 reserves the right to subdivide, change the boundary</p> <p>2 line of, and re-plat any units or other portion of</p> <p>3 the project owned by the declarant."</p> <p>4 Right? So they have to own it</p> <p>5 before they have that reservation of right, correct?</p> <p>6 A. Or such transferee.</p> <p>7 Q. Who would be the transferee in the</p> <p>8 changing of the boundary lines for 594 Lairmont</p> <p>9 Place?</p> <p>10 A. That's a legal question.</p> <p>11 Q. But as far as you know, Foothills, the</p> <p>12 declarant, did not own the golf course, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So do you know why written approval</p> <p>15 wasn't received from the board of directors?</p> <p>16 MR. GUNNERSON: Objection. Asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: I would say because DRFH and</p> <p>19 Foothills were part of the same umbrella company.</p> <p>20 That's why it's DRFH, Dragon Ridge Foothills.</p> <p>21 BY MS. HANKS:</p> <p>22 Q. And that's because it's all connected</p> <p>23 to Richard MacDonald?</p> <p>24 A. Correct.</p> <p>25 Q. But they are separate and distinct</p>	<p>1 Q. Who served on that committee in 2006?</p> <p>2 A. To the best of my knowledge, it was</p> <p>3 myself, Rich MacDonald, Paula Gibson, and Art</p> <p>4 Elliott. And I can't recall if Michael was on the</p> <p>5 committee at that time or not.</p> <p>6 Q. What is the purpose of the Design</p> <p>7 Review Committee?</p> <p>8 A. To ensure that the construction within</p> <p>9 MacDonald Highlands is done in accordance to the</p> <p>10 design guidelines.</p> <p>11 Q. When someone purchases -- and we'll</p> <p>12 limit it to 2012 and '13.</p> <p>13 When someone purchased a vacant</p> <p>14 property lot in MacDonald Highlands, did they</p> <p>15 purchase it subject to the CC&R's that we just</p> <p>16 discussed?</p> <p>17 A. Yes.</p> <p>18 Q. Did they purchase it subject to the</p> <p>19 design guidelines?</p> <p>20 A. Yes.</p> <p>21 Q. Can you turn to page 52 in the CC&R's?</p> <p>22 Referring to section 13.5, "Easement over resort</p> <p>23 properties for benefit of association." I'm just</p> <p>24 going to read the first sentence.</p> <p>25 It indicates that "The declarant</p>

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<p>1 expressly reserves." What's the word after that?</p> <p>2 Is it to the benefit?</p> <p>3 A. For the benefit.</p> <p>4 Q. For the benefit. "The declarant</p> <p>5 expressly reserves for the benefit of the</p> <p>6 association, its agent, employees, and contractors</p> <p>7 an easement over the perimeter strip for the purpose</p> <p>8 of maintaining the planted landscaping on the</p> <p>9 perimeter strip in a" -- What's the next word?</p> <p>10 A. Condition.</p> <p>11 Q. "Condition substantially equal to the</p> <p>12 landscaping located on the common elements."</p> <p>13 Understanding that the owner of</p> <p>14 the golf course at the time of 2012-2013, now the</p> <p>15 new owner has decided to maintain that perimeter</p> <p>16 strip still, it appears that the CC&R's, however,</p> <p>17 reserved an easement over that area so that the</p> <p>18 association or anybody it hired could maintain that</p> <p>19 area; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know if that easement still</p> <p>22 exists now that the new company has purchased the</p> <p>23 golf course?</p> <p>24 A. I don't believe that easement exists.</p> <p>25 Q. Have the CC&R's been amended since the</p>	<p>1 look through it.</p> <p>2 A. I don't know who drafted them.</p> <p>3 Q. It looks like on the cover page that</p> <p>4 the design guidelines were prepared on</p> <p>5 September 1st, 1992. And then there is a bunch of</p> <p>6 revision dates, the last date being</p> <p>7 September 1st, 2006.</p> <p>8 Do you know if the design</p> <p>9 guidelines were amended since September 1st, 2006?</p> <p>10 Between September 1st, 2006 to the present, have</p> <p>11 there been any revisions to the design guidelines?</p> <p>12 A. No.</p> <p>13 Q. So the binder that I have here, which</p> <p>14 is the complete set of guidelines, would have been</p> <p>15 the guidelines governing any vacant lots purchased</p> <p>16 in 2012?</p> <p>17 MR. GUNNERSON: Objection. Form.</p> <p>18 THE WITNESS: Yes. I can assume so, but I</p> <p>19 haven't reviewed that entire binder.</p> <p>20 BY MS. HANKS:</p> <p>21 Q. Sure. And I'll just represent to you</p> <p>22 that this was the binder that Michael handed to my</p> <p>23 clients, the Rosenberg Trust. So I assume it hasn't</p> <p>24 been altered.</p> <p>25 But to the extent that it is a</p>
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<p>1 purchase of the golf course by that new company to</p> <p>2 take out that easement that is listed here on 13.5?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. You're asking me why the new owner</p> <p>6 didn't amend the CC&R's?</p> <p>7 Q. No. I'm asking why Foothills didn't</p> <p>8 amend the CC&R's if the purchase of the golf course</p> <p>9 does not involve this easement any longer?</p> <p>10 A. It was never discussed.</p> <p>11 Q. So how do you know the easement doesn't</p> <p>12 exist?</p> <p>13 A. I don't believe the easement exists,</p> <p>14 because the golf course was never made subject to</p> <p>15 the CC&R's.</p> <p>16 Q. Now, let's get back to the design</p> <p>17 guidelines. Who drafted the design guidelines?</p> <p>18 Let me give you that, if you need</p> <p>19 that.</p> <p>20 (Exhibit 3 marked.)</p> <p>21 BY MS. HANKS:</p> <p>22 Q. The court reporter's handed you what's</p> <p>23 been marked as Exhibit 3. This again is just</p> <p>24 excerpts from the design guidelines. It's not the</p> <p>25 entire set, but I do have it here if you do want to</p>	<p>1 complete set of design guidelines that were in</p> <p>2 effect in 2012, is it your understanding that that's</p> <p>3 the one that would have gone and governed anyone who</p> <p>4 was purchasing vacant lots in 2012?</p> <p>5 A. To the extent of my knowledge, yes.</p> <p>6 Q. And how about 2013? Are these the set</p> <p>7 of guidelines that would govern any property</p> <p>8 purchased in 2013 that was vacant?</p> <p>9 A. Yes.</p> <p>10 Q. Let's turn to -- it's going to be the</p> <p>11 next page, 1.1. And we're only going to -- we're</p> <p>12 going to talk about all these pages, but we're going</p> <p>13 to talk about the sections that are highlighted in</p> <p>14 yellow and underlined in orange just to kind of help</p> <p>15 you out.</p> <p>16 And I want to draw your attention</p> <p>17 to the middle paragraph where the sentence begins</p> <p>18 "additionally, to protect and enhance owner value, a</p> <p>19 strict set of covenants and guidelines will be</p> <p>20 carefully monitored by a professionally advised</p> <p>21 design review committee."</p> <p>22 What does that mean to protect and</p> <p>23 enhance owner value? Can you explain that?</p> <p>24 A. I would say that this is describing how</p> <p>25 this community has --</p>

<p style="text-align: right;">Page 37</p> <p>1 MR. GUNNERSON: By the way, I'm just going to 2 object to foundation. Go ahead. 3 THE WITNESS: This community has guidelines to 4 ensure that you can't build just anything as you 5 could in an area that is not under an HOA control. 6 There are architectural guidelines and other 7 restrictions in the guidelines that control the 8 style of architecture and the look of the community 9 which help protect long-term homeowner values. 10 And, for example, the color 11 section, your neighbor can't paint his house lime 12 green with pink polka dots on it. While in another 13 area in the city, you can paint your house however 14 you want. 15 So by having a Design Review 16 Committee and having control over the architectural 17 features within the community, you can protect 18 against somebody doing something that will damage 19 your property values because, for example, it might 20 hurt your value if your neighbor paints his house 21 green with pink polka dots. 22 BY MS. HANKS: 23 Q. Now, I understand the Design Review 24 Committee is in place to review plans for houses 25 that are going to be constructed on vacant lots,</p>	<p style="text-align: right;">Page 39</p> <p>1 community identity is further enhanced by an 18 hole 2 championship golf course and destination resort." 3 I'm only concerned with the 18 4 hole championship golf course of that section. And 5 we've already discussed it. I just want to further 6 clarify that MacDonald Highlands was advertised as a 7 golf course community, correct? 8 A. Yes. 9 Q. And that was a big part of MacDonald 10 Highlands', I guess, overall identify community 11 within the valley, correct? 12 MR. GUNNERSON: Objection. Misstates prior 13 testimony. 14 THE WITNESS: Yeah. I can't answer that. 15 BY MS. HANKS: 16 Q. At least it says it here, "the 17 community identity is the 18 hole championship golf 18 course," that's what the design guidelines says? 19 A. It says it's further enhanced by an 18 20 hole championship golf court. 21 Q. Okay. The identity is further 22 enhanced. 23 If you go to the second paragraph 24 on page 1.2, I'm going to -- there is a sentence 25 there that I'm going to talk about. I'm going to</p>
<p style="text-align: right;">Page 38</p> <p>1 correct? 2 A. Yes. 3 Q. And, also, my understanding is if you 4 want to make any changes to your house after the 5 final approval of the construction of the house is 6 given the to the design committee and go through the 7 HOA; is that right? 8 A. Yes. 9 Q. But do the design guidelines still 10 serve as guidelines to owners who already have a 11 constructed house? 12 A. Yes. 13 Q. Okay. So, in other words, the 14 guidelines don't just stop working, they are still 15 there, and they are still in force, you just -- if 16 you want approvals for any structures at that point 17 once your house is built and approved by the design 18 committee, it would just go through a different 19 avenue which is the HOA? 20 A. Correct. Modifications committee. 21 That is set up by the homeowner's association. They 22 use the design guidelines to help them approve or 23 deny applications for changes to the homes. 24 Q. The last sentence on that page, it 25 spills over to the next page and start with "the</p>	<p style="text-align: right;">Page 40</p> <p>1 start with the beginning of the sentence. 2 It says "Minimum standards of 3 design arising out of the environmental and climatic 4 needs of the desert provide direction to lot or 5 parcel owners and developers in the planning, 6 design, and construction of their residences or 7 projects to ensure compatibility with the 8 environment, harmonious architectural approaches, 9 and compatibility with adjacent development within 10 the community." 11 Is that what we were talking about 12 earlier? 13 MR. GUNNERSON: I think he was lost where you 14 were. 15 THE WITNESS: Where did you start? 16 BY MS. HANKS: 17 Q. It's the second paragraph, the second 18 sentence. 19 A. Second sentence? 20 Q. Yes. "Minimum standards." And I read 21 the whole sentence so it was read in context. 22 A. Oh, it's not highlighted. 23 Q. Yes. Sorry about that. 24 A. I was looking at the highlighted. 25 Couldn't find that. Okay. Can you start that</p>

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<p>1 again?</p> <p>2 Q. Sure. It says "Minimum standards of</p> <p>3 design arising out of the environmental and climatic</p> <p>4 needs of the desert provide direction to lot or</p> <p>5 parcel owners and developers in the planning design</p> <p>6 and construction of their residences or projects to</p> <p>7 ensure compatibility with the environments,</p> <p>8 harmonious architectural approaches and</p> <p>9 compatibility with adjacent development within the</p> <p>10 community."</p> <p>11 And my question was going to be,</p> <p>12 does that paragraph discuss or address what we were</p> <p>13 talking about earlier, that one of the goals of the</p> <p>14 design guidelines is to make sure that the houses</p> <p>15 that are being built in MacDonald Highlands are of</p> <p>16 the same style so you don't have the one pink house</p> <p>17 on one lot and another green house on another lot?</p> <p>18 A. This is a little different.</p> <p>19 Q. What is this paragraph explaining?</p> <p>20 A. I think this section of the design</p> <p>21 guidelines is referring to just the basic standard</p> <p>22 of desert type homes that are appropriate to be</p> <p>23 built in a desert type environment, so it's saying</p> <p>24 the minimum standards. Basically you live in a</p> <p>25 desert. Desert style homes are appropriate, and</p>	<p>1 A. Then, yes. That's a golf course lot.</p> <p>2 Q. If you turn to the next page, it</p> <p>3 defines "Visible from neighboring property shall</p> <p>4 mean with respect to any given object, that such</p> <p>5 object is or would be visible to a person six feet</p> <p>6 tall standing at ground level on any part of such</p> <p>7 neighboring property."</p> <p>8 I want to make sure I understand</p> <p>9 this sentence and the definition. Does that mean if</p> <p>10 I'm six foot tall standing at the ground level of a</p> <p>11 particular, let's say -- just take the backyard of</p> <p>12 590 Lairmont so we have some direction -- if I'm six</p> <p>13 feet tall and I can see it to my right or left,</p> <p>14 that's what it means by "visible from neighboring</p> <p>15 property?"</p> <p>16 MR. GUNNERSON: Objection. Form.</p> <p>17 THE WITNESS: Yeah. That's not really what</p> <p>18 this is intended to describe based upon the</p> <p>19 references within the guidelines.</p> <p>20 BY MS. HANKS:</p> <p>21 Q. And I think we're going to talk about</p> <p>22 this term somewhere further into the guidelines, but</p> <p>23 can you tell me what your understanding of how this</p> <p>24 term is used within the guidelines?</p> <p>25 A. There are a number of things on a</p>
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<p>1 that's kind of the base to start of being compatible</p> <p>2 within the community. So this is more like you're</p> <p>3 not going to have a snow cabin next to a dessert</p> <p>4 home.</p> <p>5 It's a minimal requirement saying</p> <p>6 these are desert appropriate houses as a base point</p> <p>7 for starting the theme of the community.</p> <p>8 Q. Can you turn to page 1.12? At the top</p> <p>9 of this page it defines "Golf course lot shall mean</p> <p>10 a residential lot which has a portion of its</p> <p>11 boundary immediately adjacent to the golf course."</p> <p>12 And I'll just stop there. Are you</p> <p>13 familiar with 590 Lairmont Place?</p> <p>14 A. Yes.</p> <p>15 Q. Is that considered a golf course lot?</p> <p>16 A. Yes.</p> <p>17 Q. How about 594 Lairmont Place? Are you</p> <p>18 familiar with that lot?</p> <p>19 A. Is that the Malek owned property next</p> <p>20 to --</p> <p>21 Q. 590, yes.</p> <p>22 A. So 590 is the Rosenbergs'?</p> <p>23 Q. Yes.</p> <p>24 A. 594 is the immediately next to it?</p> <p>25 Q. Correct.</p>	<p>1 residential property which need to be screened so</p> <p>2 that they are not visible from the neighboring</p> <p>3 property.</p> <p>4 Generally it's the mechanical</p> <p>5 equipment. So when you say your mechanical</p> <p>6 equipment can't be visible from the neighboring</p> <p>7 property, it needed to be specified that it's from</p> <p>8 ground level, because you can see it from the second</p> <p>9 story.</p> <p>10 So we would have air conditioning</p> <p>11 units. Only need to be screened from -- if you're</p> <p>12 six feet tall looking at ground level of the</p> <p>13 neighboring property, not if you're looking out the</p> <p>14 second story window of the property.</p> <p>15 So this section is helping to</p> <p>16 describe when a neighbor says "I can see my</p> <p>17 neighbor's air conditioning, why isn't it screened,"</p> <p>18 you can say visible from neighboring property from</p> <p>19 ground level, not from your two-story bedroom,</p> <p>20 because it's too difficult to screen those things</p> <p>21 from above. That's what this section is meant for.</p> <p>22 Q. Let's take the example of looking at an</p> <p>23 AC unit from ground level. If a owner called you up</p> <p>24 and said, "hey I can see my neighbor's AC unit from</p> <p>25 ground level," why was it important for the design</p>

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<p>1 guidelines to not have that unit visible from a 2 neighboring property? 3 A. It's one of the things that the 4 developers thought would set the community apart, 5 was screening mechanical equipment, just like the 6 city no longer allows air conditioning units on your 7 roof, because you can see them from all over the 8 city. And it gives an industrial look to a 9 community. 10 So by having the mechanical 11 equipment screened, it gives a less industrial look 12 and gives it a higher level of design. Just nicer. 13 There are a number of little details in here that 14 make the houses a little bit nicer and just make the 15 community a little bit more valuable, and that was 16 the point of the guidelines. 17 Q. Let's turn to the next page, 2.05. 18 That talks about setbacks of -- it says, "all 19 developments within MacDonald Highlands shall 20 maintain setbacks and easements consistent with the 21 setback standards discussed in section 3.0 of these 22 design guidelines." 23 Now, if you turn to page 3.01, 24 it's kinds of in there a ways. Are these the 25 setbacks that are referred to in section 2.8?</p>	<p>1 MR. SHEVORSKI: You can continue. I'm just 2 going to step outside real quick. 3 BY MS. HANKS: 4 Q. 590 Lairmont, and let's even say 594 5 Lairmont cannot have storage structures because 6 they're on the golf course? 7 A. They can't have a certain type of 8 storage structures. 9 Q. And what types can they not have? 10 A. This addition to the design guidelines 11 was in response to a complaint about a plastic 12 storage shed that was placed on the back fence of a 13 golf course lot. 14 So the section was added so you 15 couldn't buy large plastic storage sheds and put 16 them up against golf course and open space, because 17 it's not a permanent structure. Those storage sheds 18 didn't have to go through the modifications 19 committee of the homeowner's association, so people 20 were buying large plastic storage sheds and sticking 21 them in visible places. 22 So this was added to the design 23 guidelines to prohibit people from placing plastic 24 storage sheds where they are visible from the golf 25 course, because they didn't look very good.</p>
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<p>1 A. Yes. 2 Q. Let's talk about 3.10 for a little bit 3 then. 590 Lairmont and 594 Lairmont Place are 4 located in Planning Area 10 of MacDonald Highlands; 5 is that correct? 6 A. Yes. 7 Q. And, so here on this chart it indicates 8 Planning Area 10 right there in the middle, the 9 front setback is 25 feet, correct? 10 A. Yes. 11 Q. The side setback is 15 feet, correct? 12 A. Yes. 13 Q. And the rear is 35 setback, the rear 14 setback is 35 feet, correct? 15 A. Yes. 16 Q. And then there is a little star at the 17 bottom of this page. It indicates -- the second 18 sentence, "While accessory structures provided on 19 lots along the golf course and/or common open space 20 must be setback a minimum of 10 feet from all 21 property lines except for storage structures which 22 shall not be allowed along the golf course, common 23 open space and hillside areas." 24 So am I correct in reading that to 25 mean that --</p>	<p>1 So you could build a permanent 2 structure that is approved, and what you do inside 3 of it, whether it's a game room or you use it for 4 storage, would be fine, because it's a permanent 5 structure that meets the design guidelines. This 6 was for non-constructed structures that didn't go 7 through the review process. 8 Q. The person who complained about their 9 neighbor -- or, actually, back up. 10 The person who complained about 11 the shed, were they adjacent neighbors to each 12 other? 13 A. No. 14 Q. Where was the person who was 15 complaining located in relation to the person that 16 had the shed? 17 A. Probably a half mile away. 18 Q. Oh, wow. 19 A. It was a golfer. 20 Q. And he owned property within MacDonald 21 Highlands though? 22 A. Yes. 23 Q. Now, you indicated because it wasn't a 24 permanent structure. Am I right to understand then 25 that someone who's lot is located along the golf</p>

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<p>1 course could build a casita?</p> <p>2 A. Yes.</p> <p>3 Q. And it could be right along the view</p> <p>4 fence on the back part of the property that abuts</p> <p>5 the golf course?</p> <p>6 A. Yes. Within 10 feet.</p> <p>7 Q. Ten feet, okay.</p> <p>8 Can you turn to the next page,</p> <p>9 3.11? This is talking about the natural area, and</p> <p>10 it's the last paragraph on this page.</p> <p>11 It says, "Any slope area adjacent</p> <p>12 to the golf course and not a part of the area of</p> <p>13 home development or construction shall be landscaped</p> <p>14 as a natural desert zone or natural area."</p> <p>15 Can you explain that paragraph to</p> <p>16 me?</p> <p>17 A. Sure. This is mostly for the lots on</p> <p>18 MacDonald Ranch Drive or where the lots are pretty</p> <p>19 far away from the golf course. So the house is</p> <p>20 located closer to the MacDonald Ranch Drive, and the</p> <p>21 construction of the house in the backyard may stop</p> <p>22 20 or 30 feet from the golf course property.</p> <p>23 So this is saying where you stop</p> <p>24 building your house and backyard, the area after the</p> <p>25 backyard stops up to where the golf course starts,</p>	<p>1 that term actually looks like.</p> <p>2 Turn to page 3.14, the next page.</p> <p>3 We're looking at that middle section where it's</p> <p>4 titled "Building orientation." And I'm going to</p> <p>5 start at the beginning of the sentence where I have</p> <p>6 it marked in orange so I can get that clause in</p> <p>7 context.</p> <p>8 So I'm starting in the middle of</p> <p>9 the paragraph where it says "the siting of the</p> <p>10 individual structures."</p> <p>11 Do you see that?</p> <p>12 A. Siting.</p> <p>13 Q. The siting, sorry.</p> <p>14 So "The siting of individual</p> <p>15 structures on the lot should consider the following</p> <p>16 three primary factors; one solar orientation; two,</p> <p>17 view orientation; and three, relationship to</p> <p>18 adjacent lots and the overall community." And I'll</p> <p>19 stop there.</p> <p>20 Why is number three important?</p> <p>21 Why does the design guidelines say that one of the</p> <p>22 factors that should be considered is the</p> <p>23 relationship to adjacent lots?</p> <p>24 A. This section is more geared towards the</p> <p>25 lots that are consistent with the sentence before</p>
Page 50	Page 52
<p>1 they want it to look natural. You can't just grade</p> <p>2 it out and make it look unnatural. They want it to</p> <p>3 look like it's a natural hillside area.</p> <p>4 So this was just generally for the</p> <p>5 lots that have a large sloped area that you're not</p> <p>6 using as part of your lot, because it's too steep.</p> <p>7 You might have disturbed it during construction, and</p> <p>8 you need to return it to looking natural. They</p> <p>9 don't want like a graded slope of dirt with nothing</p> <p>10 on it where you stopped building your house between</p> <p>11 the golf course and the golfers have to look at a</p> <p>12 wall of dirt. They want you to re-veg it and make</p> <p>13 it look natural again.</p> <p>14 Q. Do you know if the portion of the golf</p> <p>15 course that was eventually sold to many Mr. Malek</p> <p>16 was a natural desert zone or natural area?</p> <p>17 A. That's not a slope area adjacent, so</p> <p>18 no. This wouldn't apply to that area.</p> <p>19 Q. Did it have the same look? In other</p> <p>20 words, the natural desert, is that similar to what</p> <p>21 that looks like?</p> <p>22 A. That was natural area, yes. That's</p> <p>23 what these sloped area looked like before they were</p> <p>24 disturbed.</p> <p>25 Q. That's what I'm trying to know what</p>	<p>1 you started reading.</p> <p>2 Q. This exclusivity?</p> <p>3 A. Significant space between residences.</p> <p>4 There is a number of lots in the hillside area and</p> <p>5 other areas of the MacDonald Highlands that the</p> <p>6 house doesn't take up the entire lot.</p> <p>7 So the siting of the lot, of the</p> <p>8 house within the lot should be mindful of where the</p> <p>9 neighbor's siting of his house is. But this is</p> <p>10 generally intended when you're siting a house within</p> <p>11 a larger lot, the houses where the house takes up</p> <p>12 the entire lot, like in PA-10.</p> <p>13 This isn't really the -- that</p> <p>14 relationship to adjacent lots is not as applicable</p> <p>15 to the houses that take up the entire lot, because</p> <p>16 you're building the house on the entire lot.</p> <p>17 So there is a few different kinds</p> <p>18 of lots within MacDonald Highlands. And the ones</p> <p>19 with significant space between residences, it's</p> <p>20 important that you're mindful of where that house</p> <p>21 goes within the lot. If you're taking up the entire</p> <p>22 lot, you don't have that option.</p> <p>23 Q. Now, would Mr. Malek fall into this</p> <p>24 category now because he bought two adjacent lots and</p> <p>25 then also added the golf parcel? Would that be the</p>

<p>Page 53</p> <p>1 kind of example you're talking, a rather large lot 2 area? 3 MR. GUNNERSON: I'm just going to object in 4 that there is no facts that state that the two lots 5 have been combined. So right now it's a separate 6 lot. 7 THE WITNESS: Correct. And that would be my 8 answer as well. He owns two separate lots within 9 MacDonald Highlands. So the neighboring lots, the 10 Rosenbergs would not apply, because it has not been 11 expanded to two lots. 12 BY MS. HANKS: 13 Q. Do you know if he intends to use a 14 portion of the 590 Lairmont? 15 MR. GUNNERSON: I think that's the 16 Rosenbergs'. 17 BY MS. HANKS: 18 Q. Sorry. His is 598 Lairmont. I think 19 his is the one at the very end of the cul-de-sac, 20 correct? 21 A. I don't know his intentions due to the 22 title issue on that lot. 23 Q. Okay. Let's assume hypothetically that 24 he didn't have a title issue and was able to use 25 both the 598 and the 594 for positioning of his</p>	<p>Page 55</p> <p>1 developing a portion of it, and the rest of it stays 2 natural. So that's more for the hillsides. 3 Q. But doesn't indicate that within the 4 guidelines that's just something as a practical 5 matter that was done with the Design Review 6 Committee? 7 A. The way it's described, it just -- it's 8 not applicable. 9 Q. Now, if you turn to page 3.16, the 10 first sentence of the last paragraph -- are you at 11 3.16? It might not be in order. I thought I put it 12 in order. There you go. 13 A. Can I see the guidelines? 14 Q. Did I get a page missing? 15 A. I just want to see what section. This 16 is from -- okay. 17 Q. Are you on page 3.16? 18 A. Okay. 19 Q. This is a section -- the whole page 20 looks like it's talking about -- says, "Relationship 21 to adjacent lots and overall community." 22 And I don't have that paragraph 23 highlighted, but I want to direct your attention to 24 the second paragraph, first sentence. "It is the 25 intent." Do you see that?</p>
<p>Page 54</p> <p>1 house. I'm just using that as an example. 2 Is that what you mean by when you 3 have a very large section that you could potentially 4 build a really large home, but the idea around this 5 paragraph is don't consume the whole area with your 6 house, be mindful that keeps -- 7 A. No. That's not really what the section 8 is trying to cover. 9 Q. Okay. So can you explain again then? 10 I guess I misunderstand. 11 What's it trying to cover? 12 A. It's the building orientation in the 13 hillside lots. It's just covering when you develop, 14 say, a quarter acre of a two-acre parcel, you're 15 supposed to be mindful of pointing your house in the 16 direction of the view that you're trying to capture 17 and you're not throwing it right up against the lot 18 line if you have two other acres to cover. You 19 would pick the correct developable area within that 20 two acres to site the house. 21 So it's just to be mindful where 22 in your two acres you develop your half acre, but 23 that's in specific planning areas. So we'll look at 24 that more in the planning areas where you're not 25 developing your whole lot, where your just</p>	<p>Page 56</p> <p>1 A. Yes. 2 Q. "It is the intent of these guidelines 3 to ensure that not only are the architectural 4 designs consistent with community standards, but 5 that each new home compliments and enhances those 6 homes that already exist." 7 Would it be fair to say that the 8 -- when the Design Review Committee based on that 9 sentence, I take it, when the Design Review 10 Committee is looking at a particular plan for a 11 house, you're not just looking at it in a vacuum? 12 You're looking at it as it relates to other 13 properties in that area, correct? 14 A. Correct. 15 Q. And the idea is because you want to 16 have a harmonious neighbored, right, the houses 17 compliment each other, correct? 18 A. Yes. 19 Q. If you go down to the last paragraph on 20 3.16 with the sentence beginning "furthermore." It 21 says "Furthermore, if adjacent lots have existing 22 homes, the lot owner is to show the existing homes 23 and its elevation in relation to his or her proposed 24 design." 25 What is the purpose of that</p>

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<p>1 requirement?</p> <p>2 MR. GUNNERSON: Objection. Form.</p> <p>3 THE WITNESS: The purpose is to ensure</p> <p>4 compatibility between the two residences.</p> <p>5 BY MS. HANKS:</p> <p>6 Q. And what would make a resident</p> <p>7 incompatible with another residence? Can you give</p> <p>8 me an example?</p> <p>9 A. I believe this section elevation is</p> <p>10 used as the height of the home and not the look of</p> <p>11 the home. So it would be if someone builds up their</p> <p>12 property or puts a bunch of walls.</p> <p>13 We had a resident who wanted to</p> <p>14 put a house. At one point I believe it was 25 feet</p> <p>15 above his neighbor's backyard with 25 foot of walls</p> <p>16 so that a neighbor would be in his backyard and</p> <p>17 would be looking at 25 foot of walls and have to</p> <p>18 look up 25 feet to see his neighbor's backyard.</p> <p>19 And, so that would be an example,</p> <p>20 because the elevation of this particular backyard</p> <p>21 was extremely incompatible with his neighbor's</p> <p>22 backyard. And we felt that a 25 foot difference</p> <p>23 between the two properties, that elevation change</p> <p>24 was unreasonable, and that was denied by the DRC.</p> <p>25 Q. So is it fair to state that this</p>	<p>1 not obstructed."</p> <p>2 Can you please explain that</p> <p>3 paragraph?</p> <p>4 A. This is in reference to the hillside</p> <p>5 areas of the community which are similar to what I</p> <p>6 referenced before where you might buy two acres and</p> <p>7 put your lot on a quarter acre.</p> <p>8 The hillside acres are the areas</p> <p>9 of the community with higher slopes, generally up in</p> <p>10 the mountains that have panoramic city views. Just</p> <p>11 be mindful when you're siting your house on the side</p> <p>12 of the hill to be mindful of your neighbors.</p> <p>13 We have opportunities -- generally</p> <p>14 in the hillside areas, like a strip view may be your</p> <p>15 primary view. So if there is an opportunity for a</p> <p>16 neighbor to have a strip site, strip view, it's</p> <p>17 saying you don't want to obstruct that primary view</p> <p>18 from the residence in the hillside areas.</p> <p>19 Q. Now, this paragraph is not limited to</p> <p>20 hillside areas though, correct?</p> <p>21 A. That's incorrect.</p> <p>22 Q. Why do you say it's limited to the</p> <p>23 hillside areas?</p> <p>24 A. It's 3.3.7 is the hillside design</p> <p>25 guidelines, I believe. 3.3.7 is the hillside design</p>
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<p>1 particular sentence when you're dealing with</p> <p>2 elevation -- again, when you're looking to approve</p> <p>3 or deny a particular lot owner's architectural</p> <p>4 plans, you're not only taking into consideration how</p> <p>5 that plan fits within these guidelines, but also how</p> <p>6 it fits with the property next door?</p> <p>7 A. Correct. So extreme changes in</p> <p>8 elevations between two properties would be something</p> <p>9 that we would review.</p> <p>10 Q. Now, if you turn to the next page,</p> <p>11 3.57, the second paragraph on this page -- do you</p> <p>12 have that page?</p> <p>13 MR. GUNNERSON: Yeah.</p> <p>14 MS. HANKS: I just saw that he doesn't have it</p> <p>15 either. I have markings on it too.</p> <p>16 MR. GUNNERSON: I just want to let you know.</p> <p>17 I don't know if you want to switch this out.</p> <p>18 BY MS. HANKS:</p> <p>19 Q. I think I made these notes yesterday</p> <p>20 from Mr. MacDonald, but he doesn't have it on the</p> <p>21 original exhibit, so I'm not concerned.</p> <p>22 The paragraph starts with "While</p> <p>23 views should be maximized from individual home</p> <p>24 sites, the residences should be designed and sited</p> <p>25 such that view opportunity from surrounding lots are</p>	<p>1 criteria.</p> <p>2 Q. So this is only dealing with hillside</p> <p>3 properties?</p> <p>4 A. That's my understanding. It's within</p> <p>5 the hillside design criteria section.</p> <p>6 Q. And PA-10 is not within the hillside?</p> <p>7 A. No.</p> <p>8 Q. Turn to page 5.20. It's the last page.</p> <p>9 A. Okay.</p> <p>10 Q. And this is the rear yard cone of</p> <p>11 vision slash dedicated view corridors. Reads,</p> <p>12 "Those those lots that require preservation of view</p> <p>13 corridors will not be permitted to install</p> <p>14 improvements, plant trees, or install other plant</p> <p>15 material that are taller than four feet, i.e., at</p> <p>16 maturity, not with maintenance within a distance of</p> <p>17 15 feet from the rear yard property corner."</p> <p>18 And then it references Exhibit O,</p> <p>19 page 2.38. Can you explain that paragraph?</p> <p>20 A. There is a triangle area at the rear</p> <p>21 yard property corner where the height of landscaping</p> <p>22 is restricted.</p> <p>23 Q. Can you turn to page 238 so we can look</p> <p>24 at Exhibit O and see what they're referencing?</p> <p>25 So it looks like on this page it's</p>

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1 a map of the community with the lots, and it has
2 some that are yellow and some that are red, correct?
3 A. Correct.
4 Q. And the lots that are in red, they
5 indicate they require to have the rear cone of
6 vision, right?
7 A. Yes.
8 Q. Okay. And is 590 Lairmont one of the
9 red properties?
10 A. Yes.
11 Q. And is 594 Lairmont one of the red
12 properties?
13 A. Yes.
14 Q. And, so I deposed Mr. MacDonald
15 yesterday, and from what I understand -- and let me
16 make sure you have that same understanding -- is he
17 said that that paragraph means that you have to
18 place a pilaster within 15 feet from the back corner
19 of your lot, and there has to be a view fence and
20 then there is a small triangle at the corner at the
21 rear. So there is a triangle on the right-hand side
22 of the rear of the property and a triangle on the
23 left-hand side of the property, but you cannot put
24 taller vegetation than four feet.
25 Is that you're understanding of

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1 that view corridor?
2 A. Yes and no.
3 Q. Can you just tell me where I might
4 have --
5 A. Pilaster is not required. You can have
6 view fences on both sides. But if you have a solid
7 wall, it has to stop 15 feet from the back corner.
8 Q. I think that's what he was saying. So
9 if you're going to have a solid wall to the side of
10 your property, the last pilaster would have to stop
11 at 15 feet, and then from the last remaining 15 feet
12 to your rear of you property would have to be a view
13 fence, correct?
14 A. Yes. Or a view wall, I believe, is
15 still okay.
16 Q. What's the difference between view wall
17 and view fence?
18 A. A view fence is just a fence with kind
19 of a low strip at the bottom.
20 And view wall has a foot and a
21 half of masonry and a fence on top of that. So it's
22 just a little pony wall at the bottom.
23 Q. Now, with the addition of the golf
24 course parcel to 594 Lairmont, can the rear cone of
25 vision still be achieved for 594 Lairmont in

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1 relation to 590 Lairmont?
2 MR. GUNNERSON: Objection. Form as to the
3 word "achieved".
4 THE WITNESS: Yes. We can still have a cone
5 of vision on that lot.
6 BY MS. HANKS:
7 Q. On which end? Only one end or both
8 ends?
9 A. It's only required at the rear.
10 Q. Where is the rear of 594 Lairmont?
11 A. Where it borders Stephanie Street.
12 Q. Is that where you would enforce the
13 rear cone of vision for that property then?
14 A. Yes.
15 Q. Does that mean Mr. Malek can have a
16 solid wall extending all the way to the edge of the
17 golf course on the left-hand side of his property,
18 the side that is opposite to Stephanie Street?
19 A. Could you show that to me on the map?
20 MS. HANKS: Sure. That's what I was going to
21 pull out, this one. Mark that.
22 (Exhibit 4 marked.)
23 MR. GUNNERSON: Counsel, we've been going an
24 hour and a half. Can we take just a quick break?
25 MS. HANKS: Sure.

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1 (Short break.)
2 BY MS. HANKS:
3 Q. So right before we went on the break,
4 you were asked if I could show you a map. We've
5 marked as Exhibit 4, the maps that were contained in
6 the binder of governing documents.
7 My understanding is they are not
8 supposed to be part of that binder. Just probably
9 put there for ease. But before we start talking
10 about this map and using it, can you just tell me
11 what it is? And when I say "the map", it should be
12 -- the pages should be Bates stamped PLTF10520.
13 A. It appears to be the PA-10 final map.
14 Q. And when you say "final map", what does
15 that mean?
16 A. Final map is the map of record that
17 sets the legal boundaries of the lot.
18 Q. Okay. The PA-10 that we're looking at,
19 document Bates stamped PLTF10520, is this what PA-10
20 legally looked like in 2012?
21 A. Yes.
22 Q. Okay. So where is -- can you mark and
23 actually write in the addresses? Where is
24 590 Lairmont? Just put 590 on the -- so that we
25 know what we're talking about.

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1 A. (Witness indicates.)
2 Q. Okay. And, for the record, you wrote
3 that within lot number three, correct?
4 A. Yes.
5 Q. And then where is 594 Lairmont?
6 A. (Witness indicates.)
7 Q. And you wrote that address in lot
8 number two. And then where is 598 Lairmont?
9 A. (Witness indicates.)
10 Q. And then you wrote that in lot number
11 one.
12 So my understanding is Mr. Malek
13 owns 594 and 598, but for purposes of right now I'm
14 only concerned with 594.
15 Where would the rear cone of
16 vision be according to the guidelines? You can
17 circle it or X it, whatever.
18 A. (Witness indicates.)
19 Q. Do you get two or just one?
20 A. That property would only have one,
21 because it's the rear property that bounds the golf
22 course. So his other rear property corner isn't a
23 boundary of the golf course. So it wouldn't apply
24 to his other rear property corner.
25 Q. Could you mark where the rear -- I

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1 think you mentioned the rear property line for 594
2 is the portion that is parallel to Stephanie Street,
3 correct?
4 A. Yes.
5 Q. Could you just mark that with an "R" or
6 write where on the line that is the rear?
7 A. (Witness indicates.)
8 Q. And what is the line, the boundary that
9 is adjacent to the golf course, what is that
10 considered?
11 A. This one?
12 Q. Yes.
13 A. Side.
14 Q. Can you mark that as side?
15 A. (Witness indicates.)
16 Q. And then where is the front boundary
17 line of this property?
18 A. (Witness indicates.)
19 Q. And then what is the boundary lines
20 that we haven't marked? There is two left. Which
21 would they be considered?
22 A. The side and side.
23 Q. Who determined that, what side, what's
24 rear, what's front?
25 A. City of Henderson.

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1 Q. Do you know why they would put the rear
2 of the lot on the portion that is parallel to
3 Stephanie Street as opposed to the portion that's
4 adjacent to the golf course?
5 MR. GUNNERSON: Objection. Foundation.
6 THE WITNESS: Yes.
7 BY MS. HANKS:
8 Q. Why?
9 A. Because it's opposite the address.
10 Q. Oh, so whatever boundary line is
11 opposite the address is automatically the rear of a
12 property?
13 A. I don't know automatically, but that's
14 the criteria.
15 Q. Now, because Henderson has designated
16 those portions of the property as side, rear, and
17 front, does that mean Mr. Malek has to build his
18 property -- and I know he has another portion.
19 Let's assume we're only talking about when he owned
20 594 Lairmont as it exists here, these lot lines.
21 Does that mean he has to build his house a certain
22 way? In other words, does the front of his house
23 have to be the front of the property line?
24 A. No.
25 Q. So he can build his house any direction

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1 he wants to within those boundary lines regardless
2 of how the City of Henderson terms the boundary
3 lines?
4 A. Correct. We have houses that the front
5 door is on the rear property line.
6 Q. Now, with regard to the setbacks, what
7 would the setback be for the side boundary line that
8 is adjacent to the golf course underneath the design
9 guidelines?
10 A. Fifteen feet.
11 Q. And then is that the same for the other
12 side boundary line that is immediately adjacent to
13 590 Lairmont?
14 A. Yes. All sites are 15.
15 Q. And then the back which is -- or the
16 rear which is parallel to Stephanie would be 35
17 feet?
18 A. Correct.
19 Q. Can you just put cone of vision where
20 you marked that line so we know that's where you
21 marked it?
22 A. (Witness indicates.)
23 Q. Have there been any properties where --
24 let me back up.
25 Would you as the Design Review

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<p>1 Committee enforce the cone of vision on the corner 2 that's most adjacent to 590 Lairmont even though 3 that's the side portion according to the City of 4 Henderson? 5 A. No. 6 Q. Why not? 7 A. You just explained it yourself. It's 8 the side. The criteria says rear. 9 Q. Well, I understand the criteria is the 10 rear, but is there any reason why you might vary 11 from that criteria because of how this property is 12 situated? 13 A. No. 14 Q. Okay. So does that mean that Mr. Malek 15 can build a solid wall on the side property boundary 16 that is most adjacent to 590 Lairmont? 17 A. This isn't the current lot. 18 Q. No. I understand that. I'm going to 19 talk about just as it existed in 2012 according to 20 the guidelines. 21 A. As it existed in 2012, he could put -- 22 he could not put a solid wall up to the corner, 23 because Rosenberg had to put a fence there. 24 Q. Okay. So he can't put a solid wall 25 right next to their wall?</p>	<p>1 Q. Okay. Can you tell me which boundary 2 line changed? You can mark it. I have highlighters 3 if you want to do that. 4 A. This one changed. 5 Q. And how did it change? 6 A. It was moved closer to the golf course. 7 Q. Okay. Do you know how many feet on the 8 side that is most adjacent to 590, the new property 9 line extends into the golf course? 10 A. No. 11 Q. I understand that Mr. Malek is going to 12 share the wall with 590 Lairmont up to the point 13 where their property line ends. 14 What can he do for the remaining 15 portion of his property that extends into the golf 16 parcel for that, I guess, the side portion of his 17 property? 18 A. I believe it needs to be view wall or 19 view fence. 20 Q. Why? 21 A. Because it's the borders golf course 22 property. 23 Q. Do you know where I could find that in 24 the design guidelines? 25 A. Not off hand. I think we encourage it.</p>
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<p>1 A. Then it wouldn't be on the property 2 line. 3 Q. So now he has to share their wall? 4 A. Yeah. The walls on the property lines 5 are shared. 6 Q. So, because the 590 Lairmont property 7 had already built their side wall on the side that 8 is adjacent to 594 Lairmont, Mr. Malek would have to 9 share that wall at this point? 10 A. Yes. 11 Q. And it's your understanding that -- 12 where is 590 Lairmont's cone of vision? 13 A. You want me to draw it in? 14 Q. Yeah. Draw it in with the triangle 15 that you did, and then mark it cone of vision if you 16 can. You don't have to do it for both. Just kind 17 of... 18 A. (Witness indicates.) 19 Q. Was this map changed in anyway after 20 2012? In other words, were the boundary lines 21 changed? And I'm only concerned with the parcels 22 that we've identified. 23 A. Yes. 24 Q. How did they change? 25 A. The boundary of 594 changed.</p>	<p>1 Q. And why do you encourage it? 2 A. For the reasons that you had pointed 3 out previously. 4 Q. Was that to maintain the views from 5 adjacent lots? 6 A. No. 7 Q. Okay. I'm sorry. Then I don't know 8 what I pointed to previously. 9 Then why are there view fences 10 required for -- 11 A. To encourage, to take advantage of the 12 views from your own lot. 13 Q. Okay. So it's only because you want 14 Mr. Malek to take advantages of the views from his 15 own lot? 16 A. I don't know if it's only, but that 17 would be one of the reasons. 18 Q. Any other reasons why that view fence 19 is encouraged on that portion of the property or 20 would be encouraged? 21 A. Could be for the look from the golf 22 course side as well. 23 Q. Are any reasons dealing with the other 24 property owners along Lairmont Place? 25 A. No.</p>

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<p>1 Q. And now it's encouraged, but if he</p> <p>2 wanted to build, let's say, an eight foot wall,</p> <p>3 could he?</p> <p>4 MR. GUNNERSON: Objection. Vague as to place.</p> <p>5 BY MS. HANKS:</p> <p>6 Q. We're still talking about the side</p> <p>7 portion of the boundary line that's most adjacent to</p> <p>8 490 that was extended into the golf parcel.</p> <p>9 A. No. He could not build an eight foot</p> <p>10 fall.</p> <p>11 Q. Why could he not build an eight foot</p> <p>12 wall?</p> <p>13 A. Maximum height of a screen wall on the</p> <p>14 property line is limited to six foot.</p> <p>15 Q. And that's regardless whether it's</p> <p>16 side, front, or rear?</p> <p>17 A. Correct, of a screen wall.</p> <p>18 Q. What's a screen wall?</p> <p>19 A. A screen wall is not retaining dirt.</p> <p>20 So you can go up to eight feet if you're retaining</p> <p>21 dirt. So you could have another two feet above the</p> <p>22 six feet, but that's not a retaining location. So</p> <p>23 the way you had phrased it, it would be maximum six</p> <p>24 foot.</p> <p>25 Q. Okay. How about the new side? We have</p>	<p>1 BY MS. HANKS:</p> <p>2 Q. Yes, DRC.</p> <p>3 Did he submit any plans that</p> <p>4 weren't approved and sent back and had to be</p> <p>5 adjusted?</p> <p>6 A. Yes and no.</p> <p>7 Q. Can you explain that?</p> <p>8 A. We have a submittal process where you</p> <p>9 turn the schematic set of plans, which is you submit</p> <p>10 your plans, we make comments, and then you come back</p> <p>11 with a final set. So the schematic plan set was</p> <p>12 approved, but it was not final approval. It was</p> <p>13 approved to go to final. So you get the schematic</p> <p>14 plan set. You review it. You make comments on it,</p> <p>15 and you say your schematic set is approved, you need</p> <p>16 to address this on your final set to get final</p> <p>17 approval.</p> <p>18 So his schematic had changes, so</p> <p>19 yes. There were changes in your part of the</p> <p>20 question. But they weren't technically denied,</p> <p>21 because he was approved to go to the final plan set.</p> <p>22 Q. Okay. Was there anything within the</p> <p>23 plan that you did deny from the schematic?</p> <p>24 Is there anything you said, "No,</p> <p>25 you can't do that. You have to change it to X?"</p>
Page 74	Page 76
<p>1 the side here of the original 594 that is</p> <p>2 highlighted in orange. How about the new side</p> <p>3 portion of the property? What type of fencing does</p> <p>4 it have to be, either a view wall or a solid wall</p> <p>5 that's extending into the golf parcel?</p> <p>6 A. I believe all of that was approved as</p> <p>7 the fence or view wall -- or no. View fence. The</p> <p>8 view wall has the small wall at the bottom of it. I</p> <p>9 believe the new side is all view fence in the</p> <p>10 approved plans.</p> <p>11 Q. Now, when the new map was drawn to</p> <p>12 incorporate the golf parcel as part of 594 Lairmont,</p> <p>13 did the City of Henderson change the classifications</p> <p>14 of side versus rear?</p> <p>15 A. No.</p> <p>16 Q. Have you reviewed the plans submitted</p> <p>17 by Mr. Malek for the residence he intends to build</p> <p>18 on 594 Lairmont?</p> <p>19 A. Yes.</p> <p>20 Q. Have they been approved?</p> <p>21 A. Yes.</p> <p>22 Q. Were there plans submitted that weren't</p> <p>23 approved?</p> <p>24 MR. GUNNERSON: Approved by whom? Are you</p> <p>25 still talking about the DRC committee?</p>	<p>1 Anything like that that happened</p> <p>2 during that design review process with Mr. Malek?</p> <p>3 A. Yes.</p> <p>4 Q. Can you give me each example of where</p> <p>5 you told him -- whatever he wanted to do, tell me</p> <p>6 what he wanted to do and what you said he couldn't</p> <p>7 do and how he had to change it?</p> <p>8 A. There were a few things. The elevation</p> <p>9 of his home, the finished floor height, we went back</p> <p>10 and forth a little on the location of the finished</p> <p>11 floor, because we didn't want him to import a lot of</p> <p>12 dirt to raise up his finished floor. So he ended up</p> <p>13 raising his finished floor but keeping the exterior</p> <p>14 of his house down so you had to step up to get into</p> <p>15 his house was an issue with -- he wanted to reduce</p> <p>16 his window heights, because they're getting large.</p> <p>17 So he was thinking of raising the</p> <p>18 floor of his home to do that, but we didn't want him</p> <p>19 to raise the elevation of his lot per that section</p> <p>20 that you had brought up before about the elevations</p> <p>21 next to each other.</p> <p>22 So we had him keep down the</p> <p>23 elevation, at least the look on the outside. So</p> <p>24 even though he did raise his finished floor, you</p> <p>25 can't tell because he kept the exterior of his house</p>

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<p>1 down lower. So that was a compromise.</p> <p>2 Additionally, his driveway next to 590 had to be</p> <p>3 shortened a little.</p> <p>4 Q. Why did it have to be shortened?</p> <p>5 A. I felt he was extending it a little too</p> <p>6 far so that you would see it from the Rosenbergs'</p> <p>7 backyard.</p> <p>8 So initially the driveway where</p> <p>9 you came into his garage stopped before the view</p> <p>10 fence in that area, and on one of his plans it</p> <p>11 extended a little farther. So I made sure he pulled</p> <p>12 it back a little so that it wouldn't be as visible</p> <p>13 from the Rosenbergs' lot.</p> <p>14 Q. Okay. Anything else?</p> <p>15 A. I think we went back and forth on his</p> <p>16 casita a little bit, because he wasn't sure what he</p> <p>17 needed to do. I think initially his front entry</p> <p>18 gate had an issue. I think it might have been too</p> <p>19 close to the street. So he had to pull it back,</p> <p>20 because you can't go over a certain height within</p> <p>21 the front setback. So he had -- and I think it's on</p> <p>22 your plan there -- he has a front entry gate that is</p> <p>23 kind of like a drive thru.</p> <p>24 Q. Let's mark this so we can talk about</p> <p>25 it.</p>	<p>1 a coyote fence on there. That might have been a</p> <p>2 discussion -- I know the plans for sure had the</p> <p>3 fencing on top of the Stephanie Street and the other</p> <p>4 side to the south.</p> <p>5 (Exhibit 5 marked.)</p> <p>6 BY MS. HANKS:</p> <p>7 Q. And the plans that we've marked as</p> <p>8 Exhibit 5 for the portion that is parallel to</p> <p>9 Stephanie Street, can you tell from these plans how</p> <p>10 far the house is set back? Does it say?</p> <p>11 A. I believe he went to 15 feet.</p> <p>12 Q. Okay. And why was 15 feet allowed if</p> <p>13 the design guidelines required 35 feet for the rear</p> <p>14 property line?</p> <p>15 A. He asked for a variance.</p> <p>16 Q. Why was that variance granted?</p> <p>17 A. Well, generally with your rear property</p> <p>18 line, the reason you want to be farther away from</p> <p>19 the rear is because you have a neighbor, and you</p> <p>20 don't want to infringe upon the neighbor.</p> <p>21 The fact that he backed up to</p> <p>22 Stephanie Street which has no neighbor and it's kind</p> <p>23 of a busy street, we weren't worried about the</p> <p>24 distance. And he had the compensating benefit that</p> <p>25 he said he would increase the setback on the side to</p>
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<p>1 A. Yes. It's Malek's gate entry. If you</p> <p>2 see the height of it, it's, I think, 14 feet in the</p> <p>3 air. And the city restricts the height within the</p> <p>4 front setback to, I think it's 42 inches. So that</p> <p>5 was well above what's allowed in the front setbacks.</p> <p>6 So he had to make sure it was 25 feet off the street</p> <p>7 if he was going to go that high. And then probably</p> <p>8 the biggest back and forth was regarding his coyote</p> <p>9 fence concerns.</p> <p>10 Q. What were those?</p> <p>11 A. He's afraid that coyotes are going to</p> <p>12 jump the walls around his house. So he was trying</p> <p>13 to put up like iron bars on top of the perimeter</p> <p>14 walls to keep coyotes from jumping in his yard, and</p> <p>15 that is not permitted, so we made him remove it.</p> <p>16 Q. And that would only -- he had that on</p> <p>17 just the --</p> <p>18 A. He had it on, I think, everywhere</p> <p>19 except the lot line he shared with the Rosenbergs.</p> <p>20 Q. Oh, okay. So he even had it on the lot</p> <p>21 line going into the golf course?</p> <p>22 A. I think he had some special fence that</p> <p>23 he had proposed, but then I think we had told him if</p> <p>24 he wanted to do a second fence past the standard</p> <p>25 fence, he could do it that way, but he couldn't put</p>	<p>1 pull it away from the golf course a little bit.</p> <p>2 So when we looked at his request,</p> <p>3 we felt that having the house closer to Stephanie</p> <p>4 Street which is not visible from the golf course and</p> <p>5 is a major roadway and having it further away from</p> <p>6 the golf course which is very visible from the ninth</p> <p>7 hole and to all the golfers, when we weighed that</p> <p>8 decision, we felt that it would be better for the</p> <p>9 community to allow him to encroach into the</p> <p>10 backyard. As a compensating benefit, he pulled it</p> <p>11 back from the golf course.</p> <p>12 Q. Would it be fair to state then that</p> <p>13 practically speaking Mr. Malek and the Design Review</p> <p>14 Committee are considering the side portion that</p> <p>15 abuts the golf course is more the rear part of his</p> <p>16 property?</p> <p>17 MR. GUNNERSON: Objection. Foundation. Form.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MS. HANKS:</p> <p>20 Q. Why would that not be correct?</p> <p>21 A. Because it's still the rear yard</p> <p>22 setback.</p> <p>23 Q. He's only 15 feet set back from the new</p> <p>24 property line?</p> <p>25 A. He is 15 feet set back from the rear</p>

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<p>1 property line.</p> <p>2 Q. And that would be -- is it this</p> <p>3 building? I guess this section of the house right</p> <p>4 here is set back 15 feet from the rear property line</p> <p>5 or, excuse me, from the new property line?</p> <p>6 A. This corner of the house is set back 15</p> <p>7 feet from the side property line.</p> <p>8 Q. Okay. And then when you say "this",</p> <p>9 you're referring to the corner that's closer to</p> <p>10 590 Lairmont Place?</p> <p>11 A. The corner of the house closest to 590</p> <p>12 set back 15 feet.</p> <p>13 Q. Okay. Do you know how much of the</p> <p>14 house extends into the new parcel of land, that golf</p> <p>15 parcel that was added to 594 in terms of feet?</p> <p>16 A. No. I don't how many feet.</p> <p>17 Q. I'm going to mark with the highlighter</p> <p>18 on the plans where I believe the new portion, the</p> <p>19 new parcel; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So I'm going to mark with the</p> <p>22 blue highlighter the extra side property line that</p> <p>23 was added.</p> <p>24 What can that blue line be in</p> <p>25 terms of a wall or a fence?</p>	<p>1 in that location.</p> <p>2 Q. How so?</p> <p>3 A. He had them too close to the property</p> <p>4 line.</p> <p>5 Q. And how tall were the trees going to</p> <p>6 be?</p> <p>7 A. Let's see. In that area by the blue</p> <p>8 line, I don't think the trees went that far.</p> <p>9 Q. Did they go --</p> <p>10 A. So I think he had shrubs in that area.</p> <p>11 I don't think he was putting trees back there. The</p> <p>12 trees that we had him change out were between the</p> <p>13 driveway and the wall where it gets really thin.</p> <p>14 You can see that area.</p> <p>15 Q. Right in here?</p> <p>16 A. Yeah. He tried to put some trees in</p> <p>17 there, and I just thought it was too close to the</p> <p>18 property line, so I had him remove them.</p> <p>19 Q. So now he's at the driveway?</p> <p>20 A. So he wouldn't fit trees in here, and I</p> <p>21 don't recall. You probably have a copy, because we</p> <p>22 sent over all the plans. But it shows we did put in</p> <p>23 there, but I don't remember what he put in there.</p> <p>24 Q. Okay. Maybe at one of the breaks I'll</p> <p>25 try to pull out the plans to show the landscaping so</p>
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<p>1 A. Right now it has to be what's on these</p> <p>2 plans which is fence.</p> <p>3 Q. Okay. Do you know how high the fence</p> <p>4 is?</p> <p>5 A. Five and a half to six feet.</p> <p>6 Q. Is Mr. Malek limited in what he can</p> <p>7 plant on that additional side boundary line that</p> <p>8 we've marked in blue on the Exhibit 5?</p> <p>9 A. Yes.</p> <p>10 Q. What is the limitations on what he can</p> <p>11 plant there?</p> <p>12 A. Right now he has to plant per the</p> <p>13 approved landscape plan.</p> <p>14 Q. And so other than the approved</p> <p>15 landscape plan, I guess that means certain plants,</p> <p>16 right?</p> <p>17 A. No. He submitted a landscape plan to</p> <p>18 get reviewed and commented and revised, and I would</p> <p>19 go out and make sure that all of the plants are per</p> <p>20 that. Any substitutions in plant material or</p> <p>21 changes to that design need to be approved by the</p> <p>22 Design Review Committee.</p> <p>23 Q. When you say they were reviewed and</p> <p>24 commented, what do you mean by commented?</p> <p>25 A. I did have him change some of the trees</p>	<p>1 we can talk about what's going to go there.</p> <p>2 A. But theoretically he could put trees in</p> <p>3 there if he put the right ones in.</p> <p>4 Q. Now, if I understand, the landscaping</p> <p>5 plan has been as it is now been approved by the DRC.</p> <p>6 If at later date he wants to change those</p> <p>7 landscaping, who would he go through?</p> <p>8 A. Prior to his final construction walk</p> <p>9 and approval, the DRC -- after his final approval by</p> <p>10 the DRC, he would go through the modifications</p> <p>11 committee.</p> <p>12 Q. And when he goes through the</p> <p>13 modification -- or, actually, let's back up. When</p> <p>14 someone is submitting plans for the DRC, is there</p> <p>15 any involvement in terms of notice to the other lot</p> <p>16 owners around that property?</p> <p>17 A. To the DRC, no.</p> <p>18 Q. How about the modifications committee?</p> <p>19 A. Modifications committee, depending on</p> <p>20 the modification, you would have to get an impact</p> <p>21 and neighbor statement.</p> <p>22 MS. HANKS: I have one of those, so let's just</p> <p>23 introduce that as an exhibit.</p> <p>24 (Exhibit 6 marked.)</p> <p>25 ////</p>

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<p>1 BY MS. HANKS: 2 Handing you what's been marked as 3 Exhibit 6, is this copy of the impacted neighbor 4 statement that you were just referencing? 5 A. Yes. 6 Q. And you said depending on what the 7 modification is. What modifications do not require 8 an Impacted Neighbor Statement? 9 A. Something very minor. 10 Q. Give me an example what you consider 11 minor. 12 A. Changing a plant species in your front 13 yard. 14 Q. What would be considered major? 15 A. An addition. 16 Q. And how about if, let's say, there is 17 bushes planted along that highlighted blue property 18 line in Exhibit 5 and he wants to change it to 19 trees. Would that be considered -- mind you, I'm 20 assuming for our hypothetical that the DRC has 21 already given final approval? 22 A. The HOA coordinator sends that out. 23 From my understanding, that would require an 24 Impacted Neighbor Statement, but I can't say for 25 sure. But I do believe that would.</p>	<p>1 they recommend disapprove; is that correct? 2 A. Correct. 3 Q. Okay. If an owner marks disapprove, 4 what does the modifications committee do then? 5 MR. GUNNERSON: Objection. Foundation. 6 THE WITNESS: They take that into 7 consideration. 8 BY MS. HANKS: 9 Q. Do they contact the homeowner who 10 marked disapprove and maybe follow-up and ask them 11 why they're concerned with it? 12 A. They may depending on the project. 13 Q. Are there any instances where the 14 modifications committee has denied a homeowner's 15 request because another homeowner indicated 16 disapproval? 17 A. As a sole reason for the decision, no. 18 Q. But certainly they will take -- it has 19 been a factor that they'll use and have denied the 20 request for modification? 21 MR. GUNNERSON: I just again object to this 22 whole line of questioning, because he's here in his 23 capacity as representative of entities which he's 24 already stated do not use the Impacted Neighbors 25 Statement.</p>
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<p>1 Q. And what is the purpose of the Impacted 2 Neighbor Statement? Why are you requiring or why 3 does the HOA require that for otherwise non-minor 4 changes to a person's property? 5 MR. GUNNERSON: Objection. Foundation. 6 THE WITNESS: Yeah. I believe it's written 7 somewhere that you had to fill out, so they do it. 8 BY MS. HANKS: 9 Q. Do you know why? 10 A. Because it says somewhere. I don't 11 know if it's in the guidelines or where, but I 12 believe somewhere in the documents it says that as 13 part of the application process you will fill that 14 out. 15 Q. And I understand that it's written in 16 either the CC&R's or guidelines, but do you know the 17 intent behind requiring that? 18 A. The intent behind it is so that the 19 modifications committee can get a feel for the 20 opinion of the neighbors without having any sort of 21 meeting that the neighbors are involved in. 22 Q. On the Impacted Neighbor Statement, it 23 looks like there is six possible different neighbors 24 you could have, whether it be adjacent, rear, or 25 facing, and they can either mark they approve it or</p>	<p>1 You can answer if you know. 2 THE WITNESS: I'm aware they take it into 3 consideration. 4 BY MS. HANKS: 5 Q. And you're aware they have actually 6 used disapprove by a neighbor for one reason they 7 might deny a modification? 8 A. I'm not aware of that. 9 Q. Does the Design Review Committee -- I 10 understand there is no form or particular process 11 whereby a neighbor can voice concerns for a plan 12 that is trying to be submitted, but does the Design 13 Review Committee ever confer with neighboring owners 14 on issues if you're on the fence about whether to 15 approve something whether you ask a neighbor, "hey, 16 do you agree with this? How do you feel?" 17 A. Can you read back that question? 18 MS. HANKS: Sure. 19 (Record read by reporter.) 20 THE WITNESS: Initial approval, not to my 21 recollection? 22 BY MS. HANKS: 23 Q. How about any other steps within the 24 Design Review Committee process? 25 A. Yes.</p>

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<p>1 Q. When? Give me an example of when that 2 would have happened. 3 A. We may have a resident who did not 4 construct their residence per the approved plans, 5 and we will approach a neighbor if they're 6 supportive of a variance to the criteria to allow 7 the existing construction to remain, or if they're 8 requiring the neighbors to change it and meet the 9 plans. 10 Q. How about lot lines changes? When lot 11 lines are altered or proposed to be altered, is 12 there any process whereby the neighboring properties 13 have to be notified? 14 A. Yes. 15 Q. And what's that process? 16 A. There is a dual modification process 17 for the neighbor. Anyone within a certain distance 18 of the project boundary for any -- if it's a lot 19 line change that doesn't involve a zone change, then 20 I don't know if they are notified. Like if, for 21 example, between Shane's lots, if that lot line goes 22 away and those two lots become one, I don't know if 23 there is a notification for that, because the zoning 24 didn't change. And it's the nature of that lot line 25 adjustment.</p>	<p>1 sent to all of those property owners? 2 A. By mail. 3 Q. What does the notice entail? 4 A. Notice entails a brief description of 5 what's being changed, the location of the boundary 6 lines being changed, and location and the time of 7 the meeting to come discuss it. 8 Q. Does it give any maps, pictures showing 9 what the actual change is? 10 A. There is a map included on it. I think 11 it did show the area. I don't know if it showed the 12 lot lines on it. It was a few years ago. 13 Q. And when you say "the area", it may not 14 have been as detailed in terms of lot lines as the 15 Exhibit 4? 16 A. Correct. I don't think it was that 17 detailed. The detailed exhibits were shown at the 18 meeting. 19 Q. When you say "at the meeting", do you 20 mean the actual neighborhood meeting? 21 A. Both meetings. 22 Q. Okay. So the notice merely you said 23 gave a brief description of the location of what was 24 being proposed to change and then the actual 25 location of the meeting, correct?</p>
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<p>1 But for any zone change involved 2 in a lot line adjustment, the first notification is 3 for a neighbored meeting. That notification would 4 go out to anyone within the master plan, because the 5 master plan zone is changing on or zoned 6 designations are changing that's within a certain 7 amount of feet within the boundaries of the project, 8 the entire project of MacDonald Highlands. And 9 that's for initial neighborhood meeting where 10 anybody within the community, the neighbors or 11 anybody that lives in the community or anybody 12 within a certain distance of the outside of the 13 community, I believe it's 500 feet, could come to 14 the neighborhood meeting to get information on the 15 property line change and to voice any objections. 16 After that, there is then a public 17 hearing at the City of Henderson. The first one is 18 a planning commission, and the city sends out the 19 notices to the same people that are notified for the 20 neighborhood meeting. And that's within, I believe, 21 500 feet of the boundary of the community. So 22 everyone that owns property within all of MacDonald 23 Highlands and additionally outside a certain 24 distance. 25 Q. The neighborhood meeting, how is notice</p>	<p>1 A. Correct. 2 Q. And then you actually had to come to 3 the meeting, get more specific pictures of the lot 4 lines to see what was actually happening in a 5 picture, context? 6 A. No. 7 Q. Okay. I'm sorry. Then I misunderstood 8 you. 9 A. Well, you said you have to go to the 10 meeting. If anybody requested that, they would be 11 provided copies of it. So you didn't have to attend 12 the meeting. If you called and asked -- I believe I 13 did have a resident that called and said what's 14 going on, and I told them they could get further 15 maps if they wanted it. 16 So we would have provided maps. I 17 believe the resident I talked to, once he found out 18 what it was, wasn't concerned. 19 Q. Okay. Do you know if that resident 20 lived in PA-10? 21 A. He did not. But I don't recall who 22 specifically it was. I think that's -- from my 23 recollection, that's why he wasn't concerned. He 24 was more concerned that it had something to do with 25 the clubhouse.</p>

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1 Q. Where did the neighborhood meetings
2 take place?
3 A. At the clubhouse.
4 Q. What day? Do you know?
5 A. I believe it was Monday, October 22nd.
6 Q. Of 2000 -- oh, is this the -- I thought
7 this was the City of Henderson one.
8 This is the neighborhood meeting?
9 A. Yes.
10 Q. Okay. Let's mark it. I thought that
11 was the City of Henderson. That's why I didn't give
12 it to you.
13 MR. GUNNERSON: Only answer to your knowledge.
14 And if you need refreshing, make sure you point out
15 what you're referring to so they don't think you're
16 that spectacular that you can pull dates out of your
17 head.
18 THE WITNESS: That's okay. They can think I'm
19 spectacular.
20 (Exhibit 7 marked.)
21 BY MS. HANKS:
22 Q. So we marked Exhibit 7, and this is the
23 document entitled Informational Meeting for City of
24 Henderson Application Numbers. And there's three
25 numbers listed.

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1 Can you just explain what those
2 numbers are? It's CPA and numbers, ZCA and then
3 numbers and DRA.
4 What do those stand for?
5 A. Comprehensive Plan Amendment is the
6 first one. And then the numbers are how you
7 reference it within the city's kila system
8 (phonetic) which is a way to represent all your
9 documents when they're submitted, approved, changed
10 out.
11 So the first four numbers would be
12 the year, and the rest of the numbers would be as
13 the applications come in.
14 Q. Okay.
15 A. So.
16 Q. What does ZCA stand for?
17 A. That would be zone change amendment.
18 And DRA is I think a design review application.
19 Q. And, so this is the notice that was
20 sent to all the people that you had mentioned
21 earlier within the 500 feet?
22 A. Yes. I believe it's 500 feet of the
23 exterior of the community, because we had someone
24 show up that was outside of the community that got
25 noticed.

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1 Q. Who was responsible for sending out
2 those notices?
3 A. This notice was sent out, I guess,
4 jointly by us and B-2.
5 Q. When you say "us", who do you mean?
6 A. That would be the people that work in
7 my office.
8 Q. At Foothills for Foothills Partners?
9 A. Yeah. Or at the time we could have
10 been representing Dragon Ridge, but it was me
11 personally who reviewed it.
12 Q. Who is B-2 Development?
13 A. They are a project coordinating company
14 that helps with these zone change applications.
15 Q. Who paid -- I assume B-2 Development
16 charges for that service to prepare the
17 applications?
18 A. Yes.
19 Q. Who paid for those services?
20 A. Shane Malek.
21 Q. Who came up with the language in this
22 notice where you have the two paragraphs?
23 A. Barbara Beard at B-2 and myself.
24 Q. And how did you agree on the statement
25 "relating to a minor boundary adjustment to lot two

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1 and Planning Area 10"?
2 A. Can you be more specific?
3 Q. How did you come up with the term
4 "minor"?
5 Why did you guys agree to call it
6 a minor boundary adjustment as opposed to just a
7 boundary adjustment or as opposed to major boundary
8 adjustment?
9 A. I believe she came up with that, and
10 the term minor was due to the size of the boundary
11 line adjustment.
12 Q. So a third of an acre is considered
13 minor?
14 A. Yes.
15 Q. What would be considered major?
16 A. Probably an entire golf hole or
17 planning area.
18 Q. Do you know if any of the notices that
19 were mailed out were sent back as undeliverable?
20 A. I don't know specifically, but in
21 general when we send out that many mailers, some are
22 returned.
23 Q. When they are returned, do you take a
24 next step to get the notice out or is that
25 sufficient?

<p style="text-align: right;">Page 97</p> <p>1 A. I believe it's sufficient.</p> <p>2 Q. Do you know if the notice that was</p> <p>3 mailed to the owner of 590 Lairmont Place was</p> <p>4 returned undeliverable?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. So as far as you know, the owner of</p> <p>7 590 Lairmont Place received notice of this</p> <p>8 informational meeting?</p> <p>9 MR. GUNNERSON: Objection. Foundation. Calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: As far as I know, they received</p> <p>12 it.</p> <p>13 By MS. HANKS:</p> <p>14 Q. You have no reason to believe</p> <p>15 otherwise?</p> <p>16 A. I have no reason to believe otherwise.</p> <p>17 Q. Now, did you attend this informational</p> <p>18 meeting?</p> <p>19 A. Yes.</p> <p>20 Q. Who else attended this in terms of the</p> <p>21 entities that you're here on behalf of? Anyone else</p> <p>22 from those entities?</p> <p>23 A. On the entities that I'm here on behalf</p> <p>24 of, just me.</p> <p>25 Q. Did Michael Doiron attend?</p>	<p style="text-align: right;">Page 99</p> <p>1 A. And Shane's wife is not an owner of the</p> <p>2 property. I believe it's just himself. They showed</p> <p>3 up, but they're not technically owners.</p> <p>4 Q. Was there a discussion with the people</p> <p>5 that did attend?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And what discussion took place?</p> <p>8 A. There was a presentation. We had some</p> <p>9 picture boards of the detailed change and what was</p> <p>10 being changed and the process that we needed to go</p> <p>11 through to change it, and then we would answer any</p> <p>12 questions regarding the change.</p> <p>13 Q. Were there any questions?</p> <p>14 A. Yes.</p> <p>15 Q. What questions did you receive?</p> <p>16 A. Why was I noticed of this? I live</p> <p>17 really far away from it.</p> <p>18 Q. Is that it?</p> <p>19 A. In general, that was the bulk of the</p> <p>20 discussion.</p> <p>21 Q. How long did the meeting last?</p> <p>22 A. Less than an hour.</p> <p>23 Q. After the meeting what was the next</p> <p>24 step?</p> <p>25 A. The meeting is required by the City of</p>
<p style="text-align: right;">Page 98</p> <p>1 A. No.</p> <p>2 Q. Did Richard MacDonald attend?</p> <p>3 A. No.</p> <p>4 Q. How many homeowners came to the</p> <p>5 meeting, approximately? I won't pin you down to an</p> <p>6 exact number.</p> <p>7 A. I believe three owners and two guests.</p> <p>8 Q. And were any of the owners that came,</p> <p>9 did they live on Lairmont Place?</p> <p>10 A. Yes.</p> <p>11 Q. Which owners that lived on Lairmont</p> <p>12 Place came?</p> <p>13 A. Shane came. He didn't live there, but</p> <p>14 he owns.</p> <p>15 Q. So the other two owners were not owners</p> <p>16 of lots on Lairmont Place?</p> <p>17 A. No.</p> <p>18 Q. And when you say "guests", why were</p> <p>19 they guests? You mean people not living in</p> <p>20 MacDonald Highlands?</p> <p>21 A. No. They weren't the owner. One owner</p> <p>22 brought his girlfriend.</p> <p>23 Q. Well, that's a happening night. "Let's</p> <p>24 go to the informational meeting, babe. This is</p> <p>25 going to be exciting."</p>	<p style="text-align: right;">Page 100</p> <p>1 Henderson prior to the planning commission meeting.</p> <p>2 So they send a city representative to make sure that</p> <p>3 you have the meeting.</p> <p>4 The city representative takes</p> <p>5 notes at the meeting and then relays if there's any</p> <p>6 objections to the planning commissioners. So the</p> <p>7 meeting is -- so when the planning commissioners</p> <p>8 have their meeting they can talk to the planning</p> <p>9 department person that showed up to the meeting and</p> <p>10 find out were their protestors? Is this going to be</p> <p>11 controversial? Prior to voting, they want to know</p> <p>12 if it's going to make people angry or if people</p> <p>13 aren't all that interested in it.</p> <p>14 So the city sends a</p> <p>15 representative. They can relay that information</p> <p>16 back to the officials at the city. So the step</p> <p>17 after that would be the planning commission meeting</p> <p>18 after they are briefed on the results of the</p> <p>19 neighborhood meeting.</p> <p>20 Q. That kind of leads me into a question</p> <p>21 that I forgot to ask, is at that people who did want</p> <p>22 to attend this meeting could voice their objection,</p> <p>23 and that would be noted by the city representative?</p> <p>24 A. Yes.</p> <p>25 Q. And then taken back to the planning</p>

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1 commission so they at least be aware of what the
2 objection might be, if they would consider it?
3 A. Yes.
4 Q. Have you ever been involved in an
5 informational meeting for the lot line changes
6 within MacDonald Highlands that did bring objections
7 from owners?
8 A. No.
9 Q. After this meeting, when did the
10 planning commission or city meeting take place?
11 MR. GUNNERSON: Objection. Foundation.
12 BY MS. HANKS:
13 Q. Or the public hearing is I think what
14 you referred to it as?
15 A. I don't know off hand.
16 Q. Do you know how soon after, just
17 generally, if this took place in October?
18 A. Generally it would be the following
19 month. So this was October 22nd, I would estimate
20 early November.
21 (Exhibit 8 marked.)
22 BY MS. HANKS:
23 Q. The court reporter handed you what's
24 been marked as Exhibit 8. This is a document
25 entitled City of Henderson Community Development

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1 Department Staff Report. And it has the planning
2 commission date as November 15, 2012.
3 Is that the date of the public
4 hearing?
5 A. I believe so.
6 Q. Okay. And this set of documents that
7 I've provided are Bates stamped PLTF6376 through
8 6386. I think the last page is a duplicate, so let
9 me take that off.
10 Do you have all of those pages?
11 Okay. Are these the documents that were submitted
12 in connection with the applications for the zone
13 change, the comprehensive plan amendment, and I
14 think the other thing you called it was design
15 review amendment?
16 A. No.
17 Q. Okay. What is this document then?
18 A. This is the City of Henderson Community
19 Development Staff Report.
20 Q. So it's just their report of the
21 documents they received and summarizing what they
22 received and what's going on?
23 A. No.
24 Q. Okay. What's the purpose of this
25 report then? I'm just trying to figure out what it

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1 is.
2 A. Okay. This report is the planning
3 department's analysis and recommendation to the
4 planning commission. So every time an application
5 comes in, a city planner is assigned to it, and they
6 meet on it, and they discuss whether they think it's
7 a good idea or not, what somebody is trying to do.
8 And they put a report together, and there are
9 recommendations of whether they think it should be
10 approved or not.
11 So they may recommend approval or
12 recommend denial of an application, and then that
13 report is reviewed by the planning commissioners who
14 take that into consideration prior to voting.
15 Q. Okay. After this report was submitted,
16 do you know how long after the city actually
17 approved the changes?
18 A. I don't know the exact date, but the
19 planning commission would have approved it on the
20 15th.
21 Q. Once the commission approves it, what
22 is the next step in the process?
23 A. Then it goes on the next city council
24 agenda for final approval, because it's a
25 comprehensive plan amendment change. I don't

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1 believe comprehensive amendment changes can receive
2 final approval at planning commission. Their
3 approval is more like a recommendation to the city
4 council, and then the city council will then have
5 another meeting. And you could have people at the
6 planning commission approve it, show up at city
7 council and say that they don't want it to go
8 through. And then the counselors can overrule the
9 planning commission's decision possibly.
10 So final approval doesn't take
11 place until it goes to the city council or the
12 CPA's, I believe.
13 Q. And it's your understanding, I think
14 you said City of Henderson will send notice about
15 the last hearing?
16 A. They sent for this hearing, and then I
17 don't know if they send a follow-up, because they
18 then tell you at this meeting when the follow-up is
19 so that if you got the notice, were concerned, came
20 down to the planning commission, weren't happy with
21 the approval, they will say come back for this next
22 meeting.
23 So I don't recall for sure if
24 there's a follow-up. I don't believe there is,
25 because I think the public notices for this hearing

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1 and then this hearing they'll let you know if you
2 want to appeal the decision or argue in front of
3 city council, there's a follow-up meeting. But I
4 don't believe there's a secondary notice. They just
5 notice the people that --
6 MR. GUNNERSON: Just for the record when you
7 said "this meeting", he was pointing to the exhibit
8 we're currently discussing, Exhibit 8.
9 BY MS. HANKS:
10 Q. Did you attend the meeting on
11 November 15, 2012?
12 A. Yes.
13 Q. Did anyone show up to object?
14 A. No.
15 Q. Did you attend the city council final
16 meeting?
17 A. I don't recall.
18 Q. Did anyone else attend the November
19 15, 2012 meeting?
20 MR. GUNNERSON: Objection.
21 BY MS. HANKS:
22 Q. I'm sorry. Let me clarify that.
23 Within the MacDonald Highlands, were there any
24 owners or the entities you're here on behalf of?
25 A. No.

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1 Q. Now, I kind of skipped around. I
2 wanted to go with what we were talking about. Can
3 you go back to the Design Guidelines?
4 Can you go to page 2.28 in the
5 Design Guidelines? This is discussing view walls.
6 The second sentence begins, "Lots
7 along the golf course, open space, or possess strong
8 view orientations may install a community designed
9 view wall on the rear property line."
10 Now, I know we talked a little bit
11 about 594 Lairmont when it was originally, I guess,
12 plotted. Would the Design Review Committee --
13 assuming the golf parcel wasn't sold, would you have
14 required a view wall on the side boundary line of
15 594 Lairmont that is adjacent to the golf course?
16 MR. GUNNERSON: Objection. Incomplete
17 hypothetical. Go ahead. You can answer it.
18 THE WITNESS: Required a view wall?
19 BY MS. HANKS:
20 Q. Right.
21 A. No.
22 Q. So assuming Mr. Malek bought 594
23 Lairmont and didn't extend it into the golf parcel,
24 could he have built a solid six foot wall, I think
25 you said along the side portion of the property

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1 that's most adjacent to the golf course?
2 A. I don't think I can answer that.
3 Q. Why can't you answer that?
4 A. Because we vote on things. And, so I
5 don't know if I could say it's expressly prohibited,
6 but it may have been denied under the fact that it's
7 encouraged. So I think because it says in there we
8 encourage to have view fences or view walls, there
9 would probably need to be a discussion amongst the
10 members, if someone attempted to put a wall at that
11 location whether the encouragement of view walls and
12 the criteria would have been enough to deny it or
13 approve it.
14 We haven't had this situation, so
15 I can't unilaterally say it would or would not have
16 been approved. We haven't had anybody come in that
17 owned a golf course lot that I can recall that
18 wanted to do that. So since that discussion hasn't
19 taken place, I can't tell you whether or not it
20 would have been approved or denied.
21 Q. How about if Mr. Malek had simply
22 purchased 594 Lairmont and not the extra golf
23 parcel, would he have been able to position his
24 house with only 15 feet setback from the side
25 portion of the yard that is most adjacent to the

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1 golf course?
2 MR. GUNNERSON: Same objection.
3 THE WITNESS: Yeah. I can't answer that in a
4 vacuum. It would depend on the overall layout of
5 the house and the benefits and drawbacks of the
6 design. Each home is reviewed overall on its
7 impacts. So hypothetically it's tough to answer.
8 BY MS. HANKS:
9 Q. Is it fair to state that even though
10 the City of Henderson has delineated the portion of
11 the 594 Lairmont as the side portion that's closest
12 to the golf parcel and the portion that is closest
13 to Stephanie Street as the rear portion, that the
14 DRC is not married to those classifications when
15 approving an overall design of a residence?
16 Is that a fair statement?
17 MR. GUNNERSON: Objection. Form.
18 THE WITNESS: No.
19 BY MS. HANKS:
20 Q. Why is that not a fair statement?
21 A. Because we are married to that. I
22 can't change the city's delineation of property
23 lines.
24 Q. No. I understand you can't change the
25 name of the delineation. But for purposes of the

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<p>1 Design Guidelines and your setbacks, can you provide 2 variances? 3 I think we already talked about 4 one variance that you provided for Mr. Malek on the 5 rear portion of the property for Stephanie Street. 6 That's what I was getting at. 7 You're not married to their 8 delineations in terms of what you will and will not 9 allow in terms of setbacks, you'll look at it as a 10 whole and determine what makes most sense for the 11 design plan? 12 A. We're married to the setbacks, but we 13 can approve a project that encroaches into a setback 14 if we feel it's appropriate. 15 Q. And the setbacks that are set by the 16 Design Guidelines for planning area 10, are they 17 more restrictive or equal to what the City of 18 Henderson requires? 19 A. They are more restrictive. 20 Q. And what does it mean to be more 21 restrictive? Does that mean the setback is greater 22 than what's required by the City of Henderson? 23 A. Yes. 24 Q. And, so in terms of the design 25 committee's ability to make variances with respected</p>	<p>1 consideration, or do you leave it up to the 2 architect? 3 In other words, if a homeowner is 4 requesting a variance in the Design Guidelines 5 setbacks, do you concern yourself with making sure 6 it complies with Henderson, or you just leave that 7 to the architect and the homeowner? 8 A. Henderson becomes the same as the 9 design criteria. So there's a base zoning with the 10 certain setback, but the City of Henderson is part 11 of the zoning, adopts our Design Guidelines. So 12 those then become the setbacks. 13 So our setbacks may be greater 14 than the base setback in the City of Henderson, but 15 once their documents are adopted, they are then the 16 same. 17 Q. Okay. So I guess I didn't understand 18 how you earlier testified that the setback in area 19 number ten were more restrictive than the City of 20 Henderson? 21 A. They're more restrictive than the City 22 of Henderson's base requirements. 23 Q. Okay. 24 A. So, for example, our setback for the 25 front yard is 25 feet, and I think the city's is</p>
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<p>1 to those setbacks, you can only do it so much as it 2 doesn't violate the City of Henderson minimum 3 standards, correct? 4 A. Can you read that again? 5 (Record read by reporter.) 6 THE WITNESS: No. That's incorrect. 7 BY MS. HANKS: 8 Q. Okay. Why is that incorrect? 9 A. Because we could approve a variance 10 above the city standards. 11 Q. You mean you could be more restrictive 12 than the city? I guess I'm not understanding the 13 term "above." 14 A. We can approve whatever we feel like 15 has a variance if we feel it's beneficial to the 16 project. But that doesn't mean they don't need 17 additional approval from the City of Henderson. 18 So we have approved things that 19 have been later denied. 20 Q. Does the Design Review Committee know 21 what the requirements are for the City of Henderson 22 in terms of setbacks? 23 A. Yes. 24 Q. Okay. And when approving or 25 disapproving a design plan, do you take that into</p>	<p>1 usually 20 feet. So that's what I meant by they are 2 more restrictive than if you had the same zone not 3 in our master plan, the city's base zoning requires 4 like 20 feet. We require 25, but then they adopt 5 our Design Guidelines so it then becomes 25. 6 Q. Gotcha. 7 That way because when they go get 8 the plans ultimately approved by the City of 9 Henderson, they are not going to get denied because 10 you guys allowed a more restrictive setback, in 11 other words? 12 A. We're more restrictive. 13 Q. Right. 14 A. The city, for setbacks there's a 15 process to go through variances for setbacks through 16 the city that's separate from our process. 17 Q. Can you turn to page 1.7? The term 18 building envelope pops up on this page quite a bit. 19 What's the building envelope? 20 A. The building envelope is more 21 applicable to the lots that we had discussed before 22 where you're developing a quarter acre of a two-acre 23 parcel. So a lot of the verbiage regarding building 24 envelope is more applicable to that kind of lot. In 25 general, the building envelope is where you can</p>

<p>Page 113</p> <p>1 build your home.</p> <p>2 Q. Okay. And, so does that mean that in</p> <p>3 terms of the setbacks, in other words, the setbacks</p> <p>4 is what the building envelope is?</p> <p>5 A. Yes and no. In general, the building</p> <p>6 envelope is brought into the design criteria for</p> <p>7 natural lots that are far away from the setbacks.</p> <p>8 So you'll have a building somewhere on the lot, and</p> <p>9 that's where you're supposed to contain your</p> <p>10 building operations too.</p> <p>11 When it spills over onto lots that</p> <p>12 are 100 percent developable like the ones in PA-10,</p> <p>13 the building envelope is actually a little wider</p> <p>14 than the setbacks. It would encompass where any</p> <p>15 accessory structures could be built or even any</p> <p>16 overhangs. So the building envelope would extend</p> <p>17 beyond the setbacks.</p> <p>18 Q. Okay. Let's look at page 3.8. I think</p> <p>19 it specifically talks about the building envelope</p> <p>20 for Planning Area 10.</p> <p>21 Is that correct? This section</p> <p>22 talks about planning -- well, one of the areas is</p> <p>23 Planning Area 10?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And the building envelope</p>	<p>Page 115</p> <p>1 feet within the side setback so that you could have</p> <p>2 a roof overhang or something like that.</p> <p>3 So the building envelope relates</p> <p>4 to the setbacks, but it's not hand in hand.</p> <p>5 Q. Now, I'm only concerned with Planning</p> <p>6 Area 10 though and golf course parcels.</p> <p>7 They don't have the five foot</p> <p>8 setback minimum for structures, correct? A</p> <p>9 different standard applies for them?</p> <p>10 A. No. The building envelope in 10,</p> <p>11 because this references all swimming pools, patios,</p> <p>12 terraces, the restrictions on those go within, I</p> <p>13 believe, two feet of the lot line.</p> <p>14 Q. For Planning Area 10?</p> <p>15 A. For 10, yeah.</p> <p>16 Q. Do you know where that would be within</p> <p>17 the Design Guidelines?</p> <p>18 A. Like for the pool, there's a section on</p> <p>19 the pools that say, I think you have to keep your</p> <p>20 water line, I think, five feet off of the property</p> <p>21 line on a golf course lot. And I think it defaults</p> <p>22 to city standard on the interior lots.</p> <p>23 So if someone is coming and</p> <p>24 building a pool, we let them follow those guidelines</p> <p>25 where it says from the pool section. So the</p>
<p>Page 114</p> <p>1 section reads, "The building envelope is the portion</p> <p>2 of the lot exclusive of any setbacks, easements, or</p> <p>3 other encumbrances upon which lot improvement may be</p> <p>4 located."</p> <p>5 So do I understand that correctly</p> <p>6 that that means that building envelope is the</p> <p>7 portion of the lot within the setbacks?</p> <p>8 A. No.</p> <p>9 Q. Okay. What does that sentence mean</p> <p>10 then if I misunderstood it?</p> <p>11 A. There are setbacks for patios and</p> <p>12 casita structures like we covered before where you</p> <p>13 may have a rear yard setback of 30 or 35 feet, but</p> <p>14 like on an interior lot, not on the golf course, you</p> <p>15 can build your casita five feet from the rear</p> <p>16 property line per the setbacks referenced on table</p> <p>17 3.9.</p> <p>18 So your building envelope would</p> <p>19 encompass the area that you're permitted to build a</p> <p>20 casita in as well. So it wouldn't be just within</p> <p>21 the setbacks. It would be the area of the lot that</p> <p>22 you can build casitas or a home. And I believe the</p> <p>23 building envelope is -- also includes a straight up</p> <p>24 in the air. So using a setback as a guidance, the</p> <p>25 building envelope would then stretch a couple other</p>	<p>Page 116</p> <p>1 building envelope for PA-10 is pretty much the</p> <p>2 entire buildable lot.</p> <p>3 Q. Okay. The second paragraph reads, "A</p> <p>4 maximum building envelope has been established for</p> <p>5 each custom lot to foster creative solutions to the</p> <p>6 masking of building components and to ensure the</p> <p>7 preservation of views from each residence in</p> <p>8 MacDonald Highlands. "</p> <p>9 Can you explain that sentence?</p> <p>10 A. Yeah. This really more references the</p> <p>11 hillside lots where the buildable area of the lots</p> <p>12 are sited on a larger lot to ensure preservation of</p> <p>13 other areas.</p> <p>14 The building envelope on the non</p> <p>15 hillside lots are pretty much the whole lot.</p> <p>16 Q. It doesn't make that distinction, does</p> <p>17 it?</p> <p>18 A. I think you had asked me to kind of</p> <p>19 describe it.</p> <p>20 Q. Right. And you made a distinction. I</p> <p>21 just want to be clear that as I'm reading this page,</p> <p>22 I don't see a distinction. So I'm just wondering.</p> <p>23 A. The building envelope that has been</p> <p>24 established for the flat lots are pretty much the</p> <p>25 whole lot.</p>

<p>Page 117</p> <p>1 Q. Okay. But where does that say that 2 here in the Design Guidelines? 3 A. Well, it doesn't say any building. It 4 says they have been established. It doesn't they 5 are different on each lot. 6 Q. Right. 7 MR. GUNNERSON: Counsel, when you ask where, 8 are you asking him to review the entire Design 9 Guidelines and tell you where? Is that what you're 10 asking? 11 BY MS. HANKS: Yes. I guess what I'm trying to 12 understand is I look at this page, and the top title 13 is Site Planning Criteria Custom Homes. And then it 14 gives in parentheses all different planning areas 15 and included in that Planning Area 10 16 But then when I asked about this 17 sentence, you had made the caveat that "this is more 18 dealing with the hillside homes". 19 A. I mean, what I'm saying is that it 20 applies to both. 21 Q. Okay. So it does apply? 22 A. What I'm saying is that the building 23 envelope for the smaller lots and lots that are 100 24 percent graded is pretty much the entire lot. The 25 building envelope for the larger lots where the</p>	<p>Page 119</p> <p>1 you're getting confused is there is numerous setback 2 regulations. So there's an accessory building 3 setback. There's a pool setback. There's an 4 outside patio setback. And those are not the 15, 5 35, 25 feet that we've been discussing. 6 Q. That's the actual residence? 7 A. Yeah. That's just the main residence. 8 So that is a setback to just the main residence of 9 the house. 10 All of these other elements 11 described in this paragraph have their own setbacks. 12 So the building envelope is exclusive of the 13 setbacks for all of these elements they have noticed 14 which includes the pool. 15 Q. Okay. 16 A. So that's why the building envelope is 17 pretty much the whole lot for these small lots, 18 because if I take the -- how close I can build on a 19 side property line for a casita, it's five feet. 20 If I take the distance I can put a 21 pool on an interior lot, that's two feet. So the 22 building envelope for a quarter acre lot within the 23 middle of the development, I'm looking at five feet 24 on the sides and even with another overhang of 25 probably two feet. So the building envelope would</p>
<p>Page 118</p> <p>1 house doesn't encompass the whole lot, then it's a 2 portion of the lot. 3 Q. And it's not really the whole portion, 4 though, because the first paragraph we read earlier 5 talks about exclusive of the setbacks. That's what 6 the building envelope is, it's the portion of the 7 lot exclusive of any setbacks, easements, or other 8 encumbrances? 9 A. The building envelope has to be beyond 10 setbacks, because terraces, pools, patios are not 11 within setbacks. So the building envelope goes 12 beyond the building setbacks. 13 There's pool setbacks. So when it 14 says "setbacks", there are pool setbacks. There are 15 patio setbacks. There is more than just building 16 setbacks. 17 So the setbacks that we've been 18 discussing with the City of Henderson is to the 19 foundation of the main living structure. So there 20 is additional setbacks that like the city will have 21 a pool setback of two feet. So that building 22 envelope is exclusive of that pool setback. So the 23 building envelope isn't just on the setbacks for the 24 main living structure. 25 So I think that's where I think</p>	<p>Page 120</p> <p>1 probably be three feet from the property line. And 2 then in the rear yard setback, you'd have a two foot 3 setback to a pool line. So the building envelope 4 would then include where the pool could go. 5 So a building envelope is pretty 6 wide especially the smaller the lot gets, the larger 7 portion of the lot that takes up. So when it says 8 setbacks, you just have to make sure you don't 9 confuse main structures buildings setback. 10 There's a setback for an overhang. 11 You can't have your overhang go all the way to the 12 lot line. There's a certain overhang setback, a 13 fire code for property lines and things of how close 14 things can go. 15 So you have to take all of the 16 setbacks for all of the elements referenced in this 17 section into consideration when establishing the 18 building envelope. 19 Q. And in the Design Guidelines, do they 20 provide setbacks within them for the accessory 21 buildings, outside patios, terraces, tennis courts, 22 swimming pools? 23 A. Yes. In each individual section, I 24 think like tennis court there's a sport court. 25 There's a certain distance a sport court can go from</p>

<p>Page 121</p> <p>1 the lot line. A swimming pool has a distance the 2 swimming pool can go from the lot line. 3 Outside patio can encroach 10 feet 4 into the -- covered patio can encroach 10 feet 5 beyond the build setback. So that would be another 6 setback to consider, so each of these elements. 7 Also, pop-outs are permitted. So 8 you may have a 15 foot side setback to the 9 structure, but you can pop out for an entertainment 10 center or something that would come inside of that 11 setback. So there are a number of -- but there's a 12 setback to the pop out, so the pop out can come like 13 two more feet in. So there's a setback to that. So 14 each of those areas has setbacks. 15 Q. And it's within the lot line, let's 16 say, we just take this map which is Exhibit 4, the 17 building envelope is within the actual lot, correct? 18 Doesn't extend beyond it? 19 A. Correct. 20 Q. And it looks like at least that second 21 paragraph is explaining that the Design Review 22 Committee has established a maximum building 23 envelope whether that be whatever those setbacks 24 might be to preserve the views from each residence 25 in MacDonald Highlands, right? That's at least one</p> <p>Page 122</p> <p>1 reason why they have come up with these different 2 setbacks? 3 A. Correct. 4 Q. And then it refers you to different 5 tables for the minimum setbacks. They refer you to 6 table 3.9, and then they have a buildings height 7 limit in 3.4, right? 8 A. Yes. 9 Q. And then the next page is 3.9. It 10 continues its discussion about the building 11 envelope. It talks about -- the second sentence, 12 "Although the shape and location of the building 13 envelope are intended to be somewhat flexible, only 14 the Design Review Committee can make modifications 15 to the building envelope only if the modifications 16 do not result in a significant adverse impact upon 17 the natural features of the lot, adjacent lots, or 18 the MacDonald Highlands community as a whole." 19 So am I reading that sentence to 20 understand that one of the factors that the Design 21 Review Committee will take into account when asked 22 to modify the existing building envelope is adjacent 23 lots, the impact on adjacent lots? 24 A. Yes. 25 Q. Okay. Now, when you have a community</p>	<p>Page 123</p> <p>1 like MacDonald Highlands where you're selling these 2 unimproved lots, you might have a situation where 3 someone is buying on a street and they are the first 4 person to buy on that street, correct? 5 A. Yes. 6 Q. And when their architect designs a 7 plan, would you agree that that architect is 8 designing that plan with the understanding of what 9 the other lot lines are for the adjacent lots to 10 that particular property, right? 11 A. Can you read that back? 12 (Record read by reporter.) 13 THE WITNESS: By adjacent do you mean shared? 14 BY MS. HANKS: 15 Q. Okay. So that begs the question, what 16 do you mean by shared? 17 I just mean if I have a property 18 that is flanked by two other unimproved lots, my 19 architect is going to take into consideration those 20 other two lots when designing my home? 21 MR. GUNNERSON: Objection. Foundation. Calls 22 for speculation. 23 BY MS. HANKS: 24 Q. Does that clarify it for you? 25 A. Yeah. I think -- I mean, it varies on</p> <p>Page 124</p> <p>1 the architect, how thorough they are. I think they 2 do take into consideration what they think the 3 neighbors are going to do. 4 Q. Right. And I know you can't ever know. 5 You don't have a crystal ball, but you can have some 6 -- because of the lot lines, you can have an 7 architect can generally do to at least some degree 8 of probability, understand how an owner coming after 9 the house they're building might situate their house 10 in terms of within that lot, correct? 11 MR. GUNNERSON: Same objection. 12 THE WITNESS: Yeah. They can guess. 13 BY MS. HANKS: 14 Q. Right. 15 A. They can take an educated guess. 16 Q. They can also determine the building 17 envelope, correct? 18 MR. GUNNERSON: Same objection. 19 BY MS. HANKS: 20 Q. Let me clarify that. I understand it 21 depends on other structures that they build. They 22 have the residences setback and then patios and 23 swimming pools. But they can generally understand 24 based on all of those items what the general 25 building envelope will be for a particular parcel</p>
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<p>1 that's next to the parcel that they are designing a 2 home for, correct? 3 A. Yeah. I think they could probably 4 determine what the building envelope is based upon 5 the boundary lines in PA-10. 6 Q. Right. I'm only concerned about PA-10. 7 A. Yeah. Hillside lots, they would not be 8 able to determine just by looking at it. 9 Q. The lot lines? 10 A. Yes. Correct. 11 Q. So we're only concerned about PA-10. 12 And would you also agree when that architect designs 13 the home for, let's say, the vacant lot that I 14 purchased in PA-10, they are going to situate my 15 house to maximize my views, right? 16 MR. GUNNERSON: Objection. Foundation. Calls 17 for speculation. Incomplete hypothetical. 18 THE WITNESS: That's a tough question, because 19 I guess it's -- you're saying if hypothetically you 20 purchased a lot in PA-10, your architect would 21 design it to take advantage of the view? Is that 22 all you're asking? 23 BY MS. HANKS: 24 Q. Yeah. That's one criteria they're 25 going to try to achieve is to try to maximize my</p>	<p>1 take advantage of primary view opportunities. 2 BY MS. HANKS: 3 Q. And there are secondary view 4 opportunities? 5 A. There are primary, secondary, tertiary. 6 Q. Okay. Let's go down that same page on 7 3.9. It talks about combined lots. 8 "If an owner owns two contiguous 9 lots and wants to combine the two lots into a single 10 home site, the owner may do so only with the prior 11 consent of the DRC and only if the change in the 12 DRC's opinion does not materially impair views 13 and/or privacy from neighboring lots or common 14 areas." 15 Prior to the sale of the golf 16 parcel to Mr. Malek, did the DRC do any 17 investigation into whether that addition would 18 materially impair the views and/or privacy of 19 590 Lairmont Place? 20 A. Yes. 21 Q. And what did it do? 22 A. Looked at the plans of 590 Lairmont 23 Place and the layout of the home and the state of 24 the land that Mr. Malek wanted to purchase. 25 Q. What were you able to determine from</p>
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<p>1 views with how they're going to design my house 2 based on how my lot is situated and how the other 3 lots are situated in relation to the lot I 4 purchased? 5 A. I think you need to clarify maximizing 6 your views. The houses are designed to take 7 advantage of the primary view opportunity, not to, 8 quote, "maximize a view". 9 If you maximized a view, you would 10 live in a glass house, and we haven't seen that 11 before. So I think your statement would be false in 12 that nobody would be designing to maximize the views 13 so they can see everything. 14 What they do is they situate a 15 house so that their primary view opportunities which 16 could be captured from certain areas of the home 17 that are judged important by the designer. 18 Q. So that's what they'll do, they'll put 19 view windows or large walls that are all windows in 20 certain areas of the home to, I guess, take 21 advantage of the views they are see from that 22 particular lot? 23 MR. GUNNERSON: Same objection. 24 THE WITNESS: Yes. In general, you would see 25 the large windows and certain things situated to</p>	<p>1 the plans for 590 Lairmont and the layout of the 2 home that made you feel that this addition wasn't 3 going to materially impact it? 4 A. Because the design of the house was 5 focused not in the direction of the property that 6 Mr. Malek was looking at purchasing. 7 Q. It was your understanding that the 8 design did not direct that at the primary view? Is 9 that a fair statement? 10 MR. GUNNERSON: Objection. Misstates prior 11 testimony. 12 THE WITNESS: I think in reviewing their 13 plans, it appeared that the focus of the views were 14 in other areas, the primary view. 15 BY MS. HANKS: 16 Q. When I say the Design Review Committee 17 did they do that, who was the members of the Design 18 Review Committee at that juncture during that 19 investigation? 20 A. Myself, Rich, and Michael. 21 Q. Did Michael review the plans of the 22 590 Lairmont? 23 MR. GUNNERSON: Objection. Foundation. 24 THE WITNESS: I don't recall. 25 ////</p>

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<p>1 BY MS. HANKS: 2 Q. How about Rich MacDonald? Did he do 3 that review of the plans that you just mentioned? 4 MR. GUNNERSON: Same objection. 5 THE WITNESS: I don't know if he physically 6 reviewed the plans or not. 7 BY MS. HANKS: 8 Q. I'm assuming you personally did review 9 the plans? 10 A. Yes. 11 Q. Did you have any discussions after 12 reviewing the plans with Michael Doiron and Rich 13 MacDonald about how you -- 14 A. Yes. 15 Q. What conversation did you have? What 16 was the substance of those conversations after your 17 review of the 590 Lairmont plans? 18 A. We talked about the location of the new 19 lot lines and how much property it would be, how far 20 away from the golf course it needed to be, and the 21 impact on the neighbor. 22 Q. And before we get there, how did you -- 23 who determined the "new lot lines" as you phrased 24 it? 25 A. It was the group, myself, Michael, and</p>	<p>1 I said yes, and then I suggested 2 an area that was possible. And then they might have 3 had a further conversation as to the size or whether 4 it was acceptable, but I was approached whether it 5 was possible and put an exhibit together of what was 6 possible. 7 Q. And were you approached by Michael or 8 Shane about being possible? 9 A. I was e-mailed by Michael. 10 Q. Now, Mr. Malek testified that prior to 11 his purchase of 594 Lairmont Place, he was told that 12 the current owner of 594 Lairmont was in talks about 13 getting the golf parcel. 14 Do you have any recollection of 15 that happening? 16 A. No. 17 Q. So the first time you were aware that 18 anyone wanted to increase 594 Lairmont to include a 19 portion of the golf course was from when Mr. Malek 20 expressed that through his, I guess, through Michael 21 Doiron? 22 A. Was the e-mail I received from Michael. 23 Q. And do you remember about when that 24 e-mail was received? 25 A. I believe it was July 2012.</p>
Page 130	Page 132
<p>1 Rich. 2 Q. And how did you do that? Did you go 3 out there and look at it, or did you just draw it on 4 the map? How did you actually determine the new lot 5 lines? 6 A. I believe I put together an exhibit 7 based upon suggestions of Michael and Shane for the 8 size of the area. And I discussed it with golf 9 course operation's people to find out how much of 10 the area there was playable, what was in-bound, out 11 of bounds, and what was non golf-able area. And 12 then I put together an exhibit that was reviewed by 13 Michael, and we discussed it with Rich. 14 Q. Okay. So let me make sure I understand 15 this. So Michael and Shane had an idea of what area 16 they thought should be included in the additional 17 lot line, correct? 18 A. I don't recall. I don't know what they 19 did. 20 Q. I thought you said that they had given 21 you some ideas and you took that and made an exhibit 22 from. So I'm just trying to -- 23 A. I got a request whether it was possible 24 to remap that area based upon a discussion I wasn't 25 privy to between Michael and Shane.</p>	<p>1 Q. Do you know if that e-mail has been 2 produced in this case? 3 A. Yes. 4 Q. Okay. You said you also talked to the 5 golf course operators. What was the substance of 6 that conversation? 7 A. I asked them how far beyond the green 8 they needed for golf play and what would be a 9 distance that they did not need for the golfers and 10 that would be out of bounds that you couldn't play 11 from anyway. So it was to get a feel for how far 12 beyond the grass ended. You're not allowed to hit a 13 golf ball anyway. 14 Q. How far was that? 15 A. I think he had said it was around 10 16 feet, but I'm not positive. It was shorter than we 17 ended up putting the lot line, so we gave them more 18 space than they had requested. 19 Q. Do you know how many feet there is now 20 from the golf course to the edge of Mr. Malek's 21 property? 22 MR. GUNNERSON: Objection. As to the term 23 "golf course". 24 BY MS. HANKS: 25 Q. The new 594 Lairmont property lines?</p>

<p style="text-align: right;">Page 133</p> <p>1 A. It's on the golf course. I think</p> <p>2 you're phrasing that.</p> <p>3 Q. I guess the new golf course because now</p> <p>4 it's part of 594 Lairmont, the golf parcel that was</p> <p>5 sold to him?</p> <p>6 A. Are you asking me how far it is from</p> <p>7 the golf parcel to the lot line?</p> <p>8 Q. No. I'm asking how far is the golf</p> <p>9 course, the still existing golf course from the new</p> <p>10 lot lines?</p> <p>11 MR. GUNNERSON: Counsel, just to be clear, are</p> <p>12 you talking about the grass of the golf course? You</p> <p>13 keep saying golf course as though it's a parcel. I</p> <p>14 think he's confused.</p> <p>15 THE WITNESS: That's what I'm getting at.</p> <p>16 BY MS. HANKS:</p> <p>17 Q. No. Not from the grass. I guess I</p> <p>18 misunderstood. What I thought you had said when you</p> <p>19 spoke to the golf operators, you said, how much</p> <p>20 distance do you need after the green to still be</p> <p>21 considered playable. And I think they said no more</p> <p>22 than 10 feet. And then you gave them a little bit</p> <p>23 more you said when you started plotting the lines?</p> <p>24 A. Correct.</p> <p>25 Q. So what is the ultimate line in</p>	<p style="text-align: right;">Page 135</p> <p>1 Review Committee, votes on decisions; is that</p> <p>2 correct? Did I understand that correctly?</p> <p>3 A. It's not a formal voting process. We</p> <p>4 get together and discuss it.</p> <p>5 Q. Okay. Let's take the existing makeup</p> <p>6 of the design committee which is you, Michael, and</p> <p>7 Rich, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Let's say you and Michael can't agree</p> <p>10 on one thing and Rich says, no, I don't agree, can</p> <p>11 he say we're going to go my way?</p> <p>12 A. He can say whatever he wants.</p> <p>13 Q. I mean, is there any rules, I guess,</p> <p>14 governing the Design Review Committee that don't</p> <p>15 allow him to have more say than the other two</p> <p>16 members?</p> <p>17 A. No. There are no written rules.</p> <p>18 Q. Did all three of you get together with</p> <p>19 respect to the new lot lines in relation to</p> <p>20 594 Lairmont and the golf parcel and discuss whether</p> <p>21 this is something you, MacDonald Highlands, should</p> <p>22 or shouldn't do?</p> <p>23 A. Can you be more specific on "get</p> <p>24 together"?</p> <p>25 Q. You said there was no formal voting</p>
<p style="text-align: right;">Page 134</p> <p>1 distance from the green, how much extra did you give</p> <p>2 the golf course to still have?</p> <p>3 A. From the green I believe they kept 15</p> <p>4 feet from the green to the property line.</p> <p>5 Q. And do you know where the golf course</p> <p>6 was before in terms of the outer boundary play from</p> <p>7 the green, where it was it before the new lot lines</p> <p>8 were made?</p> <p>9 A. I don't know what -- I believe what</p> <p>10 you're asking is how far from the green or the grass</p> <p>11 actually, because there is green and then there is</p> <p>12 rough.</p> <p>13 So from the edge of the rough to</p> <p>14 the out of bounds area, I do not know. I'm not a</p> <p>15 golf expert enough to know, but it's closer than the</p> <p>16 property line.</p> <p>17 MR. GUNNERSON: Counsel, it's 12:15. I don't</p> <p>18 know if you want to finish this up.</p> <p>19 MS. HANKS: I would like to take a lunch.</p> <p>20 Mr. MacDonald didn't let us take a lunch.</p> <p>21 THE WITNESS: Let's eat.</p> <p>22 MR. GUNNERSON: Let's go off the record.</p> <p>23 (Lunch break.)</p> <p>24 BY MS. HANKS:</p> <p>25 Q. You indicated that the DRC, Design</p>	<p style="text-align: right;">Page 136</p> <p>1 process. Did you discuss it among the three of you,</p> <p>2 or was it always just you and Michael and then maybe</p> <p>3 Rich and you? Was there ever three of you in the</p> <p>4 room where you discussed it together?</p> <p>5 A. I don't believe it was all three at the</p> <p>6 same time.</p> <p>7 Q. But you all three discussed it in one</p> <p>8 fashion or another whether it be you and Michael and</p> <p>9 then you and MacDonald?</p> <p>10 A. Yes.</p> <p>11 Q. Now, Mr. MacDonald indicated yesterday</p> <p>12 that he and you went out to the actual parcel and</p> <p>13 walked the property, and he might have said it was</p> <p>14 either one or two times.</p> <p>15 Do you remember doing anything</p> <p>16 like that?</p> <p>17 A. Yes.</p> <p>18 Q. How many occasions did do you that?</p> <p>19 A. I don't recall.</p> <p>20 Q. And what was the purpose of walking the</p> <p>21 actual area?</p> <p>22 A. To familiarize ourselves with it.</p> <p>23 Q. Was that before or after you had</p> <p>24 already come up with proposed lot lines?</p> <p>25 A. I don't recall.</p>

<p style="text-align: right;">Page 137</p> <p>1 Q. When you came up with the exhibit for 2 the proposed outline of the new boundary lines, were 3 they ever changed? 4 In other words, did any of the 5 other people involved in the process say, no, I 6 think the lines should be moved here or there? 7 A. The lines on the exhibit were not 8 exactly the same on the final map. 9 Q. Is that just because of the actual 10 survey or changing it or because someone with the 11 Design Review Committee suggested a change? 12 A. I believe it was the civil engineer and 13 I discussed the -- how the lines would go, whether 14 it would be an arc or a straight line and how it 15 would connect to the common element parcel. 16 Q. And let's take a look at Exhibit 5. I 17 think that's the best map we have right now that 18 kind of shows us the addition of that parcel, and it 19 has a little bit of a triangle at the top or peak so 20 to speak at the top. 21 Do you agree with that 22 description? 23 A. Yes. 24 Q. And so the ultimate lot lines that you 25 see here on Exhibit 5, they came about after</p>	<p style="text-align: right;">Page 139</p> <p>1 A. Planning area 15 and 16. I believe it 2 was around a quarter of an acre on a hill that was 3 out of play. 4 Q. Do you know if that area can be seen on 5 Exhibit O within the Design Guidelines? It may or 6 may not be. 7 A. I see the area. 8 Q. Okay. Is that the actual lot 9 delineated on this particular map? 10 A. Kind of. 11 Q. Can you point me into the direction 12 where it is, and then we'll go from there? 13 A. That's the area that it was adding. 14 Q. Okay. So it looks like there is this 15 little -- almost looks like an island that's marked 16 in red, and it's flanked by two our other, I guess, 17 kidney bean shaped types. 18 So this is the St. Croix property 19 area? 20 A. Yes. 21 Q. And the little circle that you marked 22 on Exhibit O within the Design Guidelines is the 23 area that MacDonald Highlands added to that other 24 red property? 25 A. Not the red property. The red and two</p>
<p style="text-align: right;">Page 138</p> <p>1 speaking with the civil engineer; is that correct? 2 A. Yes. 3 Q. The lot lines that we see on Exhibit 5 4 that include the additional parcel of the golf 5 course to 594 Lairmont Place, were they changed in 6 anyway after the applications were submitted to the 7 City of Henderson? 8 A. Not that I'm aware of. 9 Q. Now, you had testified earlier two 10 weeks back when you were here in your individual 11 capacity, there were some other properties in 12 MacDonald Highlands where similar lot line changes 13 were completed, meaning parts of the golf course 14 were added to existing lots. 15 Do you remember that testimony? 16 A. Yes. 17 Q. Okay. Can you go through -- I think 18 there was one on St. Croix. Can you explain what 19 that involved? 20 A. What do you mean by what did it 21 involve? 22 Q. What property was it and where in the 23 MacDonald Highlands is that property located, what 24 planning area and in terms of how much golf parcel 25 was added?</p>	<p style="text-align: right;">Page 140</p> <p>1 yellows were actually combined to one giant lot. So 2 that whole area with white, red, and yellow is one 3 lot. And the little circle was added to the back of 4 that. 5 Q. Okay. And what hole is this on the 6 golf course? 7 A. That is the tenth. 8 Q. Now, when this property, this piece was 9 added as a whole to the two yellow kidney bean 10 shaped properties and the red property marked on 11 this map, did it stay in line with the rear property 12 lines for the other parcels we see along this golf 13 hole? 14 A. No. 15 Q. How far did it extend beyond those 16 other rear property lines of the other parcels? 17 A. I'm not sure of the exact dimension. 18 Q. Has that addition been approved by the 19 City of Henderson, that lot line change? 20 A. Yes. 21 Q. Has the map been finalized reflecting 22 the change in those lot lines? 23 A. The map has been finalized, but I'm not 24 sure of the status of the final signatures. 25 Q. What was the purpose of changing the</p>

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<p>1 lot lines to that -- we'll call the St. Croix 2 property? 3 MR. GUNNERSON: Objection. Foundation. Calls 4 for speculation. 5 THE WITNESS: To add additional rear yard, 6 they kind of flat lower area to the larger lot it 7 connected to. 8 BY MS. HANKS: 9 Q. Was the building already constructed, a 10 housing structure on that area? 11 A. Yes. 12 MR. GUNNERSON: Objection. Form as to area. 13 BY MS. HANKS: 14 Q. The additional golf parcel that's going 15 to become a part of those three parcels that we see 16 delineated on Exhibit O, is it going to just be a 17 landscaped area? 18 MR. GUNNERSON: Objection. Foundation. 19 THE WITNESS: The current plans, yes, but it 20 could be more. 21 BY MS. HANKS: 22 Q. How can it change to be more? 23 A. Well, after the map was signed, a 24 casita can be constructed in that area. 25 Q. And why is that? In other words, how,</p>	<p>1 was rezoned to include a portion of the golf course? 2 MR. GUNNERSON: Objection. Form as to next. 3 THE WITNESS: What do you mean? 4 BY MS. HANKS: 5 Q. Well, we agreed in our notice that 6 we're going to put the areas that we talked about in 7 your last deposition and I have. You said there was 8 -- your testimony says there is an area north of 9 planning area 11 that has been rezoned but not met. 10 Does that -- 11 A. Correct. 12 Q. Does that refresh your recollection? 13 Where is area 11? 14 A. This map has been changed but in 15 generalities, here. 16 Q. And how has this map been changed? 17 A. This is area 11. That street alignment 18 is not accurate within 11. 19 Q. Okay. So the Design Guidelines have a 20 different, a newer Exhibit O now? 21 A. No. 22 Q. Okay. So when you say, "this map has 23 been changed", Exhibit O hasn't been changed, you're 24 just saying that the Exhibit O map that's reflected 25 here or, I guess, what Exhibit O took from has</p>
Page 142	Page 144
<p>1 if the plans don't show the casita now, how can that 2 be changed later after the map is finalized? 3 A. Well, the map just creates the new 4 property lines. And then if the owner would like, 5 he could submit to the modifications committee a 6 plan for an accessory structures in that area. 7 Q. Okay. But right now the Design Review 8 Committee has approved just landscaping in that 9 area, the new addition area? 10 A. No. 11 Q. Okay. Who has approved what's going to 12 go in that area as of now? 13 A. There are no changes proposed to the 14 area. 15 Q. As it stands now? 16 A. Correct. 17 Q. And, I'm sorry. I realize I should 18 have known that. It wouldn't be in the Design 19 Review Committee's purview anymore, because you said 20 there is already a house built on the existing lots? 21 A. Correct. If there is any changes to 22 that area, it would go through the MacDonald 23 Highlands modifications committee, but there aren't 24 currently any plans. 25 Q. Okay. What is the next property that</p>	<p>1 changed? 2 A. The area that Exhibit O shows the 3 layout of the lots has changed, and Exhibit O wasn't 4 updated to reflect the new street alignment. 5 Q. And that's only for area 11 that there 6 is a difference, right? 7 A. From the red lots, it's fairly close. 8 Q. Okay. So can you mark with a circle or 9 an "X" like you did with the first, the St. Croix 10 property, and tell me how the addition of the golf 11 parcel portion of the property was added to a 12 specific lot in planned area 11? 13 A. It's zoned, but it has not been mapped. 14 Q. And it looks like -- is that two or 15 three parcels that -- 16 A. I believe it's three. 17 Q. So three parcels, I'm going to mark 18 them with a dot. 19 A. The first one, I don't think so. The 20 next three or so. 21 Q. Okay. 22 A. Those three had sections that were a 23 little deeper in the back. So this might be -- like 24 I said, the lot lines changed. So I think this was 25 a custom layout, and when it was sold the total lots</p>

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1 got a little smaller. In general, the street
2 alignment is the same. So the exhibit can still be
3 followed, because it's representative of the lots
4 that border the golf course within 11. We didn't go
5 back and change the actual lot lines, but I believe
6 there is three lots that have extended rear yard
7 developed.
8 Q. How much did the yard get extended for
9 those three lots?
10 A. I don't recall the exact square
11 footage. I can't remember the exact square footage.
12 Q. Before we go to that one, when did this
13 rezoning happen? When did the applications get
14 submitted for the St. Croix property?
15 I'm not concerned with an exact
16 date. I'm just looking for the year.
17 A. It was about a year ago, so it was
18 probably late 2013 or early 2014. So around that
19 timeframe would be my estimation.
20 Q. And how about for planning area 11,
21 those three lots that we've marked with the dots,
22 when did that application get submitted?
23 A. That was a long time ago. It was
24 during the construction of that area which I think
25 was 2004 or '05. So it could have been anywhere

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1 from 2004 to 2006 probably timeframe.
2 Q. Do you know what that area includes
3 whether it be a structure or landscaping?
4 A. There is nothing in there. It was
5 mountain. That area was rezoned, because when they
6 developed the lots from that street, there was a big
7 knob there that stuck up in the air and blocked the
8 view from these homes.
9 Q. Views of the golf course?
10 A. View of the golf course. So even
11 though it was outside of that developable area, we
12 decided to take down the area and blast it down to
13 grade so that you could see through that area.
14 So after it was blasted, it was no
15 longer natural. It was just broken rock. So the
16 lots had previously stopped on the other side of the
17 mountain. And now you had a blasted rock area
18 between the lots and the golf course. And the golf
19 course was really far away from the backs of those
20 lots.
21 So initially the lots went up to
22 the mountain, but then it didn't make a whole lot of
23 sense to have three lots that were looking at a
24 little hill when it had this beautiful golf course
25 on the other side. So we blasted it down and then

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1 went through the rezoning process so that the land
2 could be added to those three lots at a future time.
3 If they chose to purchase it, we
4 could then remap it and sell them to it, sell the
5 area to the residents that lived in those lots so
6 that they could extend their backyard.
7 Q. So at this juncture, 2015, those three
8 parcel owners have not actually purchased that
9 additional land?
10 A. No.
11 Q. Is it just a natural desert landscape
12 there now, or is it still that --
13 A. It is just broken rock.
14 Q. Who owns that portion of the land?
15 A. The Pacific Links entity, Dragon Ridge,
16 whoever we sold the golf course to. I'm not
17 positive what their entity name is. It's some sort
18 of Dragon Ridge related.
19 Q. So the new entity, the entity that
20 bought the golf course from Dragon Ridge now owns
21 that sliver that you've marked on the Exhibit O?
22 A. Yes.
23 Q. And then there is a third one that you
24 indicated in your deposition. You said lot one in
25 area 20?

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1 A. Yes.
2 Q. Where is that located?
3 A. (Witness indicates.)
4 Q. Okay. And you've marked the corner.
5 You've kind of drawn a triangle on this big yellow
6 section on Exhibit O at the very top.
7 What does that yellow section
8 represent? What piece of land is that?
9 A. Planning area 20.
10 Q. Okay. I don't see any individual lines
11 within that larger area.
12 Are there individual lots within
13 that yellow?
14 A. Yes.
15 Q. Is there any reason why that area
16 doesn't have the delineations of the individual
17 lots?
18 A. Yes.
19 Q. Why?
20 A. At the time the exhibit was made, there
21 were no lots in there.
22 Q. Okay. What hole of the golf course is
23 this property abutting?
24 A. Fifteen.
25 Q. And when was this application for

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1 rezoning submitted?
2 A. The same as the St. Croix application.
3 Q. So around late 2013, early 2014 is your
4 best estimate?
5 A. That's my estimate.
6 Q. How much property was added to this
7 particular parcel?
8 A. I think it was less than a quarter of
9 an acre.
10 Q. And what was the purpose of adding that
11 less than a quarter of an acre to that parcel?
12 A. Increase the size of the lot and the
13 buildable area for the home.
14 Q. Was the lot already sold when that
15 addition was applied for?
16 A. Yes.
17 Q. Was it already built? Was it already
18 improved?
19 A. No.
20 Q. Did the owner approach you -- I'm
21 saying you -- any of the entities you're here on
22 behalf of to purchase that parcel?
23 A. No.
24 Q. How did that come about then?
25 A. One of our representatives suggested it

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1 to the owner to see if they were interested.
2 Q. And what representative?
3 A. I believe Michael contacted the owner.
4 Q. And do you know why she recommended it?
5 A. Yes.
6 Q. Why?
7 A. I had received preliminary plans for
8 that area for the house, and it was really tight.
9 They were trying to squeeze some improvement in that
10 corner. And it wasn't working real well just
11 because of the site constraints. And the area next
12 to it in that triangle that I've outlined is between
13 two "T Boxes". It's not playable. And it was
14 fairly flat so that she could build on it if it was
15 added.
16 So I thought it would probably
17 help the design of her house if we added that into
18 the lot.
19 Q. Has the lot owner submitted -- or,
20 excuse me.
21 Has the City of Henderson approved
22 that lot line change?
23 A. Which entity within Henderson?
24 Q. Well, I guess at what point in the
25 process of the rezoning is that particular parcel?

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1 A. It's in final signature. So the last
2 update I had was being signed, the final map by all
3 the individual departments that need to sign the
4 last maps.
5 So it had been approved through
6 all the public hearings. The map has been approved
7 for final signature, and it was routing for the
8 physical signature on the map.
9 Q. Who owns that parcel, the extra golf
10 parcel that is going to ultimately be rezoned?
11 A. Right now it's owned by Pacific Links
12 entity that bought the course.
13 Q. Is that who that lot owner is going to
14 pay to purchase that portion?
15 A. No.
16 Q. Was there an exception carved out from
17 the purchase from Dragon Ridge to the Pacific Links
18 that Dragon Ridge would still get the sale of
19 proceeds from the sale of that portion of the golf
20 course?
21 A. There is an exception, but I don't know
22 if it's technically the sale.
23 Q. You mean the parcel that's going to be
24 added to that -- what is it? Lot one, planning area
25 20, you're not sure if it's actually a sale?

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1 A. Correct.
2 Q. You said it might be an exception?
3 A. There was an exception in the agreement
4 that the property would be deeded without cost to --
5 back to DRFH.
6 Q. That less than a quarter of an acre
7 that we're talking about adding to lot one in
8 planning area 20?
9 A. Correct. That's why I don't think that
10 it might not technically be a sale.
11 Q. But then will DRFH then sell it to lot
12 owner one? I mean, is that the plan?
13 A. The way the deal is currently
14 structured, I don't know if it's technically a sale.
15 I think the way escrow is
16 currently set up is that DRFH is being paid to
17 coordinate the map signatures so that the boundary
18 line is adjusted.
19 Q. Is the same true for St. Croix? How
20 was that deal done?
21 A. St. Croix, I do not believe anyone is
22 being paid through escrow. That one is not in
23 escrow.
24 Q. Do you know when the map that changed
25 the lot lines for 594 Lairmont Place was recorded?

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1 A. Approximately. I don't know the exact
2 date. It would be on the final map.
3 Q. Approximately would be perfect.
4 What was the approximate date of
5 the recordation of that map?
6 A. I thought it was around June of 2013.
7 Q. We talked -- I think it was off the
8 record -- about the maps and that's what we were
9 referring to as the governing documents of Exhibit
10 4, they're typically located in this binder,
11 correct?
12 MR. GUNNERSON: Objection. Misstates prior
13 testimony. Foundation.
14 THE WITNESS: I don't know what Michael does
15 as far as putting documents in what, but they're not
16 part of the governing documents.
17 BY MS. HANKS:
18 Q. Okay. Do you know if all individuals
19 who purchase property whether it's improved or
20 unimproved in MacDonald Highlands receive these maps
21 that we've looked at as Exhibit 4?
22 MR. GUNNERSON: Same objections.
23 THE WITNESS: Yeah. I don't know.
24 BY MS. HANKS:
25 Q. Who would know that?

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1 A. Michael would know what she gives
2 people.
3 Q. And the map that we've been looking at
4 as Exhibit 4, this is not what area 10 looked like
5 in terms of lot lines as of roughly June 2013,
6 correct?
7 MR. GUNNERSON: Are you talking post
8 recordation of the final map?
9 BY MS. HANKS:
10 Q. Yeah.
11 A. Post recordation of the new final map,
12 the new final would be the map. That's what it was
13 prior to the recordation of the new final map.
14 MS. HANKS: Okay.
15 (Exhibit 9 marked.)
16 BY MS. HANKS:
17 Q. The court reporter handed you what's
18 been marked as Exhibit 9. I did the same thing I've
19 done with some of the other exhibits prior, is I
20 just pulled excerpts from this Appraisal Review
21 Report that was drafted by Scott Dugan. It's not
22 the complete report that you have in front of you,
23 although I do have it with me.
24 Have you ever seen this Appraisal
25 Review Report before?

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1 A. No.
2 Q. If you turn to page -- it's 14. The
3 page numbers for this report are at the top of
4 the page. There you go.
5 I want to direct your attention to
6 -- there's a middle paragraph. It's one, two, three
7 -- it's the fourth paragraph on the page beginning
8 with the words "the borrowed view from the subject
9 property."
10 Do you see that?
11 A. Yes.
12 Q. Okay. It talks about -- it says, "The
13 borrowed view from the subject property that looks
14 east toward the Dragon Ridge parking lot and
15 distance mountainous southeast could be obscured by
16 planting a large tree or trees on the north side of
17 the original adjacent lot and planting large trees
18 along the east property lines Stephanie Street to
19 provide privacy to the adjacent lot."
20 And I'm only concerned with the
21 north side of the original adjacent lot.
22 Do you know where that is, where
23 that expert is referring to? You can use the map.
24 MR. GUNNERSON: I'm going object to.
25 Foundation. He stated he's not read this report,

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1 and this is not the entire report. So he doesn't
2 know who how to put this stuff in context.
3 Go ahead and answer what you can.
4 While he's looking at a that, if
5 you just want me to make a standing objection to any
6 question so I don't have to keep interrupting each
7 time.
8 BY MS. HANKS:
9 Q. That's fine.
10 A. Yes. I read it. What was the
11 question?
12 Q. Do you know what portion he's referring
13 to, what's the north side of the original adjacent
14 lot?
15 And I'll let you know, I think
16 he's talking about 594 Lairmont.
17 A. Yes.
18 Q. So what would be the north side of that
19 lot?
20 A. It would be the orange line in this
21 exhibit.
22 Q. Okay. Now, under the Design
23 Guidelines, could Mr. Malek -- mind you, I want you
24 to assume we have not added the golf parcel to
25 Mr. Malek's 594, okay?

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1 Could Mr. Malek plant trees along
2 that side portion of the yard towards the
3 highlighted in orange under the Design Guidelines?
4 A. Yes.
5 Q. Is there any limitation on the height
6 of those trees within the Design Guidelines?
7 A. No.
8 Q. If you turn to page 15, the next page,
9 the expert has appeared to draw four total circle on
10 the 594 Lairmont Place lot. And he also has
11 included the golf parcel portion of how the lot
12 changed.
13 Do you see those four circles?
14 A. Yes.
15 Q. Assuming Mr. Malek had not acquired the
16 additional golf portion to add to his lot, would he
17 be able to plant any of these trees under the Design
18 Guidelines?
19 A. Yes.
20 Q. Which trees could he have planted under
21 the Design Guidelines? And you can mark them with
22 an "X".
23 A. Well, I guess my clarification would be
24 this circle --
25 Q. I believe this is the original lot

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1 line, the first circle.
2 A. Yeah. If this tree had a trunk on this
3 side of the lot line, but it appears that the center
4 of the tree is past the rear lot line. So that
5 would be golf course property. So the golf course
6 could plant a tree there, but not Mr. Malek.
7 He could have planted this one and
8 this one, the other one if he moved it in so that
9 the trunk was on this side of the lot line so it was
10 on his property, he could have done that.
11 Q. Now, could he still have planted the
12 tree closest to Stephanie given the rear cone of
13 vision that you've marked on Exhibit 4?
14 A. That would have been a discussion with
15 the DRC.
16 Being that he borders Stephanie
17 Street, it would be something that as a neighboring
18 property owner being a common element, there may not
19 be any objection to a variance from that
20 requirement. So it may have been approved, but we
21 would have crossed that bridge when we came to it.
22 Q. Turn to Page 40. It's the third
23 paragraph on that page. It starts with "no such
24 restrictions."
25 Do you see that sentence?

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1 A. Yes.
2 Q. So it says, "No such restriction
3 regarding the planting of trees exist in the deeds
4 and/or in the CC&R's for the lots adjacent to
5 594 Lairmont Place and/or the land owned by the golf
6 course."
7 Is that accurate?
8 A. I think so. The only restriction I'm
9 aware of is that one cone of vision we've noted on
10 that diagram.
11 Q. Go to Page 59. There is two pictures
12 on this page, and it looks like the expert is trying
13 to show where trees could be planted.
14 For the first picture, assuming
15 Mr. Malek did not add the additional golf parcel to
16 the 594 Lairmont Place lot, could he have planted
17 either of these trees that are depicted in the first
18 picture under the Design Guidelines or the CC&R's?
19 A. If that tree was planted within the
20 property. It appears in this exhibit that it is
21 within his property, so then, yes.
22 Q. How about the picture number two?
23 A. Two appears to be Rosenberg's rear
24 property.
25 Q. Can the Rosenbergs plant those trees?

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1 A. I can't tell the one on the left if
2 it's outside of the 15 foot triangle or not, but the
3 one on the right, yes.
4 Q. Go to page 76, the second paragraph on
5 this page. I'm going to go to the second sentence.
6 It says "on page 34".
7 Do you see that sentence?
8 A. Yes.
9 Q. Okay. "On page 34 of the report under
10 review, the report under review implies that the
11 subject's building envelope has changed due to the
12 additional land acquired by the adjacent lot. The
13 subject's building envelope boundaries have not
14 changed."
15 Does the acquisition of a portion
16 of the golf course and adding that to 594 Lairmont
17 Place change the building envelope for that parcel?
18 A. Yes.
19 Q. And that's because now the setbacks are
20 going to be determined from a different boundary
21 line, correct?
22 A. Correct.
23 Q. Were you a member of the Design Review
24 Committee when Robert Panero (phonetic), which I
25 believe was the owner of 590 Lairmont, when he was

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1 submitting plans to construct a residence on that
2 lot?
3 A. Yes.
4 Q. Do you recall reviewing his plans and
5 approving them or disapproving them and going
6 through that process?
7 A. Yes.
8 Q. At the time that house was being
9 constructed, was there any conversation that a
10 portion of the golf course may be sold and made a
11 part of 594 Lairmont Place?
12 A. No.
13 Q. When you had the e-mail from Michael
14 about adding the golf portion of the property to
15 594 Lairmont, did you or Rich MacDonald or Michael
16 ever discuss offering that portion of property to
17 sale to any other owners on Lairmont place?
18 MR. GUNNERSON: Objection. Form.
19 THE WITNESS: Yeah. How would that be
20 possible?
21 BY MS. HANKS:
22 Q. Well, when it came up, was there ever a
23 discussion among the three of you or anyone else
24 within the entities you're here representing, "maybe
25 we should list this area for sale and see if we can

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1 get the best price for it, see if someone else was
2 interested in it"?
3 A. No. You couldn't do that.
4 Q. Why couldn't you do that?
5 A. Because it would add a unit to that
6 location. There is no access.
7 Q. So the only way for this portion to be
8 sold is to add it to 594 Lairmont?
9 A. The way it was mapped, yes.
10 Q. You mean the way it was mapped for the
11 application to rezone it, in this case, in
12 Mr. Malek's case?
13 A. I mean, you're asking me if it was
14 possible if that area could have been sold to
15 someone else?
16 Q. Right.
17 A. It is physically possible but not the
18 way that it was mapped.
19 Q. And when you say "it was mapped", do
20 you mean how the lots were already situated on
21 Lairmont Place?
22 A. I guess what I'm saying is that area
23 couldn't be sold individually. So it would have had
24 to be added to one of the lots around it.
25 If theoretically this lot line

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1 stayed the same and this came out and Rosenberg,
2 that owner could technically have it mapped around.
3 But the way it was mapped directly out would have to
4 be only adjacent to this lot. It would have to be
5 added adjacent.
6 So you could add the land, but it
7 had to be a remapping of the existing lot lines. So
8 the only lots that are adjacent to that piece you're
9 talking about are these two lots. Those are the
10 only two.
11 Q. Plausible?
12 A. That could be plausible.
13 Q. Which is 594 Lairmont and 590 Lairmont,
14 right?
15 A. Yes.
16 Q. During the time that Michael had raised
17 the interest of Mr. Malek for purchasing that extra
18 piece of the golf parcel to add to his lot, was
19 there any discussion to possibly offer that to the
20 owner of 590 Lairmont?
21 A. Well, to offer the empty piece of land
22 between 594 and the golf course?
23 Q. Yes.
24 A. To a third party?
25 Q. Yes.

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1 A. No. That did not come up.
2 Q. Do the CC&R's govern that additional
3 portion that Mr. Malek purchased from the golf
4 portion?
5 MR. GUNNERSON: Objection. Foundation.
6 THE WITNESS: At the current time, now?
7 BY MS. HANKS:
8 Q. Yes.
9 A. Now, that's part of 594, the CC&R's do
10 apply.
11 Q. But the CC&R's did not apply when it
12 was a part of the golf course, correct?
13 A. Correct.
14 Q. Were the lots on Lairmont, because they
15 were located on the golf course, being sold at a
16 higher premium than lots not located on the golf
17 course within MacDonald Highlands, generally
18 speaking?
19 MR. GUNNERSON: Objection. Form.
20 THE WITNESS: Generally speaking, no.
21 BY MS. HANKS:
22 Q. So a lot that wasn't located -- let me
23 clarify.
24 Mr. MacDonald testified there were
25 some hillside lots that had more expansive views of

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1 the valley that probably went for a better premium
2 than even the golf course lots. Let's exclude
3 those.
4 I'm talking about lots that are
5 maybe on the same level as golf course lots. Did
6 the golf course lots go for a higher premium than
7 non golf course lots?
8 MR. GUNNERSON: I'm going to object as to
9 form.
10 THE WITNESS: I think with the phrasing of the
11 question, it's difficult to answer, because the lots
12 throughout the community have different benefits to
13 all of them. So you may have large lots that sell
14 for a certain price because they're large and you're
15 away from your neighbor.
16 You might have another lot that is
17 not on the golf course but has a particular view of
18 the strip that someone enjoys, so they will pay for
19 that.
20 You may have a lot on the golf
21 course that the person wants to live on a golf
22 course, so those might get more than a lot that is
23 surrounded by houses by all four sides. But, yes,
24 there are certain lots that are more desirable
25 throughout the community. And it's not so simple as

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1 like a track home that pays "X" number of dollars
2 for a golf course premium.
3 Each lot is assessed by the sales
4 team and Mr. MacDonald for what they think they can
5 get for it based upon it's full environmental
6 surroundings.
7 You can't just say golf course
8 lots are more valuable than some other lots. Each
9 lot is individually assessed and has environmental
10 and size issues that would create value for certain
11 owners.
12 BY MS. HANKS:
13 Q. When the golf parcel was sold to
14 Mr. Malek, did the Design Review Committee have an
15 understanding that the purpose of the sale was to
16 adjust Mr. Malek's building envelope, that was the
17 reason why he wanted to purchase it?
18 A. Yes.
19 Q. Do you know if the map that Michael
20 appears to have included in the governing documents
21 binder has been updated, meaning now if someone were
22 to buy a property in MacDonald Highlands, would they
23 get a different map?
24 MR. GUNNERSON: Objection. Foundation.
25 THE WITNESS: I have trouble testifying what

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1 Michael would do.
2 BY MS. HANKS:
3 Q. That's the best person to ask what type
4 of maps that Michael is giving to owners that were
5 purchasing in 2014-2015?
6 A. Correct.
7 Q. I'm sorry if you've already testified
8 to this, but has the Design Review Committee given
9 written approval to Mr. Malek for the design of his
10 residence?
11 A. Yes.
12 Q. So he's now in a position to enter into
13 a construction contract and begin building?
14 MR. GUNNERSON: Objection. Foundation.
15 BY MS. HANKS:
16 Q. What is the next step that you
17 understand he needs to complete before he can begin
18 building?
19 MR. GUNNERSON: Same objection.
20 THE WITNESS: Needs permit.
21 BY MS. HANKS:
22 Q. Okay. From the City of Henderson?
23 A. Yes.
24 Q. So as far as you know, he hasn't gotten
25 his plans approved by the City of Henderson?

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1 MR. GUNNERSON: Same objection.
2 THE WITNESS: Yes. As far as I know, he has
3 not.
4 BY MS. HANKS:
5 Q. But in terms of all the requirements he
6 needs to do for MacDonald Highlands under the Design
7 Guidelines he's met all of those to date?
8 A. Yes.
9 Q. So he can go onto the next step with
10 the City of Henderson?
11 A. Yes.
12 Q. Have you had any conversations with
13 Barbara Rosenberg since 2013 to the present?
14 A. Does e-mail correspondence count as a
15 conversation?
16 Q. Yes. Any type. Maybe I should have
17 clarified that, any type of communications.
18 Have you had any type of
19 communications with Barbara Rosenberg since 2013 to
20 the present?
21 A. I believe so over e-mail.
22 Q. And what e-mails have you exchanged?
23 A. I believe I sent her an e-mail
24 regarding the things that needed to be done to
25 complete the residence she purchased in accordance

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1 with the approved plans.
2 Q. Any other communications you've had
3 with Ms. Rosenberg?
4 A. Not that I remember.
5 Q. How about Fredric Rosenberg, any
6 communications with Fredric Rosenberg since 2013
7 until the present?
8 A. Not that I recall.
9 Q. How about David Rosenberg, any
10 communications with David Rosenberg between 2013 and
11 the present?
12 A. Not that I recall.
13 Q. It's my understanding that the DRC, the
14 Design Review Committee, is separate and distinct
15 from the homeowners' association for MacDonald
16 Highlands, correct?
17 A. Correct.
18 Q. But the CC&R's that govern MacDonald
19 Highlands discussed the creation of the Design
20 Review Committee, correct?
21 A. Correct.
22 Q. So is the Design Review Committee a
23 committee under the CC&R's?
24 MR. GUNNERSON: Objection. Form.
25 THE WITNESS: The CC&R's state that the

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1 declarant will appoint the members of the Design
2 Review Committee and that the Design Review
3 Committee will have exclusive jurisdiction and that
4 the board has no say over the creation of the DRC or
5 its decisions.
6 So the board is created through a
7 section of the CC&R's, but that section states that
8 the homeowners' association has no say in the
9 election of its members or its decisions.
10 BY MS. HANKS:
11 Q. Back to the CC&R's, page 46, section
12 12.9, "The requirement of prior written approval
13 when your boundary line changes."
14 Do you recall discussing that
15 section?
16 A. Yes.
17 Q. Did the board provide written approval
18 for the boundary line changes in the St. Croix area?
19 A. No.
20 Q. How about lot one, planning area 11?
21 Is that correct?
22 A. Planning area 20.
23 Q. Planning area 20, did the board provide
24 written approval for that boundary lot change?
25 A. No.

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1 Q. And then how about the lots -- the
2 three lots where the area was extended? I don't
3 recall which area that was.
4 A. That was planning area 11. No.
5 Q. Do you know why that didn't happen?
6 A. It's my opinion that the belief is
7 they're acts of the declarant.
8 Q. Had written approval been requested by
9 the board of directors pursuant to 12.9, is there a
10 process that would have taken place after that
11 request was made, like a hearing or meeting? Do you
12 know?
13 MR. GUNNERSON: Objection. Foundation.
14 THE WITNESS: There would be a process, and I
15 don't know exactly what the process would be as far
16 as whether there would be a hearing or if it's an
17 administrative level vote.
18 BY MS. HANKS:
19 Q. How would one determine what that
20 process was? Can you find it in the CC&R's?
21 A. We would probably consult with our HOA
22 board rep who if she was unsure would consult with
23 the HOA's attorney.
24 Q. Tell me if you agree or disagree with
25 that statement.

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1 MacDonald Highlands is comprised
2 of high-end homes.
3 Do you agree or disagree with that
4 statement?
5 A. I agree.
6 Q. Tell me if you agree or disagree with
7 this statement.
8 Residential properties that are
9 considered high-end demand higher market values
10 because of assumed prestigious views associated with
11 such properties.
12 Do you agree or disagree with that
13 statement?
14 A. Can I hear that again?
15 Q. Residential properties that are
16 considered high-end demand higher market values
17 because of the assumed prestigious views associated
18 with such properties.
19 MR. GUNNERSON: I'm going to object to these
20 as leading.
21 THE WITNESS: Yeah. That's a tough one,
22 because I wouldn't assume that every high-end
23 property has a view.
24 BY MS. HANKS:
25 Q. So you would disagree with that

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<p>1 statement?</p> <p>2 A. As presented, yes.</p> <p>3 Q. Do you agree or disagree with this</p> <p>4 statement?</p> <p>5 The Rosenbergs purchased</p> <p>6 590 Lairmont Place which included view corridors to</p> <p>7 the right of the mountains and golf hole number</p> <p>8 nine?</p> <p>9 MR. GUNNERSON: I'm going to object. Same</p> <p>10 objection. Foundation. Form.</p> <p>11 THE WITNESS: Can you read that again?</p> <p>12 BY MS. HANKS:</p> <p>13 Q. Yeah. The Rosenbergs purchased</p> <p>14 590 Lairmont Place which included view corridors to</p> <p>15 the right of the mountains and hole number nine of</p> <p>16 the golf course?</p> <p>17 A. To the right of the mountains. I have</p> <p>18 no idea what that means.</p> <p>19 Q. Okay. Tell me if you agree or disagree</p> <p>20 with this statement.</p> <p>21 The addition of the golf parcel to</p> <p>22 Mr. Malek's lot two, 594 Lairmont, alters the view</p> <p>23 from 590 Lairmont.</p> <p>24 MR. GUNNERSON: Same objections.</p> <p>25 ////</p>	<p>1 statement then?</p> <p>2 A. If you construct a building, it alters</p> <p>3 the view of something.</p> <p>4 Q. So Mr. Malek's construction of his</p> <p>5 residence as approved by the DRC is going to</p> <p>6 obstruct a portion of the view from 590 Lairmont</p> <p>7 Place?</p> <p>8 MR. SHEVORSKI: Object. Different question.</p> <p>9 MR. GUNNERSON: Asked and answered. Same</p> <p>10 objection.</p> <p>11 BY MS. HANKS:</p> <p>12 Q. Do you agree with that?</p> <p>13 A. Yes. Every building alters the view of</p> <p>14 something.</p> <p>15 Q. I don't think I have anything further.</p> <p>16 Let me just double check.</p> <p>17 Do you know how Mr. Malek acquired</p> <p>18 lot one, which I believe is 598 Lairmont Place?</p> <p>19 MR. GUNNERSON: I'm going to object. It's</p> <p>20 outside the topics presented in the subpoena and</p> <p>21 instruct him not to answer.</p> <p>22 MS. HANKS: Okay. That's fine. You don't</p> <p>23 have to answer that. I'm all done.</p> <p>24 MR. DEVOY: Can we go off the record for five</p> <p>25 minutes?</p>
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<p>1 BY MS. HANKS:</p> <p>2 Q. Do you agree or disagree with that</p> <p>3 statement?</p> <p>4 A. The addition of the parcel alters the</p> <p>5 views?</p> <p>6 Q. Correct.</p> <p>7 A. I don't agree with that.</p> <p>8 Q. Why do you disagree with that?</p> <p>9 A. Because it's land.</p> <p>10 Q. How about if we take Mr. Malek's design</p> <p>11 plans. Do you agree or disagree that the addition</p> <p>12 of the golf parcel and what Mr. Malek intends to</p> <p>13 build on that golf parcel as approved by the Design</p> <p>14 Review Committee, does that alter the view from 590</p> <p>15 Lairmont Place?</p> <p>16 MR. GUNNERSON: Same objection, especially</p> <p>17 form as to view.</p> <p>18 THE WITNESS: Yeah. The question is whether</p> <p>19 the construction of a building will alter a view?</p> <p>20 BY MS. HANKS:</p> <p>21 Q. Yes. Well, not any building, just as</p> <p>22 Mr. Malek intended to build.</p> <p>23 A. The construction of all buildings</p> <p>24 alters all views.</p> <p>25 Q. Okay. So you would agree with that</p>	<p>1 MR. GUNNERSON: Sure.</p> <p>2 (Short break.)</p> <p>3 EXAMINATION</p> <p>4 BY MR. DEVOY:</p> <p>5 Q. Paul, I just want to follow-up on a</p> <p>6 couple questions that were raised earlier in your</p> <p>7 testimony.</p> <p>8 You had previously testified that</p> <p>9 Shane Malek paid for the services of B-2</p> <p>10 development.</p> <p>11 Do you recall how Shane paid for</p> <p>12 those services?</p> <p>13 A. Yes.</p> <p>14 Q. How did he pay for them?</p> <p>15 A. He gave a check to cover the costs of</p> <p>16 the services to one of the MacDonald entities. I'm</p> <p>17 got sure what account it went into. And then those</p> <p>18 funds were used to pay for that service.</p> <p>19 Q. Do you know if there are any receipts</p> <p>20 memorializing this transfer of funds from Malek to</p> <p>21 one of the MacDonald entities for this payment?</p> <p>22 A. Receipt, I don't know. I would imagine</p> <p>23 it was by check.</p> <p>24 Q. Do you know if there are any documents</p> <p>25 such as invoices showing that one of the MacDonald</p>

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1 entities paid B-2 using Shane's money?
2 A. I'm not sure. It's a bit of an
3 accounting question. I know when the bills came in,
4 I coded them towards the Shane Malek money. So when
5 I would get billed from B-2, I guess that would be
6 kind of the evidence you're looking for that I would
7 code that receipt to bill it or pay it from that
8 sub-account, wherever that money came from.
9 Q. Do you know if there are any other
10 third parties that had to be paid by one of the
11 MacDonald entities in connection with the rezoning
12 of Shane's acquisition of the golf property?
13 A. When you say third party, would that
14 include the City of Henderson?
15 Q. Yes. Any kind of vendors, surveyors,
16 anybody else that would have been --
17 A. Yes. I believe we put together an
18 estimate for total cost to get it done which
19 included the surveyor that did the final map, the
20 civil engineer that did the tentative map and zone
21 change exhibits, B-2 who helped us with the
22 processing, and it also covered the city fees to get
23 it done.
24 Q. Do you recall how much the estimate
25 was?

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1 A. I don't recall the exact number, but my
2 guess is low 20's. Maybe 22,000.
3 MR. DEVOY: I think we're on Exhibit 10.
4 (Exhibit 10 marked.)
5 BY MR. DEVOY:
6 Q. I'm showing you a document that has
7 been marked as Exhibit 10.
8 Have you ever seen this document
9 before?
10 A. No.
11 Q. Just below the second full paragraph,
12 it says, 40,000 dollars to Dragon Ridge Properties,
13 LLC.
14 Are you aware of 40,000 dollars
15 being released from escrow by a Nevada Title Company
16 to Dragon Ridge Properties, LLC on or about
17 August 18, 2012?
18 A. No. I wasn't aware of it.
19 Q. Do you know what this money could
20 possibly be for?
21 A. I believe this might possibly be to
22 cover the expenses we just discussed.
23 Q. Okay. We can move on from that. The
24 problem is when Rich MacDonald says you're the
25 person most knowledgeable on certain things, I have

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1 to follow-up on it.
2 MR. GUNNERSON: Just to -- I don't know. I
3 haven't looked at to see if this was part of the
4 subpoena to see if these were the things he was
5 asked to be knowledgeable on. If he's not, it maybe
6 be a result of having additional --
7 MR. DEVOY: Okay. I had asked about it
8 yesterday and I'm just following up.
9 MR. GUNNERSON: I'm just saying --
10 MS. DEVOY: This is in the scope of 30(b)(6).
11 I was just told I should ask Paul about it. If
12 there is any issues that come up --
13 MR. GUNNERSON: Go ahead.
14 MR. DEVOY: I think this would be number 11.
15 (Exhibit 11 marked.)
16 BY MR. DEVOY:
17 Q. Paul, I'm showing you a document that's
18 been marked as Exhibit Number 11.
19 Have you seen this document
20 before?
21 A. No.
22 Q. Can you take a second to review it?
23 A. Sure.
24 Q. Just let me know when you're ready.
25 A. Okay.

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1 Q. All right. Turning to page two, I just
2 want to confirm that you see where there is notarial
3 seal and signature, both dated April 8, 2013?
4 A. Yes.
5 Q. And then back to the first page in the
6 upper right-hand corner, there is a series of
7 numbers that reads 20130626.
8 Do you see that?
9 A. Yes.
10 Q. Do you agree that this series of
11 numbers indicates this document was recorded on
12 June 26, 2013?
13 A. Yes.
14 Q. Do you know why there was a delay
15 between the execution of this document on April 3rd
16 and it's recordation on June 26, 2013?
17 MR. GUNNERSON: Objection. Foundation. Calls
18 for speculation.
19 THE WITNESS: Yes.
20 BY MR. DEVOY:
21 Q. Can you tell me why?
22 A. We've kind of discussed with the
23 current maps, there is a lengthy signature process
24 where maps need to be passed around by a number of
25 people to sign them.

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1 So after the zoning is completed,
2 the prepared documents can be put into escrow, and
3 they're not recorded until the final map is. So you
4 would have the deed prepared prior to the map
5 recordation held in escrow, and then when the final
6 map is recorded and the deed can be recorded, it's
7 all done in escrow at the time of the map
8 recordation.
9 Q. Do you recall what steps were completed
10 between April 8th, 2013, when the agreement was
11 signed and June 26, 2013, what was recorded?
12 MR. GUNNERSON: Same objection.
13 THE WITNESS: Approximately?
14 BY MR. DEVOY:
15 Q. As best you can answer.
16 A. That would be the routing signatures
17 between the health district and NVP, Southwest Gas,
18 NV Energy, and the multiple departments within the
19 City of Henderson that need to physically sign the
20 map before it's recorded.
21 So that was what the B-2 services
22 were retained for, to pick up a map from, say,
23 Southwest Gas who just signed it and drive it over
24 to NV Energy. And then you drop it over to them for
25 a week. And then you'll pick it up from NV Energy,

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1 and you'll drive it somewhere and have them sign it.
2 So there's a lot of waiting for
3 signatures that take quite a long time and running
4 around to get those signatures. And that would be
5 the delay between when things were put in escrow and
6 when all the final signatures were acquired.
7 Q. Okay. Before I move on from the
8 exhibits, I'm just going back quickly to Exhibit 10,
9 the Nevada Title Company report.
10 With respect to the 40,000 dollars
11 that were released from escrow, you said the
12 estimate for the cost of rezoning was around 22,000.
13 Do you know where there is such a
14 large difference between the 22,000 dollars estimate
15 and the 40,000 dollars released from escrow?
16 MR. GUNNERSON: Objection. Foundation. Calls
17 for speculation.
18 THE WITNESS: I believe I know.
19 BY MR. DEVOY:
20 Q. Can you answer that to the best of your
21 ability?
22 MR. GUNNERSON: Same objection.
23 THE WITNESS: I think it paid for my time.
24 BY MR. DEVOY:
25 Q. Okay. Just a few last questions

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1 regarding zoning.
2 In addition to 594 Lairmont and
3 the golf parcel and the four other parcels we
4 discussed today, are there any other parcels that
5 you had combined with parts of the golf course?
6 A. With the golf course, no. I believe it
7 was the five that I had referenced.
8 Q. Were any of those unsuccessful?
9 MR. GUNNERSON: Objection.
10 BY MR. DEVOY:
11 Q. Let me restate the question. I'll
12 withdraw it.
13 To your knowledge, have you ever
14 failed to obtain a zoning variance when you've
15 applied for it when merging those parcels together?
16 A. No. I believe they've all been
17 approved.
18 Q. Do you recall in the process of
19 changing the zoning ever applying for a vacation or
20 easements or restrictions on the properties?
21 MR. GUNNERSON: Objection. Form.
22 THE WITNESS: Yes. I recall applying for
23 easement vacation.
24 BY MR. DEVOY:
25 Q. What's your understanding of what

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1 vacation of the easement and restrictive covenants
2 is accomplishing?
3 A. The vacation of easement in the
4 application that was originally filed with the zone
5 change for this area would be when you would vacate
6 a nonexclusive utility easement over a property
7 which is an easement that's generally placed on a
8 common area or the front of someone's house to be
9 able to install or remove utilities.
10 And generally there is a blanket
11 easement over common areas, just streets and any
12 landscaped areas on the side of the street. And
13 that easement is put in place so the city can go fix
14 any water lines or Nevada Power can put in a line.
15 And if you're changing a common
16 area from common area back to residential, you would
17 generally have to file a vacation easement so that
18 the city don't doesn't have a right to come into
19 where your house is to work on a property line.
20 So in this project in particular,
21 there was a surveyor at the city who wrongly assumed
22 there was a utility easement over the golf course,
23 and there was not. So basically she had told our
24 coordinator, "you need to file this easement
25 vacation application."

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<p>1 We then filed it because she told</p> <p>2 us to, and then once we passed it off to our</p> <p>3 surveyor to draw up for the vacation map, he</p> <p>4 researched and found there was not a blanket</p> <p>5 easement over the golf course, because it's not a</p> <p>6 common element. It's a golf course. So I believe</p> <p>7 there was confusion whether that easement existed.</p> <p>8 Q. Just to clarify, this step was taken</p> <p>9 with respect to adding the golf course onto</p> <p>10 594 Lairmont?</p> <p>11 A. Correct.</p> <p>12 Q. Do you recall if the vacation was</p> <p>13 granted by the City of Henderson?</p> <p>14 A. It was not required, because there was</p> <p>15 nothing to vacate.</p> <p>16 Q. So your understanding is that there</p> <p>17 were no easements on the golf parcel land that was</p> <p>18 added to 594 Lairmont?</p> <p>19 A. Correct. There was no easement there.</p> <p>20 The city employee wrongly assumed there was. I</p> <p>21 believe she mixed up common element with the golf</p> <p>22 course. So she asked for a vacation, and then we</p> <p>23 went to draw up something to be vacated, there was</p> <p>24 nothing to be vacated. There wasn't an easement.</p> <p>25 Q. Okay. Now, with respect to the five</p>	<p>1 that you have not received any objections when</p> <p>2 you've attended these meetings in the past regarding</p> <p>3 changing zoning, is that true for all the meetings</p> <p>4 you just identified in your last answer?</p> <p>5 A. No. That's for the golf course</p> <p>6 parcels. For some of the other parcels that I've</p> <p>7 attended, there has been objections.</p> <p>8 Q. So narrowing it down to the golf course</p> <p>9 parcels, how many meetings do you recall attending</p> <p>10 regarding changing zoning for the golf course</p> <p>11 parcels?</p> <p>12 A. I think four.</p> <p>13 Q. And there were no objections at any of</p> <p>14 those meetings?</p> <p>15 A. No.</p> <p>16 MR. DEVOY: I have no further questions.</p> <p>17 MR. SHEVORSKI: No questions from Bank of</p> <p>18 America.</p> <p>19 MR. GUNNERSON: I have no questions.</p> <p>20 FURTHER EXAMINATION</p> <p>21 BY MS. HANKS:</p> <p>22 Q. Just one follow-up. When the</p> <p>23 Rosenbergs purchased their lot at 590 Lairmont in</p> <p>24 May 2013, where in the process was the zoning</p> <p>25 variance for that golf parcel that Mr. Malek</p>
Page 186	Page 188
<p>1 times you've sought zoning variances from the City</p> <p>2 of Henderson, do you recall attending neighborhood</p> <p>3 meetings for those five zoning variances you sought?</p> <p>4 A. Yes.</p> <p>5 Q. Are those the only meetings that you</p> <p>6 attended? I'm sorry. Strike that.</p> <p>7 Are those the only neighborhood</p> <p>8 meetings you attended when seeking zoning variances?</p> <p>9 A. No.</p> <p>10 Q. So there were more than that?</p> <p>11 A. When we go for zoning variance, a</p> <p>12 master plan amendment for a new planning area, you</p> <p>13 have to change the master zoning from maybe a</p> <p>14 holding area to whatever specific parcel you're</p> <p>15 going to build. So throughout the entire community</p> <p>16 if we're putting in a an area in the mountains,</p> <p>17 we'll need to do comp and a new zone change for</p> <p>18 that.</p> <p>19 So as we build on the hillside</p> <p>20 areas, we'll have neighborhood meetings for those</p> <p>21 areas and zone changes for those. So there are</p> <p>22 additional changes throughout the community that we</p> <p>23 have attended neighborhood meetings for within the</p> <p>24 hillside and other non-related golf course.</p> <p>25 Q. Going back to what you said earlier</p>	<p>1 ultimately purchased?</p> <p>2 A. The zoning variance was approved.</p> <p>3 Q. And when you say the zoning variance</p> <p>4 was approved, that means the City of Henderson had</p> <p>5 approved it at that final meeting we talked about?</p> <p>6 A. I guess it's not a zoning variance.</p> <p>7 There's a zone change. The comprehensive plan</p> <p>8 change amendment and design review application, I</p> <p>9 believe, were changed prior to that date.</p> <p>10 Q. The date that the Rosenbergs purchased</p> <p>11 their property?</p> <p>12 A. Correct.</p> <p>13 Q. And, so at that point the only thing</p> <p>14 that was left to be completed was the finalized and</p> <p>15 recordation of the map?</p> <p>16 A. Yes. At that date it's my</p> <p>17 understanding that everything had been completed,</p> <p>18 and the final map was around for final review and</p> <p>19 signatures. They ensure that the final map lot</p> <p>20 lines and numbers and calculations match what's on</p> <p>21 all the other maps. The improvement plans match the</p> <p>22 final map and then everything matches.</p> <p>23 If it doesn't, they'll make a</p> <p>24 comment and you fix it. And once everything is</p> <p>25 approved by the City of Henderson on the preliminary</p>

1 map, then they say come back with a mylar and they
2 will physically sign it and record it.
3 And at that time -- I can't say
4 exactly -- but it was in the final map signature and
5 review process, and that was the last thing to
6 happen before the map gets recorded and the escrow
7 closes.
8 MS. HANKS: Thank you. I don't have anything
9 further.
10 MR. GUNNERSON: All right. Thank you very
11 much.
12 (Whereupon the deposition was
13 concluded at 2:34 p.m.)
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1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE
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16 * * * * *
17 I, PAUL BYKOWSKI, deponent herein, do
18 hereby certify and declare under penalty of perjury
19 the within and foregoing transcription to be my
20 testimony in said action, that I have read,
21 corrected, and do hereby affix my signature to said
22 transcript this day of, 2015.
23
24 PAUL BYKOWSKI
25 Deponent

1 REPORTER'S CERTIFICATE
2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss.
5
6 I, Angela Campagna, a certified court
7 reporter in Clark County, State of Nevada, do hereby
8 certify:
9 That I reported the taking of the
10 deposition of the witness, PAUL BYKOWSKI, on
11 Tuesday, February 3, 2015, commencing at the hour of
12 8:57 a.m.
13 That prior to being examined, the
14 witness was by me first duly sworn to testify to the
15 truth, the whole truth, and nothing but the truth.
16 That I thereafter transcribed my said
17 shorthand notes into typewriting and that the
18 typewritten transcript of said deposition is a
19 complete, true, and accurate transcription of
20 shorthand notes taken down at said time.
21 I further certify that I am not a
22 relative or employee of an attorney or counsel of
23 any of the parties, nor a relative or employee of
24 any attorney or counsel involved in said action, nor
25 a person financially interested in said action.
IN WITNESS WHEREOF, I have
hereunto set my hand in my office in the County of
Clark, State of Nevada, this 10th day of February
2015.

ANGELA CAMPAGNA, CCR #495

Conclusions to Fishbowl Effect

- As stated in Bell's book and in the expert report, properties fronting along a golf course have reduced expectations as to privacy.
- As shown above, the subject property is visible from the golf course, adjacent properties to the north and south.
- The pool and glass areas can be viewed from the golf course, adjacent properties along with Stephanie Street and the clubhouse parking lot.

Clearly, it is unreasonable for the expert to conclude that the subject's "privacy" will be **negatively affected** by the development of the adjacent property when the subject is visible from multiple non-private areas and the subject has open wrought iron fencing along the golf course and along 20-25 feet of the adjacent side yard fencing.

There can be no expectation of privacy beyond adding window coverings to preclude inward views of the interior of the home from outside of the property. Regardless, the exterior, rear yard, pool and balcony areas would remain very visible. The other option (for any owner) is to plant mature trees. This is a common practice on golf courses throughout the Las Vegas Valley.

Building Envelope - Page 25

On page 25 under Detrimental Condition Analysis, the report under review refers to the Bell Chart and the 10 classifications of detrimental conditions. In this section, the appraiser assigns the alleged DC for the subject property as a Class V Detrimental Condition, relating to views.

Again, the report under review incorporates Randall Bells' methodology, by citing The Bell Chart, the DC Model, etc. However, at the same time it fails to apply any of the recognized and accepted methods to identify:

- If there is a detrimental condition and;
- Does it have a measurable impact on value?

When completing a valuation or consulting assignment under USPAP and acting in the capacity of an appraiser, the consultant cannot be an advocate of the client. Here, the appraiser has accepted the client's position that the potential development of the adjacent land and the addition to the adjacent lot will negatively affect the subject property and result in a significant loss in value.

Randall Bell is clear in various sections of the book Real Estate Damages (in the development of the DC Model and the Bell Chart and methodologies), that a perceived detrimental condition by one party may or may not be considered negative by another.

From the book Real Estate Damages:

To understand perceptions within the real estate market, market data must be used to measure how the market actually reacts. Indeed, a property is considered “innocent” until a negative impact is demonstrated through an analysis of relevant market data.

The traditional appraisal techniques provide the foundation on which an analysis of real estate damages and detrimental conditions may be made.

Throughout the book and in various published articles, experts repeatedly point out the need for the consultant to remain objective and recognize the owner’s perception of a detrimental condition or the consultant’s perception of a detrimental condition may not be shared by the market.

This is why the consultant must act independently and impartially (as required by State and Federal law and valuation guidelines) to analyze the data and to correctly apply recognized techniques, to determine the market’s perception of the detrimental condition and its effect on the value of a property.

The author is also clear to state that identifying a condition to be detrimental and measuring the effect of the DC must be accomplished via recognized methodology and application of the three approaches to value. Often, perception is not reality. On page 2 of the book, Real Estate Damages, the author states:

Although these studies of property damages can be very involved, they are, in fact, based on the same fundamental economic and valuation principles. The traditional appraisal techniques provide the foundation on which an analysis of real estate damages and detrimental conditions may be made.

It is critical to recognize that in this point of the report under review, the appraiser has already concluded that a detrimental condition existed and had set out to prove it. This is in opposition to evaluating the property with “impartiality, objectively and independence ... and without advocacy to the cause or issue of any party” ... as required by USPAP. Below are examples from the report under review, which demonstrate the possibility of predetermined findings.

Example 1: Page 29 of the report under review

The appraiser expresses the importance of the Detrimental Condition Model. Fundamental to this model is a very important concept that the appraiser has failed to consider. There are six conditions in the model.

The first condition is A – the unimpaired value. Under this condition, “until a DC is discovered or known, a property will perform with its market reflecting an unimpaired value.”

In the report under review, the appraiser states his analysis is in the “assessment stage.” According to the book, “the assessment stage occurs when the damage is assessed, usually by engineers, contractors or other qualified experts.”

To our knowledge, no one has proven that a detrimental condition exists. The condition is alleged and without reliable or independent evidence or validation. The report prepared by Valbridge Associates concluded no detrimental condition existed.

This expert report under review employs a questionable methodology (agent surveys based upon hypothetical bias). Proof of an impairment to the value of the subject property is required. This proof must take place in the form of a credible methodology that is generally accepted.

Example 2: Page 34 of the report under review

Appraiser’s statements on page 34

The timeline of the known events related to the acquisition of the additional land is shown on the following page. It is true that the deed for the additional land was recorded on 06/26/2013, subsequent to the purchase of the subject by Rosenberg. However, case documents clearly indicate that the defendants were involved with and/or aware of the acquisition of the additional land prior to 03/13/2013, which is the date that Rosenberg initially offered to purchase the subject property

Observations and Comments: Here the appraiser refers to “the defendants” (as opposed to the parties) and makes allegations regarding their awareness of the land acquisitions. The appraiser is required by USPAP to be impartial and non-biased. The reference and allegations appear to show the appraiser trying the case and advocating for his client (the plaintiff).

This is further evidenced by the timeline of events and documents on page 34 of the report under review. The appraisal problems to be addressed are:

- “Does the additional site area” create a detrimental condition that affects the value of the subject property?
- If a detrimental condition is created, does it affect the value of the subject property?

Why does the expert focus on this timeline and disclosure issues? Real estate damage assessment is based upon an “unbiased assessment of value loss due to some event or occurrence.” The lack of disclosure has nothing to do with a value loss (if any).

Required disclosures and other facets (or allegations) of the plaintiff’s case create bias in the report under review. The documents and timing of the events have nothing to do with the valuation of the property and the determination of or measurement of damages, if any damages exist.

Allegations as to the actions of the individual parties to a lawsuit may create bias in the report under review and in the mind of the appraiser. Responsibilities as to legal and transactional matters should not be a part of the valuation, especially in the “assessment stage” of the analysis. The appraiser’s apparent acceptance of these events as being material clearly influenced the conclusions and opinions of the valuation and damages report under review.

Example 3: Page 36 of the report under review

The appraiser’s comments clearly exhibit the appraiser attempting to “try the plaintiff’s case” in the report under review.

The acquisition of this additional site area creates the opportunity for an entirely different building envelope than what was represented to and considered by Rosenberg.

How does the appraiser know what was or was not represented to “Rosenberg”? The appraiser has no way to “verify this” (independently from a person other than the client) and therefore may be letting the client’s remarks influence the analysis. Regardless, what was represented to “Rosenberg” is a legal matter and has nothing to do with the appraiser’s determination of value or value loss.

Example 4: Page 37 of the report under review

Again, the appraiser appears to be making the plaintiff's argument and advocating for the client in the opening paragraph. In the paragraph below the illustration, the setback error is applied in the argument. As stated before, this is a side yard setback not a rear yard setback as stated by the appraiser in the report under review. As stated, accessory buildings have a lesser setback and planting of trees or other landscape is permissible within the setback areas.

Clearly the opportunity exists and the intent is to exceed the original building envelope which Rosenberg considered when making a decision to purchase.

The proposed improvement, as illustrated above, extends roughly 30' beyond the original (north) property line and ~60' beyond the set-back that would have applied with the site as originally designed/developed.

Therefore, the "view corridor" mentioned in the report under review and created by the application of the wrong setback by the appraiser and relied upon in determination of the damage estimate conclusion in the report under review, **does not exist as shown in the report.**

When all factors are considered, there is no view corridor or view plane where buildings or landscaping could affect the borrowed views from the subject property. Constructing accessory buildings within the correct setbacks and or planting of mature trees along the side yard (on the original boundary) would obscure the views to the southeast.

Had the report under review applied the correct main building setbacks, along with the lesser accessory building setbacks and considered the planting of mature trees (common in luxury home construction) to improve the privacy of the original lot, and presented the same "correctly in the agent survey", along with proper disclosure to the agents, the conclusions would be very different.

When the proper setbacks are applied and the planting of mature trees to increase privacy is considered, anyone could reasonable conclude the subject's view from the second level master bedroom, across the adjacent lot to the east and southeast (including the additional lot area), would be considered a "borrowed view." It would also be a reasonable conclusion by anyone considering all of the facts, that planting mature trees on

the property line of the original lot would partially or totally obscure the east and southeast views towards the Dragon Ridge Clubhouse, parking lot and distant mountains.

The appraiser goes on to state:

When qualifying a Class V – DC one must consider the two concepts noted earlier in the report: Borrowed views and Visibility. In qualifying this DC, I have studied whether or not the view corridors and visibility (privacy) characteristics that were understood and considered by Rosenberg (or would have been understood and considered by any other “typical” buyer) were significantly different than what existed or what was known would exist.

The setbacks applied in the report under review are in error. Additionally, the report under review does not consider the effects on the borrowed views (from the subject property), resulting from the planting of mature trees in conjunction with developing the site. Nor does the report under review consider the impact on the borrowed views resulting from the growth of existing trees along Stephanie Street and in and around the Dragon Ridge parking lot and clubhouse.

Any of these factors would have obscured the borrowed view to the southeast, from the second level master bedroom of the subject property, with development of the adjacent lot and without development of the additional land area. As stated, the typical buyer would have or should have considered these facts, knowing the adjacent lot was vacant and someday, would be developed.

The potential impacts of development of a vacant site, on the adjacent site, would be a reason for anyone to investigate planned or proposal for the vacant land. If a buyer is not capable of doing this on their own, or their representative cannot do this (their real estate agent) there are companies that provide these services.

- The required setbacks are stated within the CC&Rs
- The appropriate method for determining which property line is which for odd shaped lots (how to determine the rear, side, etc.) is available online in the City of Henderson’s Development Code, Chapter 19.12: Measurement and Definitions (Lot or Property Line, Rear pages 12-5 and 12-6).
- A drive around the MacDonald Ranch Community, especially along the golf course, would evidence how existing homes have planted trees to increase privacy and

how the planting of those trees have obscured the borrowed views across the adjacent lots.

- A review of aerial photos, also available online, would also evidence how mature trees and landscaping affect the borrowed views from adjacent lots.

Failure to comprehend the correct rear lot line and to consider the potential impacts to the subject site because of development or events on adjacent land is not an undisclosed detrimental condition as suggested in the report under review.

Vacant land development and planting of landscaping and mature trees to increase privacy, occurs throughout the Las Vegas Valley, especially in luxury golf course communities. This is a potential that anyone doing the appropriate due diligence for a \$2-million dollar home, should be aware of or should hire an expert to investigate.

Market participants are willing to pay a premium for a golf course frontage lot and those same participants know (or should know) that views are not guaranteed by law. They also know that views of the golf course or adjacent areas may be affected by change over time, especially resulting from the growth of trees and or because of actions taken by the owners of the adjacent properties.

In other cases where a permanent view was desired, buyers have negotiated an easement that controlled the view from their property, to a limited extent. Absent such an easement, a view is not guaranteed and to imply (in the agent surveys and in the report under review) the subject property was entitled to what clearly is a borrowed view (by the definition in the report under review), is misleading.

Example 5: Page 37 of the report under review

When considering the “borrowed” view corridor to the east the subject property is currently afforded, there would be little-to-no change should the adjacent site have been improved as originally designed/developed as the required set-back would have kept any proposed improvement at a distance not to affect that existing view corridor that is illustrated below:

The conclusion in the paragraph above are in error due to the setbacks and mature tree plantings mentioned before.

However, with the proposed improvement extending ~30’ beyond the original rear property line (which is roughly where the gray material is seen in the images above),

one can clearly see the impact that the proposed 2-story improvement will have when extended ~60' to the north (or left in the below pictures) beyond the original set-back as the site was originally developed. Where occupants and guests of the proposed residence at 594 Lairmont Place will not only be able to see into the subject's rear yard, but also the rear living area of both levels of the subject's residence; thus, affecting the subject's privacy.

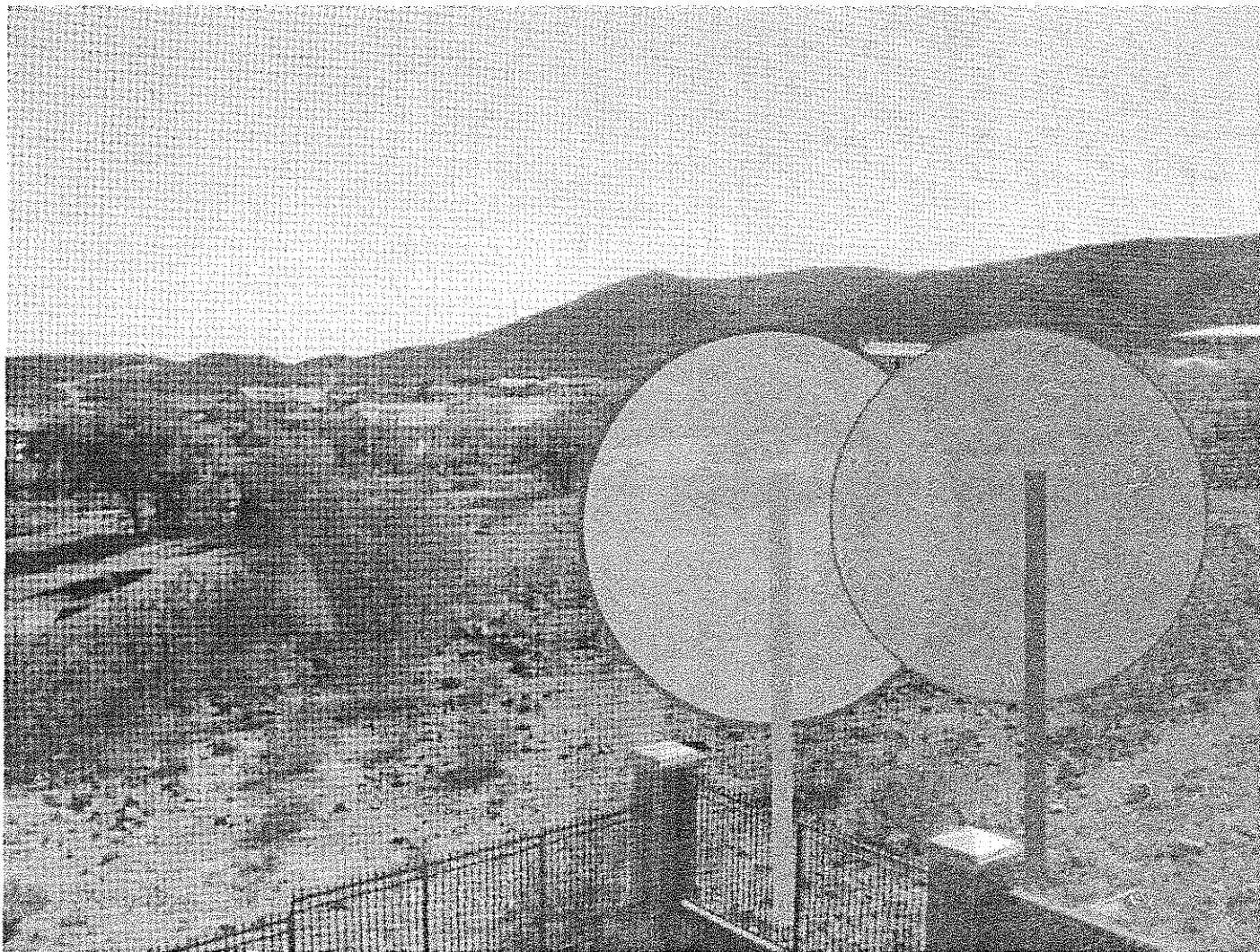
The privacy issues cited in the paragraph above already exist, were addressed in this review and shown in the photographs of the subject property.

- The subject property has extensive glass areas on the first and second levels, facing towards the golf course.
- The subject property's rear yard and pool area is surrounded by an open wrought iron fence that permits anyone on the golf course to view the rear yard and see into the glass areas of the home on both levels.
- The subject property is located 220+/- feet from Stephanie Street and the upper level of the subject is approximately at the same level as Stephanie Street. This permits anyone to look directly into the second level of the subject property from Stephanie Street and or various points along Stephanie Street, including parts of the Dragon Ridge Clubhouse parking lot.
- The subject property has open fencing for 20 feet+/- on the side property line between the adjacent lots to the north and south. This permits views of the first and second levels along with the pool area, from the ground level of these adjacent lots. It also permits views of the adjacent lots/homes from the subject.
- Two story homes are commonplace throughout MacDonald Ranch and especially along the Dragon Ridge Golf Course. It is common for the residence on the adjacent lots to have direct and indirect views into the subject property's yard areas and into the residence via the large glass areas.
- The adjacent lot to the southeast (594 Lairmont Place) is approximately 4 feet to 5 feet above the subject property. This alone would permit anyone of average height to look over the fence and observe the pool/spa and rear yard area of the subject property.

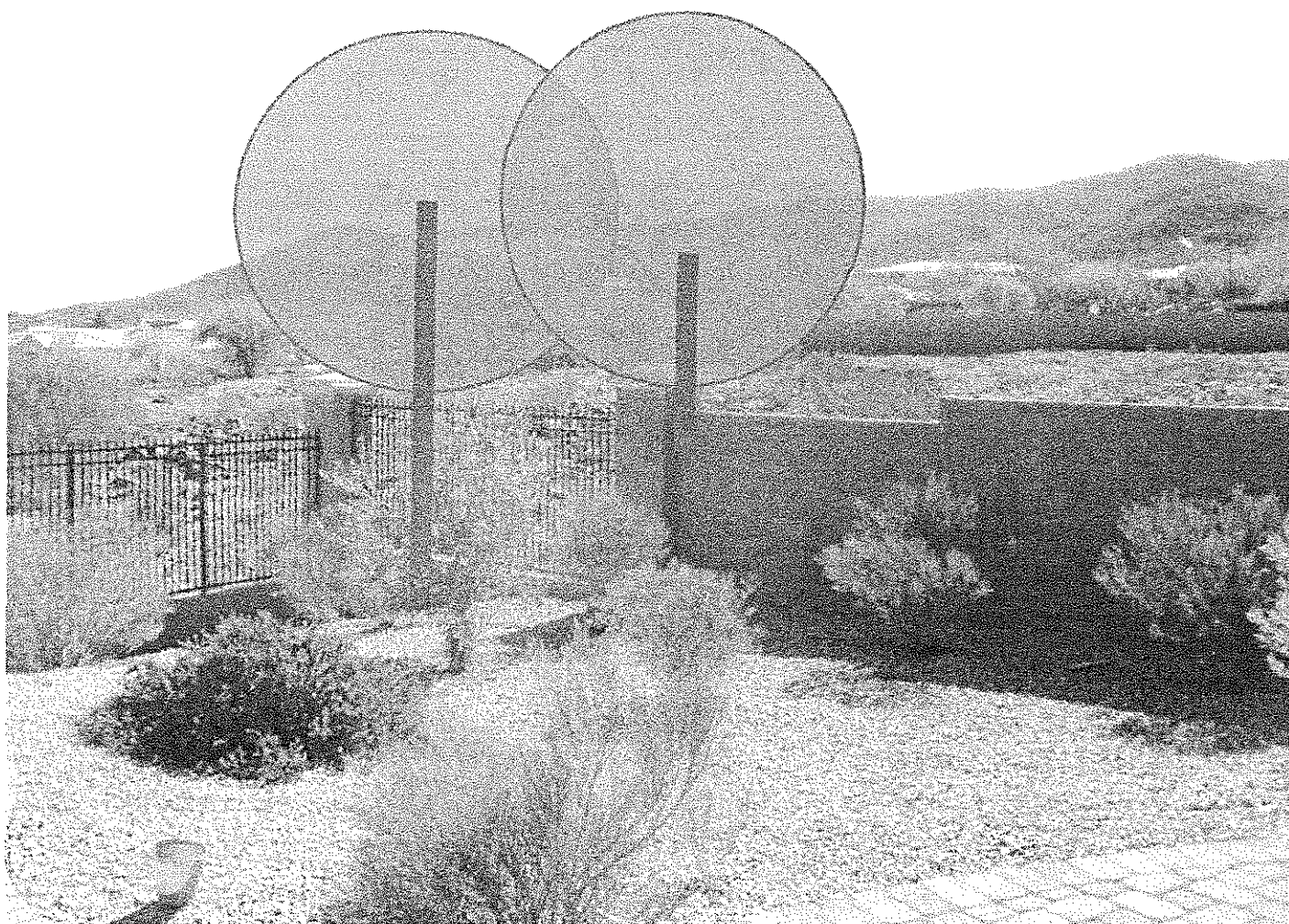
The privacy issues cited are no different from what already exists. In fact, the subject is a two story that overlooks the adjacent home of the lot to the north, especially because it is four+/- feet above the adjacent lot grade. Privacy issues are going to exist when you have large two-story homes adjacent to each other. See the subject's view (below) of the adjacent home(s) to the north.



The subject will have a direct view of the neighbor's pool, spa and rear yard area when these improvements are complete, unless the owner takes steps to increase privacy via the planting of mature trees. This is a borrowed view. If the neighbor plants trees, the subject's view of the distant city lights will be impacted.



View from the subject master bedroom, looking east. By planting trees, **the view will be obscured as they grow.** It is permissible **for the adjacent owner to plant these trees.** The same view is shown from the first level patio below.



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Example 6: Page 38-41 of the report under review

The following photographs show the view of the adjacent lot and the mountains and clubhouse beyond from various locations and angles on/in the subject property as of the date the photographs were taken. Today's view is reasonably similar to what was present as of the retrospective effective date.

Here, the photographs are misleading. On page 40, the photos are labeled as "looking north east" when in reality, there were taken from angles that are almost entirely looking east. The photos on page 41 also are slightly misleading for the same reason. While this would not appear to be a key point, when the reader looks at the photos and transfers the direction of the views to the building and lands on the aerial, the view directions will not be correct.

When looking at the photographs, one should pay attention to the visible boundary created by the grey fill material and remember that the original buildable envelope would have been 30 feet to the right from the edge of the grey material and that the new buildable envelope extends approximately 30 feet to the left of that same visible boundary in each of the photographs.

Again, as mentioned before, the setbacks described above are in error and, no considerations was given to the fact that trees and landscaping can be planted in those setback areas, totally or partially obscuring any view.

REVIEW OF DATA PRESENTED IN THE REPORT UNDER REVIEW

CASE STUDY #1 - The Impact of a View on the Value of Vacant Residential Lots, R.M. Potgieter and C. E. Cloete, the Appraisal Journal, Fall 2010 –

The report under review repeatedly cites studies and reports and then incorporates selected quoted findings from those reports without reference to the specifics. Essentially, many of the quotes are taken out of context and misrepresented as being “material to this study.”

This is a study of residential land in South Africa and involves protection of the views of the Magaliesberg Mountain range that has historic and natural protected areas. While the study discusses the value of views, etc. it has no relevance to the subject property in terms of similarity with respect to views, location and country.

The Magaliesberg Mountain range is considered a national treasure in South Africa due to its history, vistas, views and existing archeological areas, similar to Red Rock Canyon in Las Vegas or other natural areas. It goes without saying the property owners with private lands in this area would be staunch in their defense of their views.

However, quoting statements and conclusions from other reports without the proper context is misleading. In this case, the appraiser is comparing the value of the subject’s view (and the owner’s actions to protect it) to the value of views of an expansive linear natural area in South Africa, that covers multiple townships. The following comments are from the report under review:

“In their article The Impact of a View on the Value of Vacant Residential Lots, Potgieter and Cloete state that the implied views or sight lines that prestigious properties inherently bring include unobstructed sight lines as part of property ownership.

There is no mention in the article of “**sight lines or implied views or sight lines that prestigious properties inherently bring include unobstructed sight lines as part of the ownership.**” Once again, the consultant is paraphrasing statements out of context and relevancy and implying in the report under review that these statements and conclusions were made by the authors of the case study report. This is misleading.

The report under review goes on to state on page 42:

More importantly, Potgieter and Cloete use the example of any new construction that abounds any existing housing deprives the established property owner of the

enjoyment of unobstructed views that come from being the owner of original site lines. More importantly, Potgieter and Cloete conclude that any view impediment is detrimental to the value of previously established property ownership.

The statement above was not the conclusions of the authors of the study, but those of the respondents in both court cases. From the article:

“The respondents in both court cases argued that the construction of new houses in front of their existing houses would deprive them of the view enjoyed from their properties and substantially derogate from the value of their properties.”

The report under review states that Potgieter and Cloete concluded that any view impediment is detrimental to the value of a previously established property ownership. Nowhere in the article do Potgieter and Cloete state this to be their conclusion. Again, the report under review attributes these statements either out of context and or made up, to the authors of a published study, when in fact, this was not the case. This is misleading. The report under review continues on to state on page 42:

They go on to use the example of South African higher courts having heard arguments that property ownership is not restricted to land ownership only. South African lawyers argue that the ownership of real property must include site lines as part of any land ownership. Potgieter and Cloete state that it is evident that property owners regard site lines as valuable as their terra firma and should be willing to protect all site lines associated with their property ownership by any method afforded by law.

The above is not stated anywhere in the article. There are no conclusions by the authors or specific statements by the authors to the effect of “property owners regard site lines as valuable as their terra firma.” Again, this was taken from somewhere else or misstated in the report under review, as it does not appear in the article. This is misleading.

In our research, we came across this article posted on the Property 24 website, regarding the court case that was the basis for the article. The posted letter was dated 25 September 2008.

As a result of recent court rulings, the perception has grown in the SA property market that a property owner is entitled to enforce his "rights to a view" as part of his general property ownership privileges - but this is not so.

"This fact is important to note, because there is still a small handful of people who are buying houses in the belief that their view can be protected in perpetuity," says Mike Greeff, chief executive of Greeff Properties.

In general, said Greeff, the law rules that if a building, which cuts into a neighbor's view is built in accordance with the local authority's plan approval processes it can go ahead no matter how inconvenient this may be to the neighbors.

In the much-quoted Paola vs Jeeva N.O. and Others case, Mr. Paola, who owned a property high on the Durban Bluff with a 180° view applied to the court to stop his neighbor from building a double story house.

Paola contended that such a building would reduce the value of his home by at least 30% and detract from his enjoyment of it. He referred to Section 7 (1) (b) (II) of the National Building Regulations which empowers the local authority to refuse approval to any scheme which might lower the value of an adjoining property.

Jeeva replied that he was merely exercising the development rights of the property and was not contravening any laws. The court ruled in favor of Jeeva, saying that it would be unfair to give Paola an extra privilege on account of his being in the area ahead of subsequent buyers.

Similarly in the Hout Bay case of Clarke vs Faraday, the court ruled in favor of the latter, saying that although it was unfortunate that Clark's view was spoilt, he should have known when he bought his house that his neighbor had the right to build into his view line. To allow Clark to stop Faraday, it was ruled, would be to give him rights that were not included in the relevant title deeds.

Where a proposed new building contravenes regulations promulgated by LUPO (Land Use Planning Ordinance) a very different court ruling can usually be expected if a view is impinged, but in the Cape Town Municipality - and, no doubt, others - for the present, said Greeff, it looks as if it will take more negative factors than view impairment to prevent a building going ahead so long as it complies with the usual planning regulations.

For more information, contact Mike Greeff on 021 763 4120.

This article was readily available online, but not researched nor were the findings included in the report under review. The article cited in the report under review as a “case study” was nothing more than observations of events.

The report under review implies the statements made regarding the landowner’s rights to permanence in the view’s sight lines are valid and that the courts heard these arguments. This is not true. From the letter above, it is clear that the South African courts did not agree with the property owner in this case or in another case cited in the same article on the Property 24 real estate website in South Africa.

The Million Dollar View: A Study of Golf Course, Mountain, and Lake Lots, David Wyman and Stephen Sperry:

The following is excerpted from the report under review:

In their article titled A Study of Golf Course, Mountain, and Lake Lots, David Wyman and Stephen Sperry convincingly argue that considerable value can be attributed to properties with golf, water, or mountain views. Wyman and Sperry prove their position utilizing a spatial hedonic research model that assesses the hierarchy of premium values associated with golf course, water or mountain views. Wyman and Sperry point out that premium values for golf course properties is related to more than just playing golf, instead premium values could be related to the views afforded on golf course developments.

It is important to note that Wyman and Sperry point out that their research was undertaken during a period when real estate prices were experiencing substantial change. Nevertheless, they stand firm on the position that the appraisal of golf, water or mountain properties with premium views should be addressed by appraisers with enough effective spatial tools and research points to justify valuations in their own markets.

*My review of published articles affirms the value of views and privacy, especially in the context of high end land and custom houses located in private golf course communities. **The published research allows for preliminary qualification of the DC; however, the published research is not market specific and does not allow me to quantify the DC in the subject market.***

The article cited in the report under review again provides some direction and evidence as to the contributory value of a golf course view. The article references three published

studies that indicated price premiums of 21% to 27% for homes with golf course frontage. Again, the premium is for the golf course frontage (which the subject retains). This is in sharp contrast to the expert's conclusions of damages of 30% to 40% for a borrowed view.

Had the report under review employed any of the suggested methods (as recommended in the book Real Estate Damages) for establishing baselines values (including regression or paired sales), the methods would have evidenced the contributory value of the golf course frontage that remains with the subject property.

When contrasted to the survey results and other data, it would have been clear that the survey was flawed and the damages estimated and concluded in the report under review are 3 to 8 times the contributory value of the entire golf course view, for a "borrowed view" that is not guaranteed or protected under the law. How could this be?

One last note, the study cited concluded the value premium was for the golf course frontage and view of the golf course. There is no reference to the borrowed view across adjacent lots on a golf course. The articles above cited in the report under review are not case studies of the subject property or even case studies of situations like the subject (borrowed views).

These articles simply reinforce that which is widely known and accepted regarding properties in MacDonald Ranch and other communities. Properties with golf course frontage and city views, command a premium.

Page 44 – CASE STUDY #2 – Red Rock Country Club

Case study #2 is interesting information, but has no bearing on the subject property. In this case, the golf course operators want to generate income and reduce maintenance costs, so they are selling some of the excess land.

The statement in the report under review that the owners are being careful to avoid any view diminution is not supported here. They are apparently allowing pools and other amenities. This means there will be people on the new site areas and they will have a view of the adjacent sites, reducing the privacy.

In the work file provided to us was a copy of the purchase and sale agreement along with the attachments and exhibits. In our review, we did not find a reference in the purchase agreement to a document that limited on-site improvement to flatscape.

Regardless of what is stated, if the area can be used for pools or other flatscape improvements, people will occupy these areas. If people are in these areas, sight lines are changed and privacy reduced as these same people now have a different view angle on the adjacent properties, reducing privacy.

The report under review mentions the offering of this golf course land to the adjacent landowners back in the 2nd and 3rd quarters of 2013. Per the report under review, one year later, only 29 of the 810 owners are in contract to acquire some of the additional site area. It would seem that less than 4% of the eligible homeowners see any benefit in acquiring this land.

This is labeled as a “case study” but there is no data, findings or appraisal methods utilized here that develop or establishes a diminution of value for the subject property.

Page 45 - CASE STUDY #3: Survey of Real Estate Professionals

The report under review under review states:

“The survey was created with specific care given to providing an accurate, consistent, and neutral presentation of the facts and circumstances of this case.”

Details and summary of the survey:

- 7,329 emails were sent out
- 252 responses were received
 - 59 complete responses
 - 180 partial responses
 - 13 disqualified responses

Experience of Agents

- 47.25% had less than 5 high-end transactions
- 19.23% had no experience
- Over 66% of the respondents had little or no experience selling high-end golf course homes.

General – The Survey:

- Does not disclose that the views are limited, primarily from the second level and that the subject property's main floor is 10+/- below the street grade of Stephanie Street
- Does not show any of the views for the survey taker to better comprehend and evaluate the problem
- Requires the reader to look at aerials without the benefit of topography
- Does not educate the reader as to the correct setbacks
- Does not educate the reader of the owner's ability to plant trees
- Does not adequately present the factors affecting the subject property

If the survey indicated the golf course planned to plant several trees in front of the rear property line of the subject, the respondents in all likelihood would have said the planting of the trees would affect the market value of the subject property.

From the survey responses and conclusions, one can draw the following conclusions:

- Houses on golf courses would be worth as much as 50% more if they are not next to a vacant lot
- Houses on golf course would be worth as much as 50% more if they are not next to a significantly larger home and larger lot

Are these conclusions or opinions from the agents realistic? If this is true, why is it not supported by market data in the report under review?

Opinion is not fact unless supported by transactional market data.

This is the inherent problem with surveys. Often (as is the case here), the participants have nothing at risk and can say what they want without consequences or accountability. This was clearly pointed out in the book Real Estate Damages.

The report under review widely quotes the book and the principles and techniques from that book were the basis for the report under review. The report under review repeatedly cites quotes from the book (favorable or in support of the findings), however, it omits a

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number of warnings and fails to follow the recommendations of the author (Randall Bell) with regards to how to design and administer a survey that won't reflect hypothetical bias.

The subject property involves a 10,000 SF home with a market value of \$2.5 million. It is located in an exclusive, manned guard gated, golf course anchored community where the housing price ranges from \$500,000 to \$7-million and the median price exceeds \$1-million dollars.

- How many of the surveyed agents have sold this type of property and are familiar with what buyers find "detrimental" in this price range?
- How many of the agents surveyed own properties similar to the above in would qualify as a buyer so they could accurately state a buyer's motivation and preferences?

On page 48 of the report under review, the surveyed agents were given a photograph and asked to draw conclusions based upon an aerial view of the subject along with the original lot and expanded lot areas. The agents were asked: "Does the additional adjacent 14,000 square feet of "blue" land, have an impact on the value and or marketability of the subject "green" property.

Observations

- 107 agents answered and 85% of them said yes, 15% said no
- 145 agents skipped this question. They didn't know or they didn't have an opinion?

The agents were asked a follow-up question: "You answered yes. The additional adjacent blue land does have an impact on the value and or the marketability of the subject green property. Which of these options would you consider the most likely impact on value?

Observations

- 92 answered the question. Why did 160 skip the question? Did they not know? Are these agents informed and experienced enough to provide an answer?

The survey is flawed. The agents were not permitted to see the property from the street level. They are looking at plans and offering "personal opinions." There is no consensus here. The survey is highly misleading for the following reasons:

- The plans/aerials are flat and do not exhibit the topography issues.
- 19% of the respondents had no experience selling high end properties
- Failed to consider the responses of 116 people (question 6) that stated the subject could lose value and have marketability issues for many reasons, just being on the course, being next to vacant, etc.
- Failed to consider the responses of 114 agents (question 7 and 8) regarding the impact of many aspects, prior to any construction on the adjacent lot. Many comments noted due diligence should be done prior to a purchase of the subject. This is what the owners should have done, prior to purchasing the subject. This is not mentioned or considered in the report under review.
- The survey states the subject is a listing at \$5,000,000 in the survey, when the value as of the date of value is \$2,500,000. Respondents are being asked the impacts on a hypothetical \$5,000,000 property when the subject is a \$2,500,000 property.
- The addition of 14,000 SF+/- was made to lot 2. While the owner of lot 2 also owns lot 1, coloring in lot 1 is misleading when asking about the addition to lot 2.
- The survey singles out the subject property and presents allegations and information in error, as fact.
- The questions are written to evoke a negative response. Had the questions been more neutral, a fair and balanced response would have been different.
- The agents were not given sufficient information regarding the view being borrowed.

The survey was not professionally designed (as recommended by Bell). It failed to remove the hypothetical bias inherent in creating such a survey. By not reminding the agents that views are not guaranteed, the survey suggests the 45-degree views from the subject site towards the clubhouse are “entitlements” of the subject property.

Question: If the agents were asked to look at an older aerial, that showed the lots and golf course (without any homes on them) and were asked if the value of 590 Lairmont Place (lot 3) was equal to, lesser than or greater than 586 Lairmont Place (lot 4), assuming the lots were equal in size, what would they conclude?

In the question above, the agents would not be influenced by other factors and they would provide their opinion based upon their knowledge and observations of the lots, without being introduced to supposition.

In this case, the size and layout of the subject lot in contrast to the adjacent lots and golf course would be the only influence. While this still would not be “market evidence” via an actual transaction, it would not be biased by hypothetical conditions.

Failure to consider the subject transaction and contrast it to the survey findings

The subject was purchased as an REO for \$2.3 million; this was disposition value at that time and represents a \$198,000 difference (7.92%) from the “unimpaired value” of \$2.5 million. Most agents and analysts would agree that an all cash sale under REO terms would require a discount and 7.92% is within the typical range.

According to the agent survey, being next to vacant land with unknown building plans would require a discount of 1% to 50% and per the conclusions in the report under review, and from the survey results, the consultants determined 30% to 40% as reasonable damages to the value.

The report under review concluded that being adjacent to vacant land (with unknown plans) impaired the subject’s value by 30% to 40% (based upon the agent surveys with a range 1% to 50%).

- **Why did the subject property sell for less than an 8% difference below its market value, especially considering the 7.92% discount would be normal for an REO and an all cash transaction?**

On page 2 of the report under review, the consultant accepted the unimpaired value of \$2,500,000 and was aware of the \$2,302,000 sale price and terms. The report under review even labeled the sale price as “disposition value” and defined this as a forced sale, where the seller is under compulsion to sell and the reason for the 7.92% discount. The only logical conclusion is the agent opinions in the survey are not reliable.

Effectively, the actual sale of the subject property only took 13 days and it received multiple offers over the listed price. Additionally, the subject property did not meet community standards per the listings and some work had to be done to bring it up to standards. This would have closed the gap between the disposition sale price and market value, as this an out of pocket expense to the buyer.

Knowing the property sold for less than 8% of its unimpaired market value (normal for the condition and terms of sale), there is no way to reconcile a 30% to 40% value loss being applicable.

R. Scott Dugan Appraisal Company, Inc. - 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147

Hypothetical Bias

The hypothetical nature of the survey raises numerous issues with its validity. It is important to comprehend that property views are three-dimensional.

- The aerial photographs in the survey portray a two-dimensional property.
- The survey did not include key topographic details (the subject 10 to 12 feet below grade of Stephanie Street or the effect of trees along Stephanie and or on the golf course.
- As such, the respondents only had a two-dimensional perspective from which to draw conclusions.
- From the aerials, the respondent cannot properly evaluate the impacts to a property when they cannot envision the alleged detrimental condition in a three-dimensional plane.

As a result, the respondents are reacting to “hypothetical conditions” created by the survey. The agents in this case have not been provided sufficient information from which to make an informed opinion.

Compounding this issue, the responses are not based upon observed behavior of buyers and sellers, but rather opinions (of the agents) based upon conditions that do not actually exist and or that exist differently in a three dimensional plane as opposed to a two-dimensional plane.

“The truth, the partial truth or anything but the truth: Survey reliability and property valuation” – 2002

This article discusses the problems created by “hypothetical bias” as it relates to real estate and values.

- Not reliable when they cannot be validated externally with transactional data
- No consequences if the survey overstates the damages, hence hypothetical bias become a serious liability in determining the true damages.

From the book Real Estate Damages:

Market Data

The quality of the market data ultimately drives the quality of the analysis, regardless of the analytical approaches chosen. Quantifying damages based solely on experience and professional judgment is reckless at best and probably unethical,

particularly when some type of market data for measuring the impact of almost any detrimental condition is available.

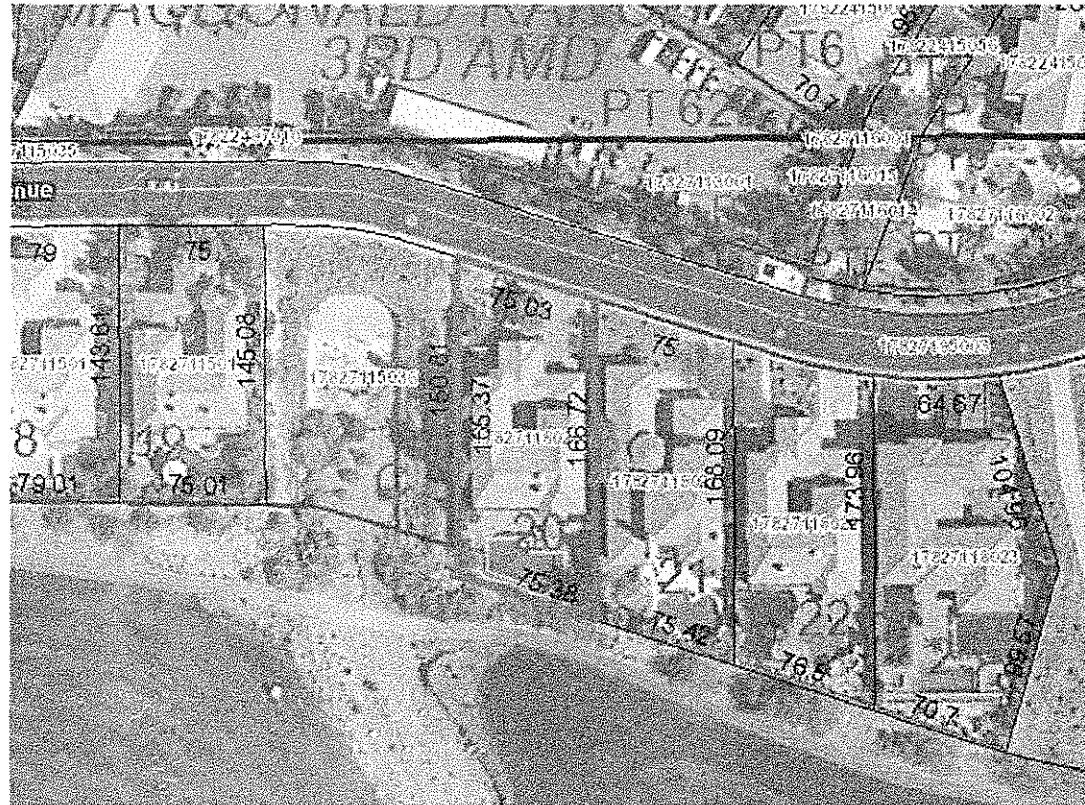
Failing to research and apply relevant market data is the single most common flaw noted in the analysis of detrimental conditions. While preconceptions about the analysis of detrimental conditions do exist, questions can only be resolved with relevant market data. The effect of a detrimental condition cannot be generalized and is unique to a particular market and the facts of a particular property at a specific date of value.

“It is never appropriate to generally assume that a detrimental condition causes a loss in value or to assume value diminution in the absence of supporting data.”

The fact that a property is impacted by a detrimental condition does not automatically mean that it has a material impact on the property’s value.
Detrimental conditions may or may not cause a material impact on value.
Frequently, detrimental conditions have no material impact on value whatsoever.
 In the analysis of detrimental conditions, it is important that the appraiser be knowledgeable about available tools, properly select and apply those tools, avoid unproven or suspect methodologies, and ultimately have relevant market data to support opinions and conclusions.

OTHER DATA AND OBSERVATIONS

Here are a few sales contrary to the statements and findings in the report under review.



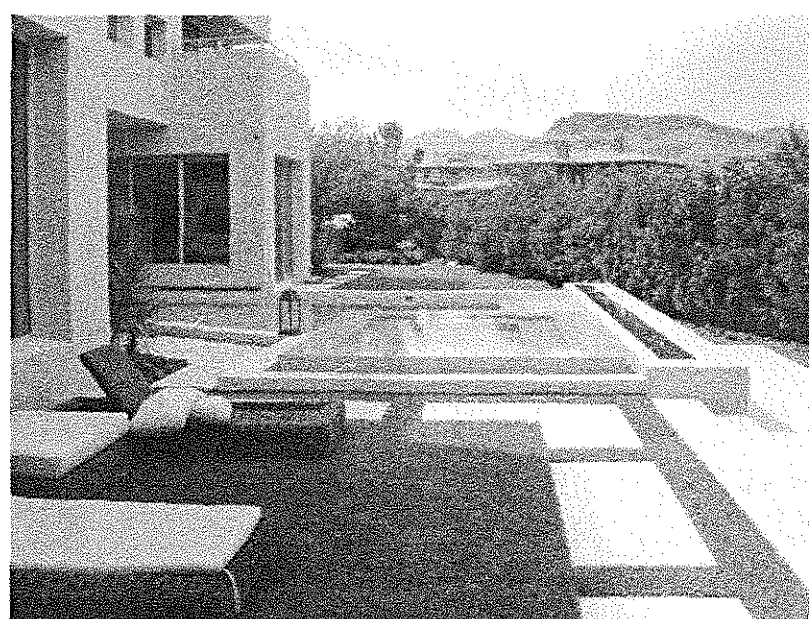
Sales #1 and #2 are located on the golf course, with similar views and are model matches. #1 also sides to the open space area of the golf course with additional privacy and slightly enhanced views down the fairways due to the open area.

#	Address	Sale Price	Date	GLA	Features
1	1327 Quiet River	\$830,000	11/09	5037	3- G, Pool, next to open space
2	1319 Quiet River	\$830,000	7/09	5037	3- G, Pool

Despite the adjacency to an open space area, sale #1 sold for the same price as sale number #2 during the same general time. It should be noted that both sales were distressed; however, #1 did not gain any premium for its location next to an open lot and its expanded view across that lot.

#	Address	Price	Date	Lot	View	GLA
1	90 Meadow Hawk	\$2,999,000	6/2014	17,040	GC-City	6033
2	356 Drifting Shadow Wy	\$3,100,000	4/2014	21,780	GC-Open	7333
3	23 Skybird Ct	\$2,855,000	2/2014	20,473	GC-City	7241
4	19 Promotory Ridge	\$2,600,000	11/2013	24,829	GC-City	6067

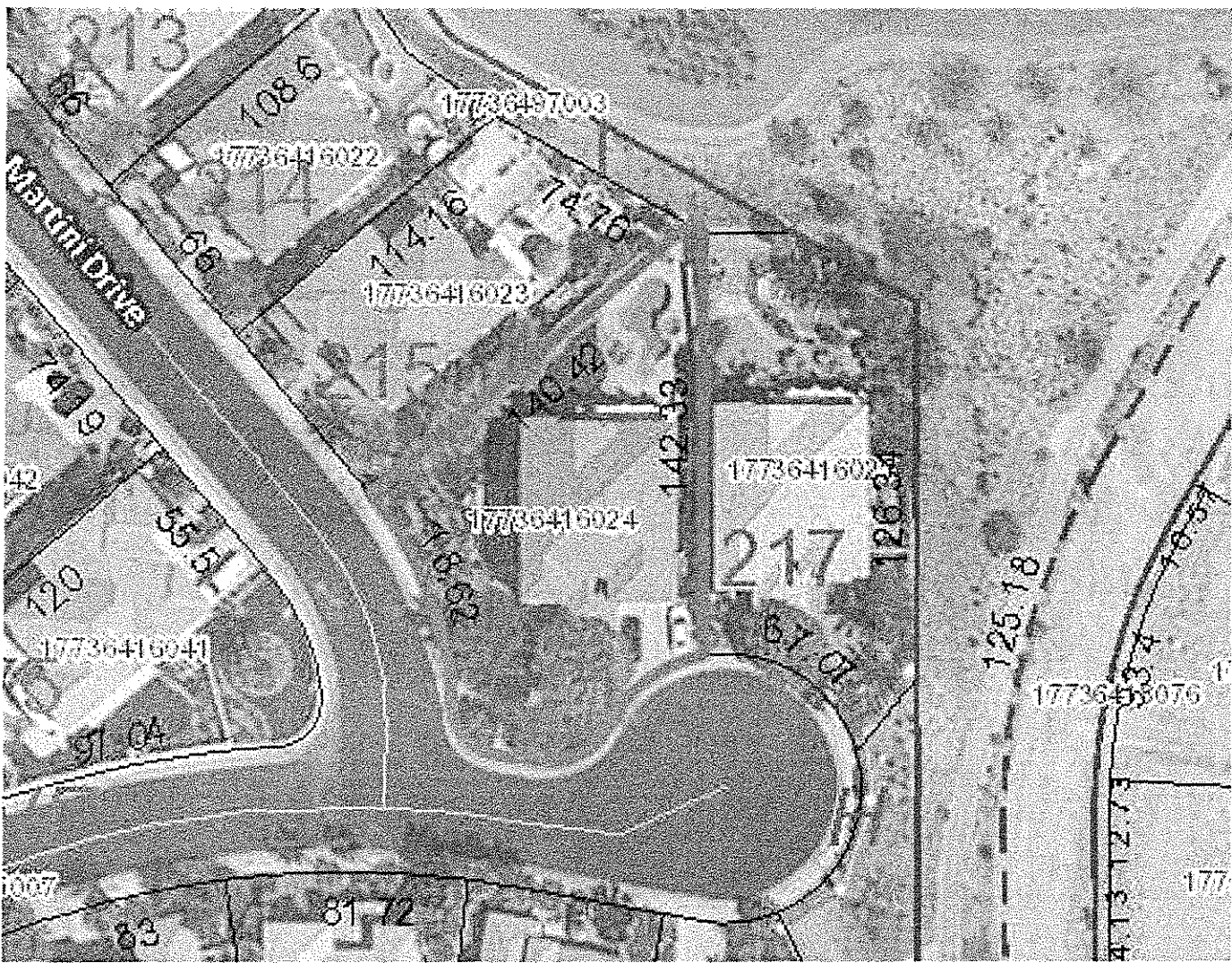
90 Meadow Hawk sold for a very similar price, as three other homes in the same development that were similar in quality, lots, golf course and city views. This despite the facts that the adjacent lot to the north had planted trees that partially blocked the views from 90 Meadow Hawk and despite the fact that the owner of 90 Meadow Hawk had planted a barrier of trees along the rear lot line, virtually eliminating any view of the course from the lower level.



As can be seen in the photos, the adjacent property overlooks the rear yard and rear areas of 90 Meadow Hawk, reducing privacy. The rear yard has trees to block the view of the course. Pine trees on the site and on the adjacent lot will grow and block the city view.



#	Address	Price	Date	GLA	Lot	Other
1	2680 Botticelli Dr.	\$975,000	11/2014	4497	12,632	Strip & Golf
2	2696 Botticelli Dr.	\$860,000	8/2014	4497	7,841	Strip



Sale #1 has 5.32 feet of frontage on the golf course and has a second level view “over the adjacent to rear yard areas” of the golf course and distant city. This sale has a 12,632 SF oversized lot. Sale #2 is a model match on an elevated lot with a city view, overlooking the adjacent home (to the NW) from the second level. This sale has a 7,841 SF lot.

While sale #1 has only 5 feet of golf frontage, it sold for \$115,000 more than #2. Both lots have city views and sale #1 has a golf view. However, the view of the golf course is across the adjacent two lots.

Adjusting the lot at \$12/SF for lot size difference (4,791 sf difference X 12 = \$57,492) reduces the price difference from \$115,000 to \$57,508, which is the contribution of the golf course view from the second level. This equates to an indicated contribution of 5.9% for the golf course view from the second level, which is consistent with other sales data.

It is also important to note that the adjacent homes to this sale have direct views from their yards into the yard and home area of sale #1. This property sold for an equal price to a model match (after adjustment for lot size), despite having a borrowed view over two adjacent lots and its loss of privacy due to the angled lot next to it. This is inconsistent with the findings of the agent survey.

MacDonald Ranch CC&Rs

Recitals – Page 1 – Item B

- “There is, however, no guarantee nor obligation that The Foothills will be developed in its entirety or in a manner so approved by the city or intended by Declarant.”

As stated in the brochure for MacDonald Highlands, the development is subject to change. This would include any/all lands owned, or controlled by the developer, including the golf course.

Under the development rights in the CC&R's, the Declarant (the developer in this case) has the rights to add or withdrawal lands from the project and or from the common area. As such, anyone purchasing a property in the subject project should be aware of the potential impacts of changes in the common areas or other areas owned or controlled by the developer. This is stated within the CC&R's and binding on owners within the project.

Definitions – Page 3

- Building Envelope – means the maximum allowable building area on a lot or parcel with the Properties. The building envelope includes both the surface area on a lot or parcel, the air space above it and the subsurface below it.

The building envelope is as defined within the applicable CC&R's and only includes the area within the property line boundaries. On page 34 of the report under review, the report under review implies that the subject's building envelope has changed, due to the additional land acquired by the adjacent lot. The subjects building envelope (lot boundaries), have not changed.

Under Article 15, the Master developer has the right to modify roads, design elements, etc. All of which, could or would affect the views of various properties. At the date of value, the developer was in control of the project and had retained all rights to modify the development. All purchase agreements are subject to the CC&R's and the CC&R's permit the developer maximum flexibility. The CC&R's have no provisions for the protection of views or sight lines.

CONCLUSIONS OF THE REVIEW

Within the report under review, there were a number of issues and factors cited that were in conflict with known facts including the physical and economic characteristics of the subject properties and in conflict with generally accepted appraisal practice as mandated by The Uniform Standards of Professional Appraisal Practice.

While the report under review repeatedly cited the book "Real Estate Damages" and referenced, quoted and paraphrased the methods presented in this book, the report under review failed to follow the methodologies from the book and consistently violated the principles and the recommended procedures for completing a reliable damages analysis.

The report under review failed to apply accepted valuation methods, which would have permitted recognition of the obvious, the agent survey and conclusions from those surveys are severely flawed, for any number of reasons, including hypothetical bias.

The report under review concludes (based upon the agent surveys) a diminution in value of 30% to 40%. This range is derived from the agent surveys that concluded a value loss and market times of:

- Value loss if the adjacent land is vacant of 1% to 50% and marketing time of 1 to 365 days.

- Value loss if the land was developed (new home) of 1% to 20% and a marketing time of 1 to 180 days.

How can the conclusion be 30% to 40% when the range was 1% to 50% and 1% to 20%? This same survey effectively stated that being next to a vacant site lowers the value of the home from 1% to 50%, when no evidence (market data) is presented to confirm this as being true.

If this were a valid conclusion, it would be simple to validate using direct sales comparison of custom homes next to vacant lots vs custom homes not next to vacant lots. A loss in value of up to 20%, for being next to an improved home, is not supported in the report under review by market data. Nor was it crosschecked by accepted methods to validate or invalidate the findings of the survey.

Based upon these findings, it can only be concluded that the report under review was not developed within generally acceptable methods and guidelines and that the conclusions stated within are not reliable.

It is our conclusion and opinion that the report under review:

- Uses a questionable and controversial survey method to develop its findings and conclusions.
- The survey method was not developed or administered as recommended in the book Real Estate Damages.
- Exhibits bias in both the survey and throughout the report under review. This is in conflict with the provisions of the Uniform Standards of Profession Appraisal Practice.
- The conclusions ignore market data and other evidence to the contrary of the findings in the report under review.

While the use of a survey is acceptable in rare cases, the report under review fails to address or employ crosschecks to guard against known pitfalls of surveys, including hypothetical bias. The findings could have easily been validated or invalidated with market data. This would have lead the consultants to conclude that no damages were present.

It is our opinion that the consultants employed flawed methodologies to prove damages, where common sense and application of more accepted valuation methodologies would have invalidated these findings.

EXHIBIT O

Page 2

1 DEPOSITION OF MICHAEL TASSI, taken at 3800 Howard
2 Hughes Parkway, Seventeenth Floor, Las Vegas, Nevada 89169,
3 on Thursday, February 5th, 2015, at 10:26 a.m., before
4 Johanna Vorce, Certified Court Reporter, in and for the
5 State of Nevada.

6

7 APPEARANCES:

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Page 3

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14 Brandon.Kemble@cityofhenderson.com

15 Also Present: SARAH GUNNERSON

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I N D E X

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Page 5

1 LAS VEGAS, NEVADA; THURSDAY, FEBRUARY 5, 2015
2 10:26 A.M.
3 -oOo-
4 (The Court Reporter was relieved of her duties
5 under NRCP 30(b)(4).)
6 Whereupon,
7 MICHAEL TASSI,
8 having been first duly sworn to testify to the truth, was
9 examined and testified as follows:
10
11 EXAMINATION
12 BY MR. GUNNERSON:
13 Q. Could you please state your name and spell your
14 last name?
15 A. Michael Tassi. And it's spelled T as in Tom, a, s
16 as in Sam, s as in Sam, i.
17 Q. And let me just introduce myself. We met
18 previously. My name is Spencer Gunnerson, and I represent a
19 couple of defendants, Michael Doiron and MacDonald Highlands
20 Realty, in this case. We have noticed your deposition.
21 Are you here today pursuant to a subpoena?
22 A. Yes.
23 MR. GUNNERSON: I'm going to mark this Exhibit A.
24 (Defendants' Exhibit A was marked
25 for identification.)

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1 MR. GUNNERSON: I don't know that you received the
2 top part of this. But I think you may have received the
3 bottom part.
4 MR. KEMBLE: Sorry. Counsel, what do you mean by
5 "top part"?
6 BY MR. GUNNERSON:
7 Q. I'll show you. On this there's a Notice of Taking
8 Deposition, which I don't think was supplied to you. This
9 was supplied for the parties. But if you'll see -- go two
10 pages into it. There's a deposition subpoena. Do you see
11 that?
12 A. Yes, I do.
13 Q. Is this the same copy of the same deposition
14 subpoena that you received in order to come today? You can
15 take a second and look at it, if you'd like.
16 A. Yes. This looks like the one.
17 Q. And on that last page, page 3 of 3 -- you see that
18 on the very last page?
19 A. Yes, I do.
20 Q. It identified matters on which the examination was
21 requested. Had you reviewed those prior to coming to your
22 deposition today?
23 A. Yes, I did.
24 Q. Are you the person with knowledge regarding these
25 topics?

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1 A. Yes, I am.
2 Q. Have you ever had your deposition taken before?
3 A. Yes, I have.
4 Q. Approximately how many times?
5 A. I believe it's only been once.
6 Q. One other time.
7 Can you tell me in what capacity were you having
8 your deposition taken in that other deposition?
9 A. Subject matter expert on a particular development
10 project.
11 Q. So it was as an expert, not in your employment
12 with the City of Henderson; is that correct?
13 A. Well, no. I take it back. It was because I was
14 employed with the City of Henderson.
15 Q. Was it a zoning issue that you were dealing with
16 or another issue?
17 A. It was a zoning. It was a development agreement.
18 Q. Did the development agreement deal with zoning
19 issues?
20 A. It did.
21 Q. Now, just as a reminder, the oath you've taken
22 today is the same oath that you would have taken in a court
23 of law and holds up the same penalties for perjury. Do you
24 understand that?
25 A. I do.

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1 Q. And just as a rough outline before we get started,
2 if you need a break, obviously you can let me know. And as
3 long as we don't have a pending question, you can take any
4 breaks you need to. I hope today will be actually very
5 quick. So I hope you don't need to take breaks. But I
6 don't know what other questions the other attorneys intend
7 on asking, so I never know the exact length.
8 If you don't understand what I'm asking, please
9 let me know, and I'll attempt to rephrase it.
10 A. Okay.
11 Q. The court reporter, as you can see, is taking down
12 everything we say. As such, I'd ask that you answer audibly
13 like you have been. Is that fair?
14 A. That is fair. Yes.
15 Q. And we will try, if we can, not to talk over each
16 other. I will try to wait for you to complete your answers,
17 if you'll wait for me to complete my sentences. Is that
18 fair?
19 A. Sounds like a deal. That's fair.
20 Q. Is there any reason why you cannot present your
21 most truthful testimony today?
22 A. No.
23 Q. For example, are you under any medications that
24 would keep you from being able to give testimony today?
25 A. No.

Page 9

1 Q. Since high school, what education have you
2 received?
3 A. I have a bachelor's degree.
4 Q. What is your bachelor's degree in?
5 A. It's a bachelor of science in architecture.
6 Q. Do you have any other post high school degrees
7 other than your bachelor's's degree in architecture?
8 A. No other post high school degrees, no.
9 Q. Do you have any other certificates or any other
10 type of training, formal training, that you've had since
11 receiving your bachelor's degree in architecture?
12 A. I don't know that my certification as an American
13 Institute of Certified Planner counts. Is that formal
14 education? I am a certified planner.
15 Q. You are a certified planner. Did that require any
16 formal education to become a certified planner?
17 A. It required years of experience and an
18 examination.
19 Q. Did you take a class for that examination?
20 A. I did not, no.
21 Q. But you became a certified planner, so you passed
22 it nonetheless?
23 A. That's correct.
24 Q. Could you tell me where you're currently employed?
25 A. Did you say where I'm currently employed?

<p style="text-align: right;">Page 10</p> <p>1 Q. Yes.</p> <p>2 A. The City of Henderson.</p> <p>3 Q. What is your job title?</p> <p>4 A. I am the planning manager.</p> <p>5 Q. How long have you been the planning manager at the</p> <p>6 City of Henderson?</p> <p>7 A. It's been seven years.</p> <p>8 Q. How many planning managers are there at the City</p> <p>9 of Henderson?</p> <p>10 A. Just one.</p> <p>11 Q. Did you have any other job titles at the City of</p> <p>12 Henderson prior to being the planning manager?</p> <p>13 A. Yes.</p> <p>14 Q. What was your job title previous to being planning</p> <p>15 manager?</p> <p>16 A. Principal planner.</p> <p>17 Q. How long were you a principal planner?</p> <p>18 A. I believe it was three years.</p> <p>19 Q. Do you know approximately how many principal</p> <p>20 planners there are at the City of Henderson?</p> <p>21 A. Currently?</p> <p>22 Q. Sure. Currently.</p> <p>23 A. There are four.</p> <p>24 Q. How many principal planners were there at the City</p> <p>25 of Henderson when you were a principal planner?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Three years.</p> <p>2 Q. I hate to ask if you've had any other titles</p> <p>3 because you've worked there for so long.</p> <p>4 A. There was one more.</p> <p>5 Q. One more. What was the one before planning</p> <p>6 analyst?</p> <p>7 A. Planning technician.</p> <p>8 Q. Do you know how long you were a planning</p> <p>9 technician?</p> <p>10 A. It was approximately three years also.</p> <p>11 Q. So if my calculations are correct, you have been</p> <p>12 working with the City of Henderson for somewhere around 24</p> <p>13 years?</p> <p>14 A. I could be that off. I've been there for 20</p> <p>15 years.</p> <p>16 Q. Twenty years?</p> <p>17 A. Some of these are guesses, and I'm probably wrong</p> <p>18 on the number of years.</p> <p>19 Q. Would you say though that at least with the</p> <p>20 planning manager as seven years, is that correct?</p> <p>21 A. That's correct. Um-hmm.</p> <p>22 Q. So it would be somewhere with the number of years</p> <p>23 prior to being the planning manager?</p> <p>24 A. Yes.</p> <p>25 Q. And I'm not saying I didn't add them up wrong</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Including myself?</p> <p>2 Q. Yes.</p> <p>3 A. I believe there were five. Although, I'm not sure</p> <p>4 on that number.</p> <p>5 Q. Did you have any other titles at the City of</p> <p>6 Henderson prior to being a principal planner?</p> <p>7 A. Yes.</p> <p>8 Q. What was your --</p> <p>9 A. Senior --</p> <p>10 Q. -- title?</p> <p>11 A. Senior planner.</p> <p>12 Q. How long were you a senior planner?</p> <p>13 A. I believe it was two years.</p> <p>14 Q. Any titles before being senior planner?</p> <p>15 A. Community planner.</p> <p>16 Q. How long were you a community planner for at the</p> <p>17 City of Henderson?</p> <p>18 A. I want to say it was six years.</p> <p>19 Q. Any positions or titles prior to being a community</p> <p>20 planner with the City of Henderson?</p> <p>21 A. Planning analyst.</p> <p>22 Q. How long were you planning analyst at the City of</p> <p>23 Henderson for?</p> <p>24 A. Oh, boy. I'm not exactly sure.</p> <p>25 Q. Can you give me an estimate?</p>	<p style="text-align: right;">Page 13</p> <p>1 either. Let me make sure I got the planning manager.</p> <p>2 A. Yeah.</p> <p>3 Q. What do your duties entail as planning manager at</p> <p>4 the City of Henderson?</p> <p>5 A. I am responsible for the planning services of our</p> <p>6 department, community development, including long range</p> <p>7 planning and current planning. Every development</p> <p>8 application that comes to the City of Henderson goes through</p> <p>9 my division.</p> <p>10 Q. Does that include planning as it pertains to</p> <p>11 zoning --</p> <p>12 A. Yes.</p> <p>13 Q. -- in the City of Henderson?</p> <p>14 A. Yes.</p> <p>15 Q. If there's a request for a zoning change, will you</p> <p>16 see those requests?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Do you follow the process of the zoning change</p> <p>19 request from inception to completion, or do you get involved</p> <p>20 at some other point in the process?</p> <p>21 A. It's basically from inception to completion, yes.</p> <p>22 Q. When the zoning submission or zoning change</p> <p>23 request has been approved and zoning maps need to be</p> <p>24 updated, are you aware of the process for updating the</p> <p>25 zoning maps?</p>

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1 A. I am.
 2 Q. Does that include the zoning maps online?
 3 A. Yes.
 4 Could I clarify that?
 5 Q. Of course.
 6 A. I don't -- my department isn't responsible for
 7 putting them online. My department is responsible for
 8 submitting the information to be put up online.
 9 Q. For the purpose of this deposition today, we had
 10 marked as Exhibit 1 the items of which you were to have
 11 knowledge as it pertains to zoning changes, including zoning
 12 changes that would have been made online.
 13 A. Um-hmm.
 14 Q. Are you still the person with the knowledge as to
 15 when zoning changes would have been made online as it
 16 pertains to the subject matters in the subpoena?
 17 A. Yes. In this particular case, the research I
 18 performed, I do know approximately when they were placed
 19 online.
 20 Q. Did you review any documents in preparation for
 21 your deposition?
 22 A. I did.
 23 Q. What did you review?
 24 A. I looked at the zoning and land use and tentative
 25 map request for this particular project, reviewed the staff

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1 report. And I reviewed the -- the videos for both planning
 2 commission and city council. And I looked at the backup
 3 material that was submitted along with that request.
 4 In addition to that, I -- I spoke with our -- our
 5 GIS experts on -- on when that mapping occurred.
 6 Q. Did you bring any documents with you today?
 7 A. I brought a document that was a recordation of
 8 that zoning action on the property.
 9 Q. Can I take a look at that? Is that okay, Counsel?
 10 MR. KEMBLE: Let me look at it first.
 11 BY MR. GUNNERSON:
 12 Q. Does it look like this?
 13 MR. KEMBLE: Yours is much thicker.
 14 MR. GUNNERSON: Well, mine as multiple copies.
 15 MR. KEMBLE: Yeah, it looks like that. Why don't
 16 you take a look?
 17 MR. GUNNERSON: I'm just going to hold onto it.
 18 When I look at them, they appear to be the same.
 19 Although, I will note that the ones I have are Bates
 20 Stamped, and ones you have are not, because you brought ones
 21 from yours. And I note that the map on the back of your set
 22 is a lot clearer than mine. So we're going to hold onto
 23 this. And when I get to that, I'll put them both in as
 24 exhibits together.
 25 MR. KEMBLE: That's fine.

1 BY MR. GUNNERSON:
 2 Q. You've stated you are aware of the zoning change
 3 process at the City of Henderson from inception to
 4 completion, correct?
 5 A. Correct.
 6 Q. Can you give me just a general understanding of
 7 how the process begins and when it ends?
 8 A. Process begins when an applicant submits an
 9 application making a request to, in this case, change of
 10 land use and the zoning on this .34 acres. It then gets
 11 scheduled for a staff review committee meeting. So this --
 12 we provide comments back to the applicant before we schedule
 13 it for planning commission. The item then goes to planning
 14 commission. We write staff -- I'm sorry. Let me back up.
 15 We write a staff report for -- based on the -- the
 16 information they submitted. And that staff report provides
 17 the staff's recommendation based on the analyses that we've
 18 done.
 19 That gets forwarded to the planning commission
 20 with the recommendation. They hold a public hearing. The
 21 planning commission then makes a recommendation by motion on
 22 whether they're going to recommend approval of the
 23 application or recommend denial.
 24 That gets automatically forwarded to the city
 25 council. And the city council takes potentially two

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1 meetings. They have a public hearing as well. If they
 2 approve the item, then it gets forwarded to a committee
 3 meeting. And then it's just a process of creating an
 4 ordinance of those from a committee through the regular
 5 meeting at that same time for adoption.
 6 Q. Is it ultimately adopted by the city council? Is
 7 that correct?
 8 A. In the zone -- for the zone change, yes, that's
 9 correct.
 10 Q. And once the city council has approved a zoning
 11 change, do they provide notice of final action, if you're
 12 aware?
 13 A. I -- I'm not -- yes, they do provide notice of
 14 final action. I think it's in the form of the minutes. I'm
 15 not with the clerk's office, so I have some cursory
 16 understanding of that process.
 17 (Defendants' Exhibit B was marked
 18 for identification.)
 19 BY MR. GUNNERSON:
 20 Q. I'm going to hand you what I've marked as Exhibit
 21 B. The document I've handed you is entitled Notice of
 22 Henderson City Council Final Action. Have you ever seen a
 23 document like this before?
 24 A. Yes, I have.
 25 Q. Do you know if this is a notice that's provided

Page 18

1 when a zoning change has been approved by the city council?

2 MR. KEMBLE: Give me one second. I need to make
3 an objection. This is outside the scope of the matters on
4 which examination would occur. But I'll let Mr. Tassi
5 testify if he has knowledge.

6 MR. GUNNERSON: That's fine. And the sole purpose
7 of this is going to be to set forward the zoning change
8 number with the property itself. I'm not going to be
9 getting into very many of the specifics of this document.

10 MR. KEMBLE: That's fine. He may know. But if
11 he's offering testimony here, it's in his individual
12 capacity and not as a 30(b)(6) witness.

13 MR. GUNNERSON: Okay.

14 THE WITNESS: What was the question again?

15 BY MR. GUNNERSON:

16 Q. So have you seen notices like this before?

17 A. Yes, I have.

18 Q. Now, it states at the beginning that, "Notice is
19 hereby given on December 4th, 2012. The city council of
20 Henderson took the following action on the application
21 listed below."

22 Is it your understanding that on December 4th
23 there was a city council hearing regarding a zoning change
24 plan?

25 A. Yes.

Page 19

1 Q. Now, if you look at -- turn with me to -- it's at
2 the bottom right-hand corner. It's identified as PLTF1792.
3 Do you see that?

4 A. Yes, I do.

5 Q. On that it provides -- after that whereas clause
6 on the left, it talks about a -- it provides a legal
7 description.

8 In preparation for your deposition today, is that,
9 to your knowledge, the same property that you have been
10 prepared to discuss today?

11 A. I recognize the -- at the top, below resolution,
12 where it says MacDonald Highlands Golf Hole Nine. I did not
13 look at the legal description as it's listed here. So I
14 can't say that that is legal description. This appears to
15 be the property I did research on.

16 Q. If you go back to Exhibit 1 where we provide you
17 with the subpoena, on there it states in No. 2, "The
18 Henderson City Council approved zoning changes for
19 APN:178-28-520-001, certain real property totaling 0.34
20 acres, more or less, located in a portion of Section 27,
21 Township 22 South, Range 62 East, located within the
22 MacDonald Highlands master plan, off MacDonald Ranch Drive
23 and Stephanie Street." And then it goes into the zoning.

24 If you look at that page I've just marked, do you
25 see at the whereas clause where it discusses the 0.34 acres?

Page 20

1 A. Yes, I do.

2 Q. And then you see also in the next paragraph that
3 begins with "Being a portion of lot?" I just want you to
4 look at about halfway through that paragraph. It talks
5 about locating the Northwest corner Section 27, Township 22
6 South, Range 62 East. Do you see that?

7 A. I do, yes.

8 Q. Is it your understanding then that this Notice of
9 Henderson City Council Final Action is referencing the same
10 property in which you prepared to discuss today?

11 A. Yes, I do.

12 Q. If you then go back to the front page, I note on
13 here it gives a zoning change number. It says
14 ZCA-06-660018-A15. Do you see that?

15 A. I do.

16 Q. Did I read that correctly?

17 A. Yes, you did.

18 Q. Is that the zoning change number for the zoning
19 change at which you prepared yourself --

20 A. Yes, it is.

21 Q. -- to talk about today?

22 A. Yes, it is. Sorry.

23 MR. GUNNERSON: Thank you.

24 MR. KEMBLE: Counsel, when you said "front page,"
25 you were referring to Exhibit B, Bates Stamped PLTF1785?

Page 21

1 MR. GUNNERSON: Correct.

2 MR. KEMBLE: Thanks.

3 MR. GUNNERSON: Thank you.

4 (Defendants' Exhibit C was marked
5 for identification.)

6 MR. GUNNERSON: I'm handing you what we've marked
7 as Exhibit C. And it appears to be a recorded document.
8 I'm going to represent that I'm also going to attach to the
9 deposition transcript the document you brought, which is
10 Exhibit D. And I'm going to allow counsel to just take a
11 look at it, if you would, and see if you have any objection
12 to just using your Exhibit C as we discuss this document.
13 And they'll both be in the record, if you want it
14 afterwards. So we'll just give them a moment to look at
15 that.

16 MR. DEVOY: I have no objections.

17 (Defendants' Exhibit D was marked
18 for identification.)

19 BY MR. GUNNERSON:

20 Q. I'm also handing you what has been marked as
21 Exhibit D. We'll talk about those in a second.

22 After the city council has approved a zoning
23 change, what happens next?

24 A. The -- they will create what we call our annotated
25 agenda. So if the -- this particular item was on the

Page 22

Page 24

1 December 4th agenda, it was approved by council. The
2 clerk's office will prepare an agenda with all of the
3 approvals on it. That comes to our department. Let me --
4 let me backtrack. In this case, like I said, it takes two
5 meeting for a zone change to be approved. It's after the
6 second meeting we get that information. And then we start
7 creating the information -- the -- the map for that.

8 Q. You said two meetings. The first meeting, if I
9 remember correct, is that the planning commission meeting?

10 A. No. It takes a planning commission meeting, and
11 it takes two council meetings to adopt an ordinance.

12 Q. And in this case, at some point there is something
13 recorded with the recorder's office, correct?

14 A. Correct.

15 Q. Is that the document I've marked as Exhibits C and
16 D?

17 A. Yes, it is.

18 Q. Is that document recorded after both city council
19 meetings have occurred?

20 A. Yes, it is.

21 Q. Do you know if this Notice of Henderson City
22 Council Final Action that I provided to you as Exhibit B, if
23 that's the result of two city council meetings or one? Is
24 there any way for you to be able to tell?

25 A. This is the one after the first meeting.

Page 23

1 Q. After the first meeting?

2 A. Yes.

3 Q. Then after this first meeting, there would have
4 been a second meeting?

5 A. That's correct.

6 Q. And then if the second meeting, there was an
7 approval finalized, then it would result in the recorded
8 documents that we have as C and D?

9 A. That's correct.

10 Q. After the document that we've marked as C and D is
11 recorded, what then does the City of Henderson do to update
12 the zoning maps?

13 A. Once we receive the -- we actually get the
14 annotated agenda after the second council meeting. And
15 our -- we put it in line for updating of the maps. We
16 update our maps on a monthly basis. And it typically takes
17 us about 30 days to update our zoning map.

18 MS. HANKS: I'm sorry. I didn't hear that answer.
19 How many days?

20 THE WITNESS: It takes about 30 days to update the
21 zoning map, typically.

22 BY MR. GUNNERSON:

23 Q. When you say "update the zoning map," what zoning
24 map is updated? Is that a physical map? Is that a map on a
25 computer? What maps are updated in that 30 days?

1 A. We take the -- the data of the lot that was
2 created -- or -- or the zoning that was created, and we
3 place the zoning on that in our GIS System, and then we
4 print out a physical map. We put that physical map at our
5 front counter for sale. And then we also supply that map to
6 our IT Department for placing it onto our -- on our website.

7 Q. So just to make sure I'm clear. You update it in
8 GIS?

9 A. Correct.

10 Q. Do you know what GIS stands for?

11 A. Geographic Information Systems.

12 Q. Is that an internal system or is that an online
13 system at that point?

14 A. It's an internal system at that point.

15 Q. So you update it in your internal GIS System?

16 A. That's correct.

17 Q. It then becomes a physical map?

18 A. That's correct.

19 Q. And then the IT Department takes that physical map
20 and updates the online version of the zoning map; is that
21 correct?

22 A. That's correct. And we have two versions of what
23 you consider online zoning. We have the -- the printable
24 map that you can print out and see the zoning. Or we have
25 our interactive system. And those are both updated after we

Page 25

1 create the -- the permanent physical map.

2 Q. So previously you said that you update the maps
3 within 30 days. Would that include -- are the zoning maps
4 that are available as printable maps or interactive maps on
5 the website, are those also updated within that 30 days?

6 A. We have 30 days to update our physical map.

7 Q. Okay.

8 A. And then once we update the physical map, we
9 provide that to our IT Department to put on the website,
10 both on the interactive map and the printable map. And
11 sometimes that process takes one to two weeks --

12 Q. Okay.

13 A. -- depending on work load.

14 Q. Does it ever take longer than two weeks, to your
15 recollection?

16 A. I don't know that.

17 Q. But you're saying normally it takes one to two
18 weeks?

19 A. That's correct.

20 Q. And this process we've discussed, is that the
21 process that happens today in 2015?

22 A. Yes.

23 Q. Is that the same process, the one that we've been
24 discussing, was that the same process at the beginning of
25 2013?

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1 A. Yes.

2 Q. Do you know if the City of Henderson's website has

3 changed at all regarding zoning maps in the last two years?

4 A. Are you talking about process or actual website

5 itself?

6 Q. Process of accessing zoning maps through the

7 website.

8 A. I don't know for sure.

9 Q. Okay.

10 A. I don't believe so, but I don't know for sure.

11 Q. You're not aware of any changes that have

12 occurred?

13 A. I am not aware, no.

14 Q. Have you personally been on the Henderson's city

15 website and accessed zoning maps online?

16 A. Yes.

17 Q. And you did that also in 2013; is that correct?

18 A. Yes.

19 Q. If you were to get on the internet right now, how

20 long would you say it would take you to access a zoning map

21 of a particular property in the City of Henderson?

22 A. Maybe five minutes.

23 Q. Would you say that's short end or the long end of

24 that time?

25 A. I would say that's probably the long -- the long

Page 27

1 end.

2 Q. You could do it quicker than five minutes; is that

3 correct?

4 A. I could do it quicker, yes.

5 Q. And if you access the zoning maps on the website,

6 is it initially like a map of the entire zoning for the

7 entire City of Henderson?

8 A. When you go on our interactive website, yes,

9 that's -- that's the first screen you see is the entire City

10 of Henderson. You have to zoom into the parcel that you're

11 looking for.

12 Q. But you can do that with the online function of

13 the website, zoom in and look at a particular property --

14 A. Yes, you can.

15 Q. -- is that correct?

16 A. That's correct.

17 Q. We have talked a little bit about the particular

18 zoning change at issue here, which we identified through

19 Exhibit B as the zoning change ZCA-06-660018-A15, pertaining

20 to property adjacent to the Ninth Hole Golf Course at

21 MacDonald Highlands, correct?

22 A. Correct.

23 Q. As it pertains to that property specifically, is

24 it your understanding that that final zoning ordinance

25 change was ultimately recorded with the recorder's office?

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1 A. Yes.

2 Q. And is that document, to your understanding,

3 memorialized in Exhibit C and D that are in front of you?

4 A. Yes, it is.

5 Q. So particularly in this case then, when would the

6 physical maps pertaining to the zoning change have been

7 updated?

8 A. We updated the physical maps on this particular

9 item on January 24th.

10 Q. What year was that?

11 A. 2013.

12 Q. After those physical maps were updated, as you

13 stated previously, the process would have been to send them

14 to the IT Department, correct?

15 A. That's correct.

16 Q. Do you know when the website was updated to

17 incorporate those zoning changes?

18 A. I do not know.

19 Q. Do you have an approximate timeline as to when

20 they were updated?

21 A. Approximately the typical process. Approximately,

22 one to two weeks.

23 Q. Are you aware if it's ever taken longer than a

24 month to update the website after physical maps have been

25 changed?

Page 29

1 A. I am not aware.

2 Q. Do you know if there's anybody at the City of

3 Henderson who knows the exact date as to which those maps

4 would have been updated online?

5 A. I don't know who that would be.

6 Q. As the planning manager of the City of Henderson,

7 what is the longest amount of time you're aware it has taken

8 to update zoning changes online once the physical map has

9 been updated?

10 A. That's not something I prepared for. I don't

11 know.

12 Q. But in your personal knowledge as someone who's

13 worked on zoning changes, do you have an estimate of the

14 amount of time which is the longest amount of time you

15 understand it's taken to update those?

16 A. I -- I don't. I looked at our typical process. I

17 thought that's what we were asked to do.

18 MR. KEMBLE: He just asked in your personal.

19 THE WITNESS: Okay. Yeah. I'm sorry. I don't.

20 I don't know.

21 BY MR. GUNNERSON:

22 Q. So you had mentioned before that it takes one to

23 two weeks to your understanding, correct?

24 A. For a map to be -- once we submit it to IT

25 Department for a map to be online, yes, one to two weeks.

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1 Q. Where did that one to two weeks come from?

2 A. In talking with our GIS Department, in their

3 experience, it takes -- it's usually faster. But two weeks

4 is kind of the outside. So I guess that would be the answer

5 to your question. Two weeks is typically the longest.

6 Q. So even though you have not found anything that

7 shows exactly when this particular zoning change was updated

8 on the maps, in speaking with your GIS experts, they have

9 indicated that the outside frame as to when this is usually

10 updated on the website is two weeks; is that correct?

11 A. That's correct, yes.

12 Q. So if the physical maps were updated on

13 January 24th, 2013, two weeks following would have been

14 sometime in mid February 2013, correct?

15 A. That's correct.

16 Q. So based upon your discussion with your GIS

17 experts and your knowledge as the planning manager, these

18 maps were more than likely available online in March 2013,

19 correct?

20 A. Correct.

21 (Defendants' Exhibit E was marked

22 for identification.)

23 BY MR. GUNNERSON:

24 Q. I'm handing you what I've marked as Exhibit E.

25 What it is is it's a handful of screen shots from the

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1 computer. And I will represent to you that I went online

2 last night, and I took some screen shots of the process I

3 went through to get online and look up a zoning map. And

4 just want to understand if this -- one of the processes

5 you're aware of is how a person can access the zoning map.

6 So we'll just go through each page.

7 The first page I typed in City of Henderson

8 zoning. And it came up with these items, these Google

9 Search responses.

10 In glancing at those, are you able to tell if any

11 of those would get me headed in the right direction for

12 finding zoning maps online?

13 A. Yes.

14 MS. HANKS: I'm sorry, Counsel. Did you attach

15 those as an exhibit?

16 MR. GUNNERSON: I did. Exhibit E.

17 MS. HANKS: I'm just going to object to the

18 authenticity. But go on.

19 THE WITNESS: Yes.

20 BY MR. GUNNERSON:

21 Q. Which of those items that come up would head me in

22 the direction of finding zoning maps in the City of

23 Henderson?

24 A. The first item.

25 Q. Would the second item head me in that direction as

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1 well?

2 A. I believe so, yes.

3 Q. If we go to the next page, I will represent to you

4 I clicked on the second item. If I clicked on that second

5 item, does this appear to you to be the page that would come

6 up?

7 A. Yes.

8 Q. In fact, if you look at the second item on that

9 first page, it gives a web address

10 www.cityofhenderson.com/gis/home. Do you see that?

11 A. Yes, I do.

12 Q. And if you look up at the top of that second page,

13 it also gives a web address. Is that the same web address?

14 A. Yes.

15 Q. And you had stated earlier, you said that you

16 could interact on the team zoning maps either by way of

17 interactive maps or printable maps, correct?

18 A. That's correct.

19 Q. And I see that there are two buttons or two boxes

20 in purple on the right side of that page. Do you see those?

21 A. I do.

22 Q. And one is entitled interactive maps and one is

23 titled printable maps. Do you see those?

24 A. Yes, I do.

25 Q. Are those the buttons that you were indicating a

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1 person could -- or place a person could go to view those

2 maps?

3 A. Yes.

4 Q. And your understanding this is what the Geographic

5 Information Services page looks like at the City of

6 Henderson website, correct?

7 A. Yes. I would -- I haven't been to this particular

8 website. But yes, this is what our Henderson website looks

9 like.

10 Q. I will represent to you that I actually clicked on

11 interactive maps. Do you see that?

12 A. I do.

13 Q. And it brought me to the next page.

14 Have you ever been on the Geographic Information

15 Services interactive maps page before?

16 A. Yes.

17 Q. Does this appear to be what a person would see if

18 they clicked onto that page?

19 A. It does. Yes.

20 Q. And I notice that we see the bottom of this web

21 page appears to be cut off. Is that because a person can

22 scroll down to access more --

23 A. That's correct.

24 Q. -- information?

25 A. Yes.

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1 Q. I will represent to you I did scroll down, as you
2 can see from the scroll bar on the right. It's all the way
3 at the top of this page you've been looking at.
4 If you go to the next page, it's scrolled down
5 about halfway down; do you see that?
6 A. Yes.
7 Q. And as it scrolls down, there's a part there
8 that -- on the bottom right-hand corner that says zoning and
9 future land use. Do you see that?
10 A. Yes, I do.
11 Q. In fact, it appears my computer had some trouble
12 bringing up the picture right above those words. Do you see
13 that?
14 A. Yes.
15 Q. Is this where I would go to then access the
16 interactive zoning maps?
17 A. Yes. It's one of the spots, yes.
18 Q. One of the spots. Like you said, there are
19 multiple places a person can go to access these zoning maps
20 online --
21 A. Correct.
22 Q. -- correct?
23 I will represent to you I actually clicked on the
24 zoning and future land use button, and it took me to the
25 next page.

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1 Have you ever seen this page online before with
2 the City of Henderson website?
3 A. Yes.
4 Q. And what is it?
5 A. This is the overall outline of the City of
6 Henderson's jurisdictional boundary that contains the
7 zoning.
8 Q. And obviously looking at this, it's difficult to
9 see any specific zoning for any specific properties,
10 correct?
11 A. Correct.
12 Q. So if I wanted to look at specific properties,
13 what would I need to do?
14 A. The -- up in the top right-hand corner, there's a
15 pair of binoculars. It says search. You would click on
16 that. And that would bring up several options of ways to
17 search.
18 Q. Okay.
19 A. If you had the parcel number, the address, cross
20 streets, that sort of thing. Or using the -- if you knew
21 exactly where it was, you could use the wheel on your mouse
22 and zoom in on that particular location.
23 Q. If you turn to the second to last page of this, I
24 represent to you that I used the wheel on my mouse and
25 zoomed into the area I knew was at issue in this litigation.

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1 In preparing for your deposition today, did you
2 review any maps of the properties in question?
3 A. Yes, I did.
4 Q. Do you see anywhere on this map that I provided to
5 you on the second to last page of Exhibit E what property
6 was in question?
7 A. Yes, I do.
8 Q. Is it identified anywhere specifically on this
9 map? Or is there any way for you to identify it?
10 A. I could point to it.
11 Q. Why don't I have you circle it with a pen.
12 Okay. Thank you.
13 So you have circled a property on this that
14 includes -- it looks like a piece of yellow that jets out
15 into the green; is that correct?
16 A. That's correct.
17 Q. Let me ask you this. If I went to the City of
18 Henderson and looked at their physical maps, after
19 January 24th, 2013, is this the zoning I would have seen on
20 the physical maps at the City of Henderson?
21 A. Yes.
22 Q. And if what your GIS experts tell you is correct
23 and that the website was updated within two weeks of the
24 physical maps being updated, if I had gone online in March
25 of 2013, is this the zoning I would have seen as it pertains

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1 to the properties you've circled?
2 A. Yes.
3 Q. If you go to the last page, I notice that there is
4 a function at the top of the page that says "base map aerial
5 photo." Do you see that?
6 A. I do.
7 Q. Is that a sliding button that you can slide back
8 and forth?
9 A. It is.
10 Q. And so in this case, I've slidden it more towards
11 aerial photo instead of base map. And what happens when I
12 slide it -- or when a person slides towards the aerial
13 photo?
14 A. The color tends to fade and you get the actual
15 aerial photo.
16 Q. So if I'm concerned at all as to whether or not I
17 have the right location, based solely on the base map, I can
18 use that function to actually see the properties to get my
19 bearings straight to understand that I'm looking at the
20 correct property; is that correct?
21 A. Yes.
22 Q. Or as you said before, a person could go into the
23 search function and actually type in the address, or you
24 said like the APN number --
25 A. That's correct.

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1 Q. -- or other identifying information; is that
2 correct?
3 A. Yes, that is correct.
4 MS. WINSLOW REPORTER: You said it's the APN
5 number?
6 MR. GUNNERSON: I think actually it's Assessor's
7 Parcel Number. And if you say APN number, you're actually
8 stating number twice, but...
9 THE WITNESS: Right. That's correct.
10 MR. GUNNERSON: But we'll stick with that.
11 I have no further questions. I pass the witness.
12 MS. HANKS: Can we take a quick bathroom break?
13 MR. GUNNERSON: Sure.
14 (A short recess was taken.)
15 EXAMINATION
16 BY MS. HANKS:
17 Q. You indicated that after the City of Henderson
18 receives the application for rezoning, sometimes comments
19 are sent back to the applicant. Can you elaborate on that?
20 What type of comments might get sent back to the applicant?
21 A. We may have questions about the physical map that
22 they filed. We might need more information that would
23 create a more clear picture for our planning commission.
24 We -- we -- typically in these cases, we ask for a map or an
25 exhibit that shows existing zoning versus proposed zoning.

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1 You know, there may even be spelling errors in the
2 justification letter or something that, you know, that
3 doesn't make any sense, and so we ask for a clarification.
4 Q. Do you know if any comments were sent back to this
5 particular applicant in this case?
6 A. I -- I believe there were. I'm not certain what
7 that would be. I didn't look at that, no.
8 Q. If someone wanted to obtain those comments, where
9 would I find them within the City of Henderson; what
10 department maintains those records?
11 A. You could make a records request to the Community
12 Development Department.
13 Q. You also mentioned that there are several hearings
14 that take place once an application is received for
15 rezoning. I think you said there was two council meetings
16 and there's a planning commission meeting; is that right?
17 A. That's correct.
18 Q. When you use the term meeting, they're also, I
19 guess, considered hearings?
20 A. They are.
21 Q. Do you attend any of these hearing slash meetings?
22 A. I attend the planning commission meeting, and I
23 attend some of the city council meetings, not all.
24 Q. Do you recall if you attended any of the meetings
25 slash hearings that took place for this particular

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1 application that we're discussing today?
2 A. I am usually at all the planning commission
3 meetings. But I don't know that I attended this one in
4 particular.
5 Q. Now, if someone wanted to -- from the public
6 wanted to object to the particular application, which of
7 those meetings slash hearings would they attend?
8 A. They would attend the planning commission meeting,
9 which is the public hearing. And they could attend the
10 city -- the first city council hearing, which is also a
11 public hearing.
12 Q. Have you ever attended any of those meetings or
13 hearings where -- and I'm not talking about this particular
14 application, but any application -- where other people came
15 and did object to what was being proposed?
16 A. Yes.
17 Q. How does that work in terms of the meeting and
18 hearing from the council's perspective? Do they listen to
19 the objections voiced from that particular person or entity?
20 MR. GUNNERSON: Objection.
21 MR. KEMBLE: Form objection. Go ahead.
22 MR. GUNNERSON: Foundation.
23 THE WITNESS: Can I answer?
24 MR. DEVOY: You can.
25 THE WITNESS: Yes. At both planning commission

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1 and city council they open the public hearing for public
2 comment. And those folks can come down and speak in
3 opposition of that particular topic.
4 BY MS. HANKS:
5 Q. Has there ever been an occasion where an
6 individual or entity objected to a particular application
7 and that objection was taken under advisement and the City
8 of Henderson rejected the application?
9 MR. GUNNERSON: Objection; foundation.
10 THE WITNESS: Yes.
11 (Ms. Winslow enters deposition.)
12 BY MS. HANKS:
13 Q. We deposed someone from MacDonald Highlands,
14 actually Foothills Partners, a developer for MacDonald
15 Highlands, by the name of Paul Bikowski. And he mentioned
16 that someone from the City of Henderson typically attends
17 the neighborhood meeting when they submit these rezoning
18 applications. Do you know anything about that, anyone from
19 the City of Henderson attending these neighborhood meetings?
20 A. We do attend neighborhood meetings, yes.
21 Q. Do you recall who attended the neighborhood
22 meeting for this particular application that we're
23 discussing today?
24 A. I don't recall.
25 Q. What is the purpose of someone from the City of

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1 Henderson attending those neighborhood meetings?
 2 A. We attend to observe. And often there are
 3 questions about process, and we ask -- we answer those
 4 questions.
 5 Q. If an individual or an entity showed up at the
 6 neighborhood meeting and lodged an objection with the actual
 7 application, is that something the City of Henderson
 8 employee would note and take back to the city council?
 9 A. We provide a general summary of all the
 10 neighborhood meetings for the planning commission and the
 11 councilors. We don't specifically note every objection.
 12 But we note the tenor of the meeting, of the neighborhood
 13 meeting.
 14 Q. Do you have knowledge regarding how particular lot
 15 lines are designated by the City of Henderson, i.e. rear,
 16 side, or front? Is that within your purview?
 17 A. Yes. That's in the development code.
 18 Q. What is the standard for the designation of lot
 19 lines; meaning, rear, side, or front?
 20 MR. KEMBLE: I'm going to object to this as being
 21 outside the scope of the matters that were noticed. But
 22 I'll let him testify if he knows in his individual capacity.
 23 MS. HANKS: Thank you.
 24 THE WITNESS: Typically, the front is the -- the
 25 lot line that's adjacent to the street in which this is

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1 addressed off of. And that's typical. Typically, the line
 2 parallel to that is the rear. And then the sides are, of
 3 course, the -- the lines that are perpendicular to those two
 4 lines.
 5 BY MS. HANKS:
 6 Q. Do you know if once this zoning was approved for
 7 this, the application we discussed today, when the lot lines
 8 were changed, if the designations of those lot lines
 9 changed; i.e. rear, side, front?
 10 A. I'm not sure I understand the question.
 11 Q. It looks like there was some -- there's additional
 12 two lot lines, I guess, when you look at the shape of this
 13 property now. And I'm looking at the computer printout that
 14 you have in front of you.
 15 So my question is: When the City of Henderson
 16 approved the zoning of this lot and added those two other, I
 17 guess, portions of the lot, did they designate those lot
 18 lines as rear, front, side, or any other designation a lot
 19 line might receive?
 20 A. I did not look that closely at the recorded map to
 21 know if that recorded map showed designated lot lines.
 22 Sometimes they do. Sometimes they don't.
 23 Q. Is that something the City of Henderson would
 24 typically do when lot lines are being changed, they would
 25 redesignate or assign a designation to any new lot lines

1 that were added to a particular lot?
 2 A. No, that is not typical.
 3 Q. If you could, turn to Exhibit D, which I believe
 4 is...
 5 MR. KEMBLE: Exhibit D was the one we brought
 6 that's similar to Exhibit C.
 7 MS. HANKS: Okay. So I had them marked opposite.
 8 So we can go to Exhibit D, I believe.
 9 MR. GUNNERSON: That's B.
 10 MS. HANKS: Okay. This is B.
 11 MR. GUNNERSON: Yeah.
 12 MS. HANKS: Sorry.
 13 MR. GUNNERSON: That one is C. And then D is the
 14 one just like C that he brought.
 15 BY MS. HANKS:
 16 Q. I want you to turn to Exhibit B then. If you
 17 could, turn to page -- well, it's the second page in the
 18 stack. And it's the document Bates Stamped PLTF1786. And I
 19 want to address your attention to Item Number O.
 20 It indicates there. It reads, "The proposed
 21 master plan will not have a significant adverse impact on
 22 other property in the vicinity."
 23 How did the City of Henderson make that finding,
 24 if you know?
 25 MR. GUNNERSON: Objection; foundation.

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1 THE WITNESS: For this particular case, how did we
 2 make that finding?
 3 MS. HANKS: Correct. For this -- yeah, for this
 4 particular application, this final action that we're talking
 5 about.
 6 THE WITNESS: I would -- I would have to reread
 7 the staff report.
 8 BY MS. HANKS:
 9 Q. Are there factors that the City of Henderson
 10 generally takes into account in determining that finding?
 11 And is it a general for any type of rezoning application?
 12 MR. GUNNERSON: Objection; foundation.
 13 THE WITNESS: Could you clarify "factors"?
 14 BY MS. HANKS:
 15 Q. Sure. I guess I'm trying to figure out how the
 16 City of Henderson -- or what information the City of
 17 Henderson reviews or takes into consideration to make that
 18 final determination?
 19 A. On -- on that particular finding of fact?
 20 Q. Correct. On that one particular finding of fact
 21 that has, "will not have a significant adverse impact on
 22 other property in the vicinity," what type of information
 23 generally does the City of Henderson take into account when
 24 trying to make that finding one way or the other?
 25 A. We will look at operational aspects of that

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1 proposal. We'll look at hours of operation, noise, dust,
2 that sort of thing. With a single family, it's the same
3 use. And so we just -- that's -- as far as impact in this
4 particular case, yeah, I -- I couldn't -- I would have to
5 read the staff report to know what we found on this one.

6 Q. Would it be fair to state though that because it
7 was the same use, meaning you were just extending the parcel
8 and it was still the same residential use, more likely than
9 not that's the reason that the City of Henderson found it
10 had no adverse impact on other property in the vicinity?

11 MR. KEMBLE: Form objection.

12 MR. GUNNERSON: Objection; foundation.

13 THE WITNESS: That would be my speculation.

14 BY MS. HANKS:

15 Q. And we could read the staff report to further
16 elaborate on how they came to that conclusion?

17 A. That's where our analysis is, yes.

18 Q. But at least in your experience, one factor or one
19 consideration is when you may be changing a particular area,
20 let's say from residential to commercial, that might be a
21 factor that the City of Henderson might say now that affects
22 the vicinity of the property?

23 MR. GUNNERSON: Same objection.

24 THE WITNESS: That is correct. When you're
25 changing the use, then impacts are a little bit more

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1 obvious.

2 BY MS. HANKS:

3 Q. When the City of Henderson made this
4 determination, do you know -- and for this particular
5 application -- do you know if they actually took into
6 account the property next door to 594 Lairmont, which is the
7 property that was rezoned?

8 MR. GUNNERSON: Objection; foundation.

9 BY MS. HANKS:

10 Q. Did they get that detail and look at each of the
11 individual parcels next to the property that's being
12 rezoned?

13 A. Not typically, no.

14 Q. And then if you can, turn to the next page, which
15 is PLTF1787. If you look at Item No. 1, it reads, "The
16 acceptance or approval of this item does not authorize or
17 entitle the applicant to construct the project referred to
18 in such application or to receive further development
19 approvals, grading permits, or building permits."

20 Can you explain what that sentence means?

21 A. Yes. This is a -- a standard public works
22 condition that goes on every application. What this
23 essentially says is that they have approval to make the
24 request now for building permits or grading permits or other
25 types of things. But it is not the grading permit. It is

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1 not the building permit.

2 Q. So I just want to be clear then. How I read it
3 meant that we're approving the zoning change, but it does
4 not mean that we're approving any development on that area;
5 you still have to submit further applications with respect
6 to that.

7 A. That's correct.

8 Q. Now, we talked a little bit about the map, the
9 final map of the rezoning being updated on the system.

10 Once the IT Department updates the map online, am
11 I correct to understand that now it's available to the
12 public?

13 A. That's correct.

14 Q. And in this case, if I understood you correctly,
15 you're not sure exactly when it became available to the
16 public in this case, but you do know that the updated
17 physical map was done on January 24th, 2013?

18 A. That's correct.

19 Q. And typically in your experience, the IT updates
20 the online system within one to two weeks of that date?

21 A. That is also correct, yes.

22 Q. In terms of the physical map, is that recorded
23 somewhere in the City of Henderson?

24 A. It's not recorded. We -- we take copies of the
25 physical map to -- we have a bin up front so people can buy

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1 the physical map. We also will replace our physical maps at
2 the front counter.

3 Q. After the physical map was updated, I believe you
4 said it was January 24th, 2013, would the City of Henderson
5 have notified the applicant of such update?

6 A. No.

7 Q. How would the applicant know that the final map
8 had been updated?

9 MR. GUNNERSON: Objection; form as to "final map."

10 THE WITNESS: The -- I'm getting a little confused
11 on the term because it's the physical map. The final map is
12 actually the map that creates the lot after the tentative
13 map. So that's where I'm -- I'm getting a little bit
14 confused on the term itself.

15 BY MS. HANKS:

16 Q. And maybe that's where I was confused. You just
17 clarified something. So the physical map is not the final
18 map?

19 A. No. The -- the final map is -- it's actual lot
20 lines. So the final map is what creates the lot.

21 In this case, you had a -- a comprehensive plan
22 amendment, which is land use. You had a zone change, which
23 is zoning. And then you had a tentative map. The tentative
24 map says we're going to do this with the lot lines. And
25 then the final map is the actual map that creates those lot

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1 lines.

2 Q. So the tentative map, is that what appears online

3 one to two weeks after the physical map is updated?

4 A. No. The -- so we're talking two different things.

5 The -- the tentative map and the final map deal with the lot

6 lines. The physical map that we've spoken about deals with

7 the zoning. So the zoning itself was updated on the

8 physical map on January 24th. And then one to two weeks

9 after that, it was up, up on our website on the interactive

10 and on the printable maps.

11 Q. So what the website that Mr. Gunnerson was going

12 through just shows the zoning of the area; am I correct in

13 understanding what you're saying?

14 A. That is correct.

15 Q. Not the actual physical lot lines?

16 MR. KEMBLE: When you say "the map," he was going

17 through, referring to Exhibit E.

18 MS. HANKS: Yeah, Exhibit E, and the last, I

19 guess, two pages where you actually have some pictures of

20 property.

21 Q (By Ms. Hanks) I understand there's kind of an

22 outline of the property. But just so I understood you

23 correctly, this is the type of map that the IT Department

24 would have updated to the system based on the updated

25 physical map, correct?

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1 A. That is correct.

2 Q. And this map only shows the zoning changes, not

3 the actual legal lot lines?

4 A. It shows -- with every zoning change, we get a

5 legal description. So it shows what that legal description

6 is. It will also show the lot lines as represented on the

7 tentative map. But I guess the term "final map" in that map

8 is what is actually recorded and what actually creates that

9 lot.

10 Q. So if I wanted to know legally where the actual

11 lot lines were, I would not rely upon the City of

12 Henderson's website; I would actually have to go and see the

13 final map that was recorded?

14 MR. GUNNERSON: Objection; foundation.

15 THE WITNESS: For the physical lot lines.

16 MS. HANKS: Correct.

17 THE WITNESS: Yes.

18 BY MS. HANKS:

19 Q. Do you know when the final map was recorded for

20 this particular parcel?

21 A. I did look at the final map. And I'm -- I'm

22 having trouble recalling whether it was May or June of 2013.

23 Q. Has there ever been an occasion where the City of

24 Henderson has approved a zoning change, updated the physical

25 map, IT Department updates the website, but then the final

1 map that encompasses the lot line changes differs?

2 MR. KEMBLE: I'll object to that as being outside

3 the scope. If you know, go ahead and answer.

4 THE WITNESS: I don't know of a specific time that

5 that's happened.

6 BY MS. HANKS:

7 Q. Is that possible?

8 A. I guess anything is possible. That's not our

9 typical process. Maybe I could explain a little bit of the

10 process of a final map when we review it.

11 Q. Please.

12 A. We review the final map. Again, it's the

13 tentative map that was approved. So in this case, after the

14 final map came in, was submitted to us, we look at the

15 tentative map and the zoning to make sure they match before

16 we approve the final map.

17 Q. So that might be an instance where it might not

18 work out? If the tentative doesn't match with the final

19 map, there might be some variations?

20 A. Which would require an amendment of the tentative

21 map.

22 Q. If the tentative map was required to be amended,

23 would you pull the physical map and pull the IT updated map

24 on the system?

25 A. Pull them?

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1 Q. Meaning, would you erase what was updated on the

2 system?

3 A. No. Because the zoning was approved. And so the

4 zoning would still show the shape of what we were -- we

5 provided during that process.

6 Q. How about the recordation of the final map? Does

7 the applicant get notice of that from the City of Henderson?

8 A. We don't notice on recordation of a final map.

9 The applicant submits the final map, and they're the ones

10 that record it. They provide the recordation to us.

11 Q. So they obviously would know because they would

12 have recorded it?

13 A. I would assume, yes.

14 MS. HANKS: I have nothing further at this time.

15 EXAMINATION

16 BY MR. DEVOY:

17 Q. I'm J. DeVoy. I just have a few questions to

18 followup on a few things that came up today.

19 You had mentioned previously that the zoning map

20 for APN -- I have to get it in front of me so I can speak

21 specifically about it. The zoning map for

22 APN:178-28-520-001 had been updated on January 24th, 2013,

23 correct?

24 A. Correct.

25 Q. Do you know of any delay between when that

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1 information is submitted to GIS and when new maps are
2 available at the front counter at the City of Henderson City
3 Hall?
4 A. In this particular instance, do I know of any
5 delay?
6 Q. In general.
7 A. In general? I'm not sure I understand the
8 question. I think what you're asking is after we produce
9 the -- the physical map, which is the -- the physical map of
10 the zoning, when that goes -- that goes directly to our
11 front counter.
12 Q. Correct.
13 A. And then we -- at the same time, we submit that
14 information to our IT Department to put online.
15 Q. Correct.
16 I'm asking if there's a time between January 24th,
17 in this case, and the time when it became available at the
18 front desk of the City of Henderson, because they had to go
19 to printing or if there was some other reason why there was
20 a delay between the 24th and when the maps were ultimately
21 available.
22 A. I don't believe there was a delay, but -- but I'm
23 not sure. You know, typically they -- the dates that we
24 mark when we updated our information, we print them out
25 right then, take them to the front counter.

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1 Q. So it's instantaneous?
2 A. It is.
3 Q. Thank you.
4 Now, you had also discussed the hearing process
5 regarding planning meetings and city council meetings
6 regarding zoning changes.
7 Are you aware of instances where people have tried
8 to communicate directly with the planning department about
9 zoning changes?
10 A. Yes.
11 Q. Were there any such communications in the case of
12 the rezoning for APN:178-28-520-001?
13 A. I did look at the staff report in the -- in the
14 back of documentation for that specifically to see who
15 received notices. And then the process is when we send out
16 our public hearing notices, we send them out on yellow
17 cards. And on that yellow card, it goes to whoever is the
18 owner of that property. And they can write -- there's check
19 boxes, I support I oppose. We had two of those yellow cards
20 submitted back to us and both of those were in support.
21 Q. Do you recall receiving any communication opposing
22 the change to the zoning for this lot?
23 A. No.
24 Q. Do you recall at any time between January 1st and
25 say July 1st, 2013, whether you or anyone at the planning

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1 department had any communication with Barbara Rosenberg?
2 A. Not that I'm aware of. I -- I did not.
3 Q. Do you recall if you or anyone at the planning
4 department for the same time period, between January 1st,
5 and July 1st, 2013, received any communication from David
6 Rosenberg?
7 A. Not that I recall, no.
8 Q. And basically the same question. Do you know if
9 you or anyone at the planning department had any
10 communication from Fredric Rosenberg from January 1st to
11 July 1st, 2013?
12 A. No.
13 MR. DEVOY: I have nothing further.
14 FURTHER EXAMINATION
15 BY MR. GUNNERSON:
16 Q. I have one followup question.
17 Again, Spencer Gunnerson.
18 When the map is available -- you've talked about
19 it being available up front at the front desk.
20 Just to confirm, I don't know if we got this in
21 the record yet.
22 Once it's at the front desk, it's available to
23 anyone who walks in and wants to view it, correct?
24 A. That's correct.
25 MR. GUNNERSON: I have nothing further.

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1 FURTHER EXAMINATION
2 BY MS. HANKS:
3 Q. If someone wanted to obtain copies of those yellow
4 cards, who would they request that information from?
5 A. Also records request in community development.
6 Q. Does that department keep all the yellow cards
7 regardless of whether someone checks the box?
8 A. I believe we do.
9 MS. HANKS: I don't have any further questions.
10 MS. WINSLOW: I have nothing. Thank you.
11 (The deposition was concluded at
12 11:39 a.m.)
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1		CERTIFICATE OF DEPONENT		Page 58
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14			I, MICHAEL TASSI, deponent herein, do hereby	
15			certify and declare under penalty of perjury the within and	
16			foregoing transcription to be my deposition in said action;	
17			that I have read, corrected, and do hereby affix my	
18			signature to said deposition.	
19			<hr/> MICHAEL TASSI	
20			Deponent	
21				
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23				
24				
25				

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

I, Johanna Vorce, Certified Court Reporter, do
hereby certify:

That I reported the taking of the deposition of
the witness, MICHAEL TASSI, commencing on Thursday, February
5, 2015, at 10:26 a.m.

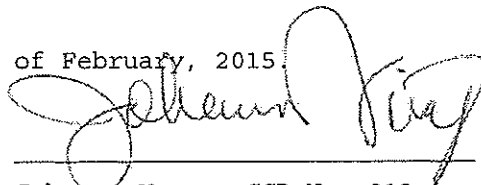
That prior to being examined, the witness was by
me duly sworn to testify to the truth.

That I thereafter transcribed my shorthand notes,
and the typewritten transcript of said deposition is a
complete, true, and accurate transcription of said shorthand
notes.

That a request has been made to review the
transcript.

I further certify that I am not a relative or
employee of an attorney or counsel of any party involved in
said action, nor a relative or employee of the parties
involved, nor a person financially interested in said
action.

Dated this 19th day of February, 2015


Johanna Vorce, CCR No. 913

Case No. 69399 c/w 70478

IN THE SUPREME COURT OF NEVADA

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS
REALTY, LLC, a Nevada Limited
Liability Company; MICHAEL
DOIRON, an Individual; and FHP
VENTURES, a Nevada Limited
Partnership,
Respondent/Cross-Appellants.

Electronically Filed
Oct 12 2016 11:52 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

FREDERIC AND BARBARA
ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable KENNETH CORY, District Judge
District Court Case No. District Court Case No. A-13-689113-C

JOINT APPENDIX VOLUME 3

Respectfully submitted by:

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1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	13	1/12/15	Amended Complaint	JA_0089
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
8/9/ 10/1 1	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
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7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497

12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
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13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
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12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
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13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
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14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
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CHRONOLOGICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	1	9/23/13	Complaint	JA_0001
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
1	7	1/10/14	Order Granting in Part DRFH Ventures, LLC; Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0052
1	8	1/13/14	Notice of Entry of Order Dismissing Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0055
1	9	1/28/14	MacDonald Highland Reality's Answer to Plaintiff's Complaint	JA_0060
1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086
1	13	1/12/15	Amended Complaint	JA_0089
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110

1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
1	18	2/2/15	MacDonald Highland's and Michael Doriron's Answer to Amended Complaint	JA_0126
1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
4/5/6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215

7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
7/8	33	6/3/15	Motion to Amend Complaint to Conform to Evidence	JA_1553
8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
8	36	6/22/15	Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1636
8/9/10/11	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

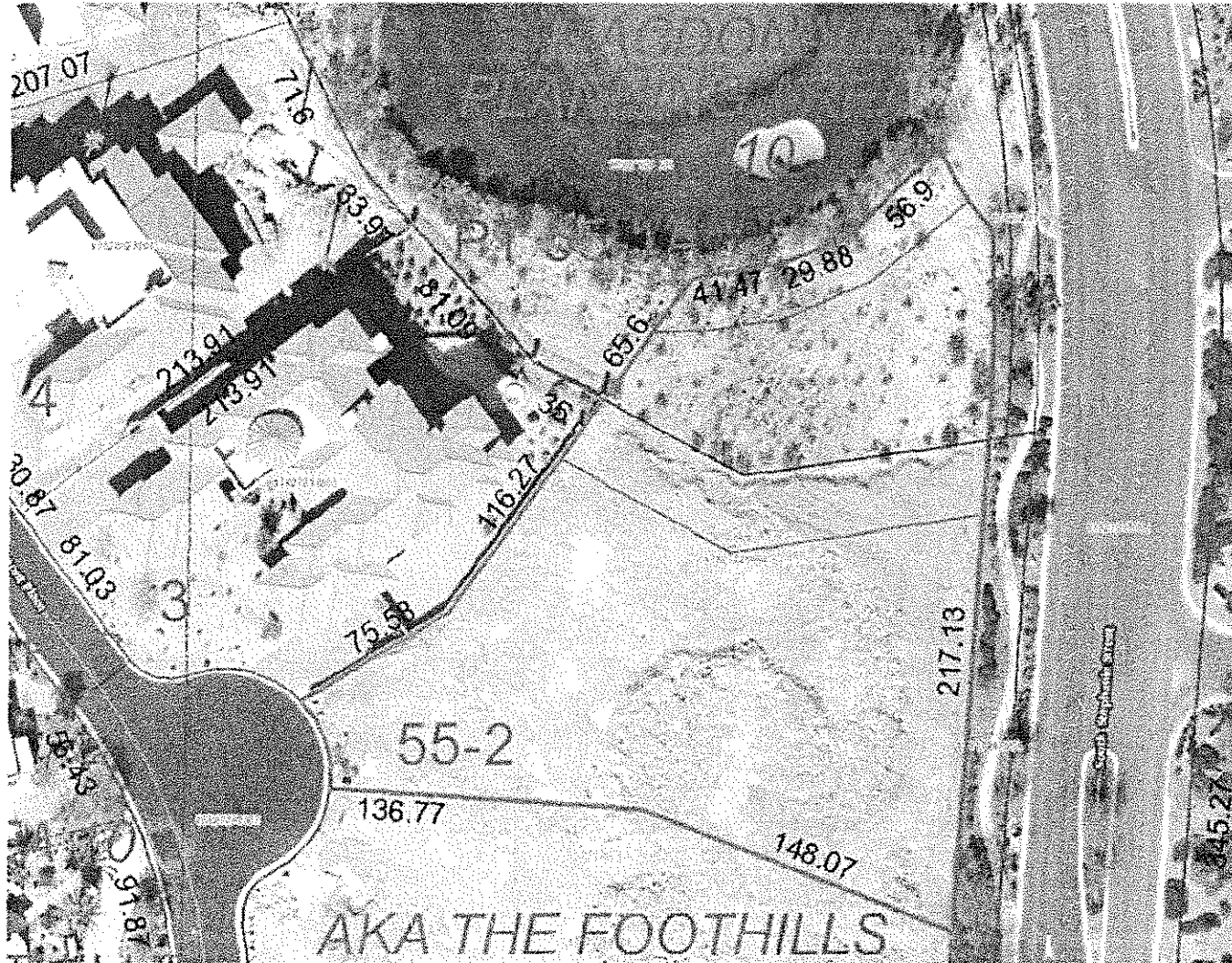
12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
12	41	7/23/15	Order Denying Motion for Summary Judgment	JA_2432
12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
12	43	8/13/15	Proposed Order, Findings of Fact and Conclusions of Law, and Judgement on Shahin Shane Malek's Motion for Summary Judgment	JA_2457
12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
12/13	47	9/2/15	Motion for Attorney's Fees and Costs	JA_2526
13	48	9/9/15	Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_2684
13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784

13	53	11/19/15	Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees and Costs	JA_2790
13	54	12/9/15	Notice of Appeal	JA_2801
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
13	57	1/20/16	Notice of Entry of Order	JA_2817
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	62	5/23/16	Notice of Appeal	JA_2854
13/14	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970

14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048

Lairmont Place as shown on the photo below from page 36 of the report under review.
From the report under review:

The image below illustrates the original rear property line in blue, the original (30') rear yard set-back as the site was originally developed in green and the new set-back created by the acquisition of the additional site area in red.



The report under review stated the original “rear property line” is shown in blue and the “original (30’) rear yard set-back” is shown in green. This is a fundamental and substantial error in the report under review. According to the City of Henderson Development Code and verified with the Planning and Zoning Department, the line (designated by the appraiser in the report under review) as the rear yard boundary, is in fact “the side yard boundary. In the case of the original lot, the property line parallel to Stephanie Street would be the rear yard. The line shown in blue represents the side yard and according to the CC&R’s for MacDonald Ranch, the side yard setback to a main residence building is 15 feet on the golf course side of the lot.

It is important to note that while the main building area or residence must be set back 15 feet, accessory buildings (storage, cabanas, etc.) are only required to be set back 6 feet by the CC&R’s. This means the owner could construct a two story accessory building (pool cabana for example), to within 6 feet of the original side property line.

Effectively, the “borrowed view corridor” envisioned by the appraiser and articulated in the report under review and upon which the agent surveys and the appraiser’s conclusions are based, is not the view corridor that actually exists. It is also important to note that any view across the property of another is a “borrowed view” as defined on page 25 of the report under review and restated below:

“Borrowed” views – That a subject property may enjoy a view(s) either in portion or its entirety only because of the existence of a vacant parcel between the subject and the view amenity, with a realistic expectation that the view corridor might be obstructed in some manner once that adjacent parcel is improved.

As the appraiser stated in the report under review, “borrowed views” are views across a vacant parcel that will be affected when that vacant parcel is developed. An important fact (not addressed in the report under review), “borrowed views,” can be partially or totally obscured not by a new building, but also by landscaping.

The borrowed view from the subject property that looks east (towards the Dragon Ridge Clubhouse’s parking lot and distant mountains to the southeast), could be obscured by planting a large tree or trees on the north side of the original adjacent lot and planting large tree along the east property line (Stephanie Street) to provide “privacy” to the adjacent lot.

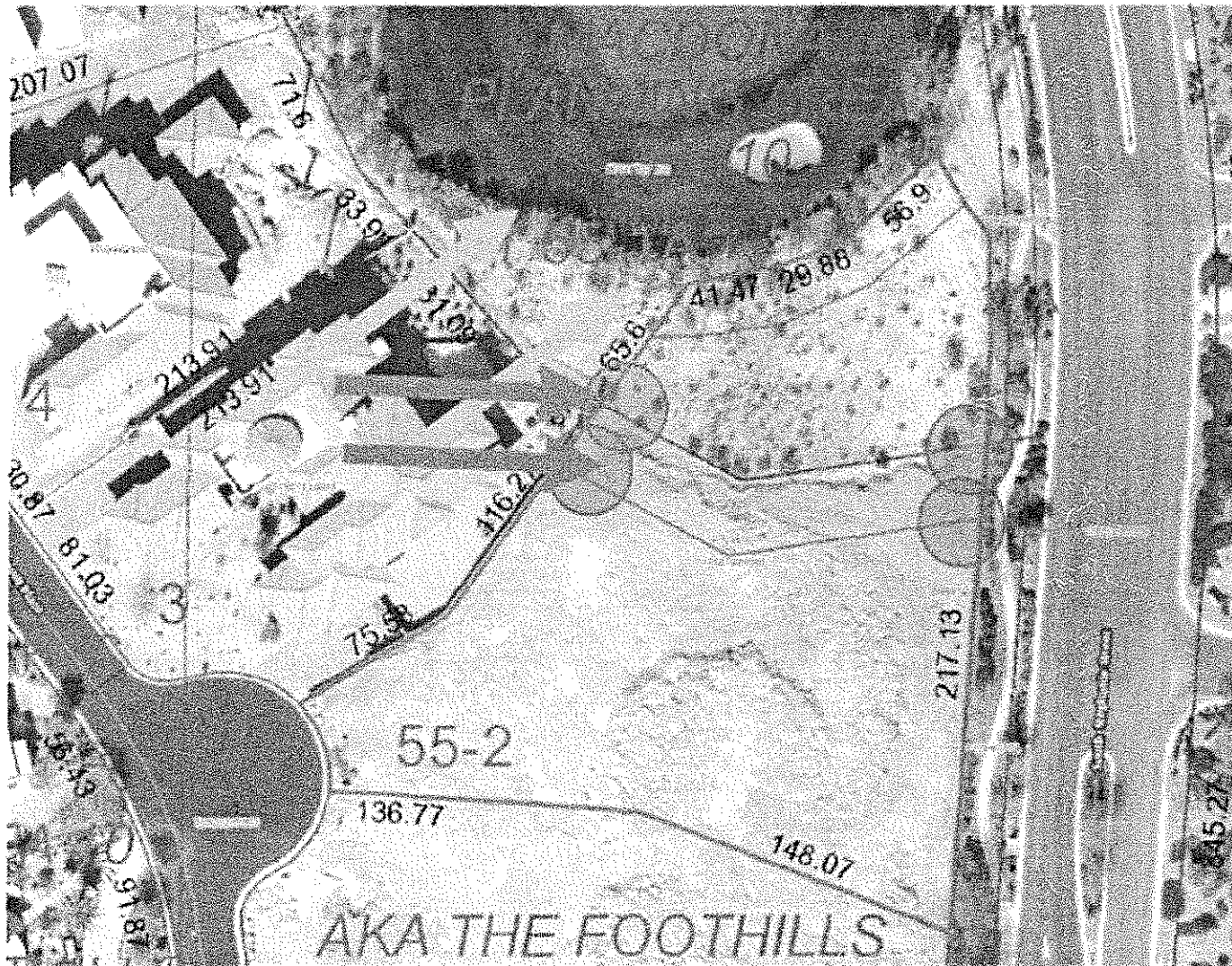
Planting mature trees is common, especially with respect to luxury quality homes. A medium sized mature tree may be 20 to 30 feet (or more in height) and have a branch spread (canopy area) of 30 feet or more. Planted on the adjacent lot (within the original lot boundaries) across from the subject property and within the “side yard setback area” (erroneously referred to as the “rear yard setback are” in the report under review), would have the effect of totally blocking the “borrowed view” of the subject property.

Additionally, there are no provisions in the CC&R’s regarding trees on private lots overhanging the golf course. A mid-sized mature tree planted on the subject and overhanging the golf course slightly is common throughout MacDonald Ranch. Owners plant these trees to provide “privacy” and reduce “visibility” from adjacent lots and from the golf course or adjacent areas (streets, park and open areas, etc.).

There are no restrictions to planting tree(s) along the side yard between the two properties, and along Stephanie Street, would obscure any view from the subject

property's second level towards the clubhouse. This is demonstrated on the aerial photograph from the report under review.

Below, we have added 30-foot circles to demonstrate how the owner of the adjacent lot could obscure the "borrowed view" of the subject property, both across the original lot and across the additional lot area. By several trees planted on the original lot.



Not only is the borrowed view of 590 Lairmont Place obscured by mature trees planted on the original lot of 594 Lairmont Place, those same trees would obscure the view of most (if not all) of the additional lot area, from the master bedroom area of 590 Lairmont Place.

The yellow arrows show the golf view and frontage is not affected. The orange arrows represent the borrowed views to the east, which would be blocked, by planting mature trees for privacy, on the subject's original lot.

Implied Conditions of the report under review vs. facts	
Premise of the report under review	Fact
The subject property has a golf course view to the northeast, a golf course and limited city view to the north and a view of the clubhouse and distant mountains to the east and to the southeast.	The subject fronts the golf course and faces northeasterly. The view of the clubhouse is from the second level of the home and is a borrowed view. Borrowed views can be obscured (partially or completely), by buildings or landscaping on the adjacent lots.
Views are permanent and guaranteed	Views are not permanent or guaranteed unless a view easement is agreed upon.
The addition of the vacant desert land to the lot at 594 Lairmont Place will create a loss in value to the subject property, as development on that site will block the borrowed view of the clubhouse and mountains from the second level of 590 Lairmont Place.	Borrowed views are not guaranteed. Planting mature trees (which is common to increase privacy) on the original lot would obscure the borrowed view of the clubhouse and mountains from the second level of 590 Lairmont Place.
The borrowed views of the clubhouse and mountains from the master bedroom and second level of 590 Lairmont Place along with views of the desert area behind the ninth green contribute a significant value to that property.	Cross comparison of the original sale of the lots on Lairmont Place indicated the subject property was the lowest selling property of similar size with golf course frontage. It sold below prices for smaller lots. This would support it was the least desirable. There was no premium in the developer pricing to support a value beyond the golf front and golf view.

Views and sight lines are permanent, as is frontage on the golf course.	Views are not guaranteed. This includes the golf course and frontage on the golf course and any view derived from that frontage. Portions of the Stallion Mountain Golf Course and The Falls Golf Course were sold to developers and housing replaced parts of the course, changing and or eliminating golf course and other views and eliminating golf course frontage.
The proposed improvements on the adjacent lot will create a loss in value to 590 Lairmont Place because of obscuring the subject property's view of the mountains and clubhouse.	The view is borrowed and not a contributor to value. The view that contributes to the value of 590 Lairmont Place is its frontage on the golf course and the view to the northeast and north to the city lights. These views will not be affected by development on the adjacent lot. The appraisal report by Valbridge Property Advisors concluded no loss in value to 590 Lairmont Place if the proposed improvements are constructed on 594 Lairmont Place.
The proposed improvements at 594 Lairmont Place encroach in the 30-foot, rear yard setback area of the original lot, affecting the view from 590 Lairmont Place.	The cited setback is not 30 feet. This is the side yard and the setback is 15 feet along the golf course and only 6 feet for accessory buildings up to 2 stories. Views across the land of another are borrowed and can be obstructed with development. Planting of trees along the property lines of the original lot would obscure views from 590 Lairmont Place. This is widely observable throughout Dragon Ridge and other area golf courses.
Obscuring the borrowed view amenity of the subject property results in a 30% to 40%, loss in value (damages) to the	The report under review did not include paired sales or any sales data analysis to support a 30% to 40% value loss due to

subject property, based upon "agent opinions" from a survey.	blocking the borrowed view of the clubhouse and mountains from 590 Lairmont Place.
The 30% to 40% estimated damages are not consistent with the agent survey findings in the report under review.	Agents said 1% to 20% for being adjacent to an improved lot and 1% to 50% for vacant lot. The range is as low as 1% or no penalty, to 50% or half the value of the home
The report under review repeatedly cites the methods and procedures outlined in the book Real Estate Damages by Randall Bell.	The methods relied upon in the report under review were misapplied. The report under review included supportive statements but omitted contrary statements to the findings, regarding methods used and reliability.

Advocacy and Bias in the report under review

The appraisers reviewed the court case as opposed to reviewing the property. Throughout the report under review, the consultants appear to be advocates of their client as opposed to impartial, objective and independent and not an advocate the cause or interest of any party or issue as required by USPAP.

An appraiser must not allow the intended use of an assignment of a client's objectives to cause the assignment results to be biased.

Uniform Standards of Professional Appraisal Practice, The Appraisal Foundation, 2014-2015 Edition

The Uniform Standards of Professional Appraisal Practice (USPAP) has widely been adopted by state and federal agencies as the guiding principles and standards for real estate appraisers in the development of valuation and consulting assignments. USPAP has also be adopted by the State of Nevada under NAC 645C.400.

The purpose of USPAP is "to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers." Among USPAP's rules and guidance, is the Ethics Rule. Within the Conduct section of this rule:

- An appraiser must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests.
- An appraiser must not advocate the cause or interest of any party or issue.

In the case of the subject property, the appraisal problem to be solved was to “**identify a loss in value (if any loss in value), resulting from the addition of land to the site adjacent to the subject property.**” Essentially, analysis of potential detrimental conditions that could affect property value has nothing to do with allegations by either party to the litigation or their opinions.

The focus of the analysis and the appraisal problem should be “identifying the market reaction (if any)” resulting from an event or action that changes the market environment of the subject property.” The consultants should not become involved in the client’s case as an advocate for that client.

Throughout the report under review, there are statements, application of techniques, information, etc. that raise concerns as to bias and advocacy within the analysis and conclusions of the report under review. Regardless of the complaint, statements by the owners or other parties to the litigation, the appraiser must remain objective and focus on the “appraisal problem.”

The following highlights some of our findings and concerns relative to this issue. Note that some statements have been emboldened and or underlined for emphasis. Statements from the report under review are shown in italics and in a Times Roman Font:

From the engagement letter dated June 24, 2014

*PURPOSE: The purpose of this assignment is to provide a reliable and credible valuation services including but not limited **to an estimate of the real estate damages** related to the properties involved in the case noted above.*

*All appraisal reports, appraisal reviews or file memoranda will be prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Our work is intended to be "appraisal practice," as defined by the USPAP; i.e. **the intention is that the appraisal service be performed in such a manner that the results of the analyses, opinions and/or conclusions are that of a disinterested third party.** The market data, factual data, reasoning, computations, descriptions, analyses and discussions, from which the conclusion was derived, will be stated or summarized within the report or file memorandum, and set forth within the work file.*

*Any opinions that I/Brunson-Jiu, LLC develop during the course of the assignment **will reflect my/our independent, impartial and objective professional judgment.***

In the engagement letter, the consultants indicated they were being engaged to prepare an estimate of the real estate damages related to the properties involved in the case noted above.

If the consultants were acting as a disinterested third party (as implied in the report under review) and the analysis was independent, impartial and objective, as required by USPAP, the purpose of the assignment would have been to first determine if any loss in value resulted from the addition of land to 594 Lairmont Place.

Cover Letter

Page 1 – second paragraph

My analysis focuses on the lack of disclosure regarding imminent and known changes to the adjacent lot that impacted the subject views and privacy as of the retrospective effective date.

Why does the expert focus on this? Real estate damage assessment is based upon an “unbiased assessment of value loss due to some event or occurrence.” The lack of disclosure has nothing to do with value loss (if any). This is the first in many cases in this report under review, where the expert appears to be advocating the client’s position in the litigation as opposed to simply providing an opinion as to the value.

Page 3 – Middle of the page

The following facts must be considered when considering Rosenberg’s decision to purchase:

- *Rosenberg believed they were purchasing Property A including certain view corridors and privacy. In reality they were receiving Property B with different (potentially obstructed) view corridors and lesser privacy due to an approved and imminent change in the adjacent property boundaries and building envelope.*
- *Because of the approved and imminent change in the adjacent property boundaries and building envelope Property A (as represented to Rosenberg) did not exist.*
- *The defendants were involved with the change in the adjacent property boundaries and building envelope and/or aware of the fact that Property A (as represented to Rosenberg) did not exist and yet did not disclose this fact to Rosenberg.*
- *The lack of disclosure precluded Rosenberg from making an informed decision and considering:*
 - *Whether or not they wanted to purchase Property B?*

- *What incentive (discount) would be required in order for Rosenberg to acquire Property B?*
- *Because Property B is an inferior alternative (as demonstrated by the analysis and conclusions within my report), the lack of disclosure by the defendants results in damages to Rosenberg that can be expressed as economic opportunity loss (cost of lost opportunity).*

In the report under review, the consultant is pleading and supporting Rosenberg's position, instead of providing unbiased support for a loss in value. The report under review is making a legal argument for damages as opposed to analysis concluding whether or not damages are present.

This is client advocacy, bias and contrary to the impartiality requirements of USPAP. **The report under review:**

- Refers to the parties as "defendants." The report under review should be analyzing the real estate, and not discussing the actions of parties related to a sale of the subject property.
- Discusses "lack of disclosure" and circumstances regarding the buyer's decision to purchase. This has no bearing on the appraisal problem.

The items above are legal issues that have yet to be decided in court. This appears to be advocacy as opposed to impartiality, as required by USPAP. The appraisal problem here should be to determine the property values (before and after the event).

Page 4 – Final Conclusions and Opinion of Impaired Value

Bullet-point items four, five, and the subsequent paragraph.

- *Under market conditions "current" as of the date they took the survey, respondents indicate the diminution of value in the vacant condition would range from 1% to 50% and the increase in marketing time would be from 1 to 365 days.*
- *Under market conditions "current" as of the date they took the survey, respondents indicate the diminution of value in the developed condition would range from 1% to 20% and the increase in marketing time would be from 1 to 180 days.*

“It is generally accepted practice in real estate damage analytics to assume the most injurious scenario to the damaged party.”

These conclusions (diminution of value of 1% to 50%) are based upon the adjacent site (land) being vacant as of the date of value. The survey concluded a range of 1% to 50% and the appraiser selects 30% to 40%, why?

Use of this scenario in the survey is hypothetical, has no bearing on the appraisal problem and is misleading. In addition, what is the basis for selecting 30% to 40% when the indicated range is 1% to 50%?

The diminution in value as a percentage of value, based upon the survey was reported to be 1% to 20% for the adjacent vacant land site as improved, with a marketing time of 1 to 180 days. Essentially, the agents indicated that simply building a home on the vacant site next door would decrease the value of the subject property by 20%, because it is a large lot and presumably a large home.

Throughout the valley, there are numerous large homes on large sites, constructed next to smaller homes on smaller sites. There should be no shortage of data for the impact to the sale price of a smaller home, negatively affected by a larger home next to it.

Cross comparing this data would validate or invalidate the findings in the survey. No attempt was made to crosscheck the agent responses with analysis of paired sales (a recognized appraisal method) to see a smaller home that is next to larger homes, sells for less than a similar smaller home that is not next to a large home.

In the first paragraph following the bullet points above, the report under review states that generally accepted practice is “to assume the most injurious scenario.” The consultant uses the combination of this statement and the range created by the “vacant land” scenario, to justify conclusions of 30% to 40% of the “improved value.”

This is misleading. The report under review uses hypothetical conditions (that did not exist) and uncredited statements to generate a higher range of diminution of value. The only conclusion can be the report under review is biased, as doing this favors “the cause or interest of any party or issue.” This is a violation of USPAP and contrary to the premise and certifications within the report under review.

The statement below, could not be found anywhere in the valuation literature or the book, “Real Estate Damages,” which is continuously referenced in the report under review.

“It is generally accepted practice in real estate damage analytics to assume the most injurious scenario to the damaged party.”

We have no explanation or justification for consultants stating they are “impartial, objective and independent”, and then assuming the most injurious scenario (referring to the damages of “50% of improved value” from the survey), without collaborating support from one or more of the accepted methodologies, to derive or reconcile the final conclusions and value opinion. The conclusions of 30% to 40% of the improved market value are rationalized by stating assuming the most injurious scenario is generally accepted practice.

Summary of Salient Facts – Page 14

- ***Purpose of the Assignment:** To provide a reliable and credible opinion of real estate damages related to the facts of the case.*

If approached objectively, the purpose is “to identify if or if not, the additional lot area added to 594 Lairmont Place, affects the market value of the subject property.” Here, the consultant has pre-concluded “damages.” Under USPAP, the consultant is required to be impartial, objective and not biased or an advocate of the client.

This statement is in direct conflict with USPAP and the appraiser’s ethics requirements under state and federal law regarding bias and impartiality. The value opinion has nothing to do with the “facts of the case,” as of this point in time.

The value opinion, opinion of possible damages, etc. should be based upon market data and valuation protocols, not legal filings, arguments or allegations. At this point, “the facts of the case” have not been presented in court and are only allegations.

The purpose of USPAP “is to promote and maintain a high level of public trust in appraisal practice It is essential that appraisers develop and communicate their analysis, opinions and conclusions to intended users of their services in a manner that is meaningful and not misleading.”

Failure to Apply Recognized Methodologies

The report under review stated the lack of identical sales (similar to the subject) precluded the use of recognized methods (sales comparison, income and costs approaches) to determine the diminution in value (if any).

While the lack of sales with similar attributes or potential impairments may preclude 'direct comparison' in some opinions, other sales data (historic and current) is useful in determining, bracketing and or contrasting findings to evaluate or validate the relevance and accuracy of the conclusions.

While perfect sales may not exist in the market (and therefore the analyst has no direct comparison to establish what the value is), other sales data can be used (historic, or current) to show the relationships and confirm what the subject is not. This process is used to eliminate erroneous conclusions from misapplied techniques and or from faulty surveys, as in the case of the report under review.

Scope of Work - Page 17

This Real Estate Damages Analysis report is intended to be an "appraisal assignment." That is, the intention was that the appraisal service was performed in such a manner that the results of the analysis, opinion, or conclusion be that of a disinterested third party.

The report under review is intended to be an "appraisal report," in compliance with USPAP and the opinion of a "disinterested third party." The report under review applied a wide range of real estate agents opinions (value loss of 1% to 20% if the site is improved and value loss of 1 to 50% based upon the site being vacant) and was oblivious to the fact the golf frontage and golf/city view itself would only contribute 10 to 15%.

Sales data was available that would support a primary golf course and limited city view contribution being in the 10% to 15%+/- range. How can the loss be the 30% to 40% of market value for **a theoretical loss of a tertiary view that is "borrowed,"** when the primary golf course view in its entirety is only worth 10% to 15% of the property's market value?

As part of their engagement, the same consultants produced an appraisal of the adjacent and nearby vacant lots at 594 and 598 Lairmont Place, with an effective date of value of October 20, 2014 (report BRUNJIU002124). This report concluded the value for a golf course frontage lot (in this case, 594 Lairmont Place) to be \$22/SF. The report also showed an approximate value increase in the neighborhood of 8% +/- from May 2013 to September 2014. Therefore, the \$22 per square foot represents 108% of the value of the land as of the date of purchase of the subject property at 590 Lairmont Place.

The value as of the May 15, 2013 date would be \$20.00 per square foot. 590 Lairmont Place has a site area of 28,711 square feet per the final recorded map. Applying \$20.00 per square foot to the site area would yield a value indication of \$574,220 for the site. The consultants completed the land valuation prior to their completion of the report under review.

Therefore, the consultants were aware of land values for the subject and could have easily applied the \$20/SF+/- factor to the subject land and concluded that their reported damages, based upon agents surveys, were unreliable as the indicated amounts vastly exceeded the contributory value of the land in its entirety.

The golf frontage and view of the city only contributes 10% to 15% maximum (\$250,000 to \$375,000 based on the \$2,500,000 value by Valbridge). The golf course frontage and the city view are still present in the subject property and the views of the golf course and the city are not affected by additional land added to the adjacent lot.

Application of a recognized method of valuation, to the appraisal problems, in this case land sales, would have provided the consultants with a check and balance to the agent surveys and clearly shown or proved that the ranges shown by the agent surveys were unreliable.

This raises the following observations.

- The report under review concludes damages in the range of 30% to 40% or \$750,000 to \$1,000,000.
- \$750,000 to \$1,000,000 exceeds the value of the subject's lot (the lot that creates all of the subject views) by a range of \$165,000 to \$415,000.
- How can the loss of a "borrowed view" (for which there is no guarantee), exceed the value of a lot that retains its primary value contributors, the golf course frontage and golf course/city views?
- The subject still has golf course frontage, a golf and a limited city view. The value of the subject lot by virtue of the frontage and retained views is \$574,000 (using the conclusions of lot value by the same consultants).
- If the loss is \$750,000 to \$1,000,000 and the retained value is \$574,000, per the report under reviews, the total value would range from \$1,325,000 to \$1,574,000 for the lot alone.
- This is more than the conclusions by the same consults, for the superior adjacent lot.

How can this be a credible appraisal when the value loss or damages concluded in the report under review exceed the total value of the subject land when the subject site, retains its view of the golf course and the distant city lights?

For this reason alone, the appraisal opinion (damages of \$750,000 to \$1,000,000) stated within the report under review, is not credible and therefore in violation of USPAP. The appraiser overlooked the obvious and instead, elected to assign damages based upon a severely flawed real estate agent survey that will be discussed later in this review.

Did not consider or use historical data to identify relationships

It should be noted that within the scope of work on page 17, the reported scope of work included the following statements:

- *Gathered and analyzed data on the subject subdivision.*

The developer of MacDonald Ranch has considerable experience with the sale of residential lots for custom homes. It is widely accepted that golf course communities generate significant lot premiums for those lots fronting along the course and or for those lots with a view of the golf course, even though the lot may not have direct frontage along the course itself.

Unlike many golf course communities, MRH is being developed on the foothills of the McCullough Mountains, approximately 100 feet to 600 feet above the Las Vegas Valley floor. The developers sold hundreds of golf course lots and high quality home lots since 1999 to date, with prices ranging from \$150,000 to more than \$4,000,000. It is reasonable to conclude the developer comprehends the attributes that generate value and how to maximize that value in the pricing of the lots.

There were sixteen lots on Lairmont Place, behind the gated entry. The lots ranged from 22,459 SF to 46,415 SF. Fifteen of the 16 lots have golf course frontage and eleven of the 16 had some degree of city view.

590 Lairmont Place (the subject property) and eight other lots on this street were as sold in 2004. The subject lot is 28,711 SF and was the lowest priced lot of the lots in the 25,000 SF to 34,000 SF range. With an experienced developer and in a market that was doing well, **the subject was the lowest priced lot and sold for the lowest price of similarly sized lots on Lairmont Place.** Why is this?

The only logical answer, it was the least desirable lot on Lairmont Place. There is no other logical explanation. In 2004, the developer sold 49 lots. The valley real estate market was doing very well. Prices were moving up and there was adequate demand. The developer was experienced; therefore, the developer understood the market and knew how to price the land for the maximum return.

Original Lot Sales Along Lairmont Place					
Lot	Orig. Price	Date	Lot Size	\$/SF	Views
1	\$1,053,000	Jun-04	46,415	\$22.69	No golf front
2	\$1,048,000	Jun-04	42,088	\$24.90	Golf front - Down Fairway. Oversize, City
3	\$748,000	Jun-04	28,711	\$26.05	Golf Front - Across Fairway
4	\$848,000	Dec-04	29,596	\$28.65	Golf Front - Across Fairway
5	\$798,000	Jun-04	30,088	\$26.52	Golf Front - Across Fairway
6	\$798,000	Jun-04	26,791	\$29.79	Golf Front - Across Fairway
7	\$1,009,000	Jul-06	27,436	\$36.78	Golf Front - Across Fairway & City
8	\$1,140,000	Mar-07	26,504	\$43.01	Golf Front - Across Fairway & City
9	\$1,487,000	Jun-04	44,424	\$33.47	Golf Front - Multi FW & City, Oversize
10	\$1,150,000	Jan-07	22,459	\$51.20	Golf Front - Across Fairway & City
11	\$1,000,000	Mar-06	22,880	\$43.71	Golf Front - Across Fairway & City
12	\$898,000	Jun-04	28,675	\$31.32	Golf Front - Across Fairway & City
13	\$950,000	Jun-05	27,395	\$34.68	Golf Front - Across Fairway & City
14	\$1,189,000	Jul-06	25,166	\$47.25	Golf Front - Across Fairway & City
15	\$1,189,000	Jul-06	30,597	\$38.86	Golf Front - Across Fairway & City
16	\$1,235,000	Jan-06	33,399	\$36.98	Golf Front - Across Fairway & City

If the subject was more desirable than other lots and or if the subject had a superior view amenity (clubhouse, mountains), that was not borrowed and was marketable to a buyer, why would the developer price the lot below the other lots (of similar size) on the same street?

According to the report under review, in the Scope of Work section on page 17, data on the subject subdivision was analyzed. If this is the case, why did the consultant not come to and report a similar finding? The sales data above is not opinion. It is fact. The subject property was the lowest priced property on Lairmont Place. It had golf course frontage, a fairway view and was larger than eight other lots.

The only reason for pricing this lot below and selling for less than the other lots is that it was the least desirable lot. The subject lot is located behind the ninth green and buffered from the green (actually, the green is partially obscured by the landscaping, especially at the lot grade level). Many of the other lots have better views of the fairway and ninth green area.

Lot 4 is adjacent to the subject with an angled view of the desert area behind the ninth green. Its view of the clubhouse and desert area behind the ninth green is inferior to the subject's view of the same items. If a borrowed view of the desert area and the clubhouse (and the distant mountains behind the clubhouse) area valuable amenities (as stated in the report under review); and the subject's view of those are superior to lot 4's view of the same items, why would lot 4 sell for \$100,000 more than the subject lot?

Analyzing the original lot sales would have revealed the developer's pricing and illustrated the sales pattern shown in the chart above. An objective review of these sales and discussions with the sales office would have placed the subject within the proper perspective in relationship to the other lots.

Comprehending the subject's relationship to adjacent and nearby lots is the first step to establishing its value. Generally speaking; "properties maintain their value relationship" to other nearby properties over time. If a lot has a better view and sells for more than the subject sells, over time, that relationship will be maintained.

While the gap in price may change slightly, due to supply and demand, under normal market conditions, the superior lots will hold their values over lesser lots. Knowing that the market identified the subject as equal to, superior or inferior to other lots (based upon prior sales), permits comparison of the subject to more recent sales to bracket the subject's value.

Finally, reviewing the original sales data would have shown that the subject did not have any premium "over and above" the adjacent lots for its "borrowed view" of the desert area behind the ninth green of the Dragon Ridge golf course. In fact, it sold for \$50,000 less than a nearby smaller lot and \$100,000 less than the adjacent lot to the north that has less golf course frontage.

Blind reliance on questionable methodologies without cross validation and without consideration as to the steps that must be taken to avoid hypothetical bias

On page 12 of the report under review, Impaired Value is defined as:

“The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.”

12 Randall Bell with Orell C. Anderson and Mike V. Sanders, *Real Estate Damages: Applied Economics and Detrimental Conditions* – 2nd Edition (Chicago: Appraisal Institute, 2008), p. 378.

The three recognized approaches to value would include the cost approach, the income approach and the sales comparison approach. In developing the damages opinion, none of the recognized approaches to value was applied to the appraisal problem. Instead, an agent survey was developed and the responses to that survey were used to quantify a percentage range of potential market value loss.

On page 45 of the report under review, under Case Study #3: Survey of Real Estate Professionals, the following was stated:

In a perfect scenario, I would provide several examples of improved golf course property with adjacent vacant land that acquired additional land from the abutting golf course with altered sight lines and privacy in the before and after conditions. Because comparable data of sales and resales on such similar sales could not be located, I conducted primary research on the specific issue utilizing a survey of real estate professionals.

Here, it is implied that the absence of directly comparable sales of vacant sites precludes any analysis by the direct sales comparison approach. Finding sales of improved properties, like the subject property, adjacent to a golf course and to a lot that has been expanded, would seem to present a challenge.

You do not need physically identical properties to employ the sales comparison approach. Often in the valuation of real estate, the appraiser will not have “perfect comparable sales” from which to derive an estimate of the market value, unimpaired. However, this does not preclude using multiple valuation scenarios and recognized valuation methods to bracket the subject value (or value loss if any) and or to identify “market derived” indications of either the unimpaired or the impaired value of a property.

While the use of market interviews and surveys can at times be useful and provide valuable insight as to market characteristics and other factors influencing the market and or a subject property, in the book Real Estate Damages: Applied Economics and Detrimental Conditions (REDAEDC), the author states that reliance upon market surveys for highly unusual situations:

“... might be a valid means to query property owners and brokers and determine their perspectives and perceptions relative to the effect on value, if any. Additionally, a market survey may be used as secondary or supporting documentation for primary market data.”

“However, a survey should not be the sole method used when relevant market data is available. In other words, prior to relying solely upon a survey method, an analyst should make a full search for relevant transactional data and exhaust other alternatives.”

Essentially, the author is warning the reader that surveys should not take the place of transactional data and that when used in conjunction with transactional data, one of the methods could be used to validate or to invalidate the other.

Conversely, the concern over the use of surveys to establish financial damages has been well documented. From REDAEDC:

“A particular concern with some surveys is hypothetical bias, which is defined as the potential error that arises from not confronting an individual with a real situation. Hypothetical bias is problematic, since there are no economic consequences to respondents who overstate or understate values in a hypothetical scenario.”

A common pitfall with surveys is that without proper discipline, planning, and thought, they can become little more than casual conversations in which preconceived ideas and notions become superficially validated. Surveys can in some instances provide valuable insight into market behavior, although the use of surveys is rarely a substitute for the analysis of actual market data when it is available. It should be noted that formal surveys, particularly such specialized techniques as contingent valuation and conjoint analysis, are beyond the expertise of many appraisers and may require the use of specialized experts.

In our opinion, the methodologies, analysis and conclusions presented in the report under review are based upon a misapplication of the “contingent valuation” survey method. This was done while ignoring data that would have invalidated the survey conclusions and subsequently the findings and conclusions in the report under review.

This type of survey is acceptable as a back up to traditional market data. From REDAEDC:

In other words, in very rare or unusual situations, Type II surveys may be a valid means of gathering market data when no transactional data is available. The interviews must qualify the participants, be carefully scripted, and accurately set forth all the relevant issues in a fair and unbiased way. Ideally, both sides of the issues should be studied, i.e., questions asked from both the buyers’ and sellers’ perspectives. This type of survey can be valid, but only if it is correctly designed and administered.

A common pitfall with surveys is that without proper discipline, planning, and thought, they can become little more than casual conversations in which preconceived ideas and notions become superficially validated. Surveys can in some instances provide valuable insight into market behavior, although the use of surveys is rarely a substitute for the analysis of actual market data when it is available. It should be noted that formal surveys, particularly such specialized techniques as contingent valuation and conjoint analysis, are beyond the expertise of many appraisers and may require the use of specialized experts.

The survey was designed and administered by the appraisers. From reading the situations cited, the questions and responses (and for reasons previously cited in the review), it was apparent the survey was impacted by hypothetical bias, contained non-factual elements and was not properly designed to solicit responses that would reflect a fair response.

The report under review goes to great extent to quote and cite the methods, definitions, levels of detrimental conditions, etc. from the book Real Estate Damages. However, the report under review failed to provide the reader with a full understanding of the factors that validate or invalidate the use of surveys.

While the use of contingent valuation surveys can be useful as additional and or supporting data, the survey must be carefully designed and administered to avoid bias and preconceived notions in the questions asked. In the case of the survey used in the report under review, the survey was biased and improperly designed and administered, which resulted in highly misleading conclusions relative to the subject property.

Failure to use recognized valuation approaches that would have confirmed and or invalidated the findings in the survey

In the report under review, the conclusions rely upon the use of a contingent valuation survey, without any application of a traditional valuation approach to validate or invalidate the findings and conclusions. As previously stated, the report under review justifies the use of a contingent valuation survey on page 45 under Case Study #3, citing the lack of comparables with altered sight lines, etc. Fundamentally, this statement is not accurate. It is common in the custom home market to have high quality properties fronting on the golf course, with similar, but slightly different views.

Typically, when the lots for these homes are sold, the golf course is in place and buyers have some perspective as to the quality and degree of view the lot will provide, based upon the design of the home and most importantly, the orientation of the home on the lot that the buyer anticipates.

However, as noted in the developer's brochure, the CCR&s, etc., models, course design, brochures are subject to change and the brochures, topo models, etc. are representative as opposed to exact. This is common practice in real estate development and it is widely known by buyers, sellers and market participants.

The sight lines of the initial views in any community with vacant and or developed or partially developed lots will continuously change over time for a variety of reasons. This is especially true in luxury home communities where lot coverage may be higher than typical due to the size of the primary residence and garage along with the inclusion of large accessory buildings such as cabanas, guest homes and RV garages.

In addition, in luxury home communities (and as stated in the report under review), privacy is an issue. Anyone with common sense understands that lots adjacent to common areas with tennis courts, a community facility for use by a large number of members or lots fronting the golf course, will lose some degree of privacy due to people playing golf or using the common area or recreational facilities along with maintenance workers and employees of those amenities.

Additional privacy loss can be due to external conditions. For example, while golf course lots have positive attributes (views, no neighbor abutting the rear of the property), they also have negative factors (noise from lawn mowers, players with loud voices, additional traffic noise from vehicles going to and from the clubhouse, etc.).

Most notably, a loss of privacy is often attributed to the design of the home and its orientation. Because the views of green areas and distant city lights are desirable, homes are generally oriented (key rooms within the home such as the living, dining, family or master bedroom areas) towards the primary and most permanent view.

In doing so, it is also common for the developers of these home to incorporate large glass areas in the key rooms that are oriented to the view that is valuable, as part of the home design. While large glass areas make it easy for the residents and guests to enjoy the view of the golf course, that same glass makes it easy for others to view the residents and guests of home fronting on the golf course or other open areas.

This is commonly referred to as the fishbowl effect. While the occupants can see out, others can see in and privacy (to a large degree) is lost. Property owners are individuals and individuals have different perceptions as to privacy. Therefore, property owners will take steps to mitigate the fishbowl effect based upon their perceptions.

Many, if not most homes suffer from the fishbowl effect. The dominance of two-story homes in MacDonald Ranch creates a degree of the fishbowl effect on adjacent homes, as one home overlooks the other home's side or rear yard area. This is evident by driving through the neighborhood or by observing homes on and off the golf course via flat and oblique aerial photographs available online on the internet.

The different lot and improvement orientations, pool and spa locations, etc. contribute to or lessen the impacts of the fishbowl effect and being adjacent to a two-story home and or to the golf course or common area elements. However, the most common method to mitigating the impact of the fishbowl effect is via the use and planting of mature trees.

Observation of oblique and flat aerials overtime, illustrate how the planting of trees and the maturing of landscape, planted within the confines of the owners lot, obscures the visibility of the lot and reduces or eliminates the fishbowl effect.

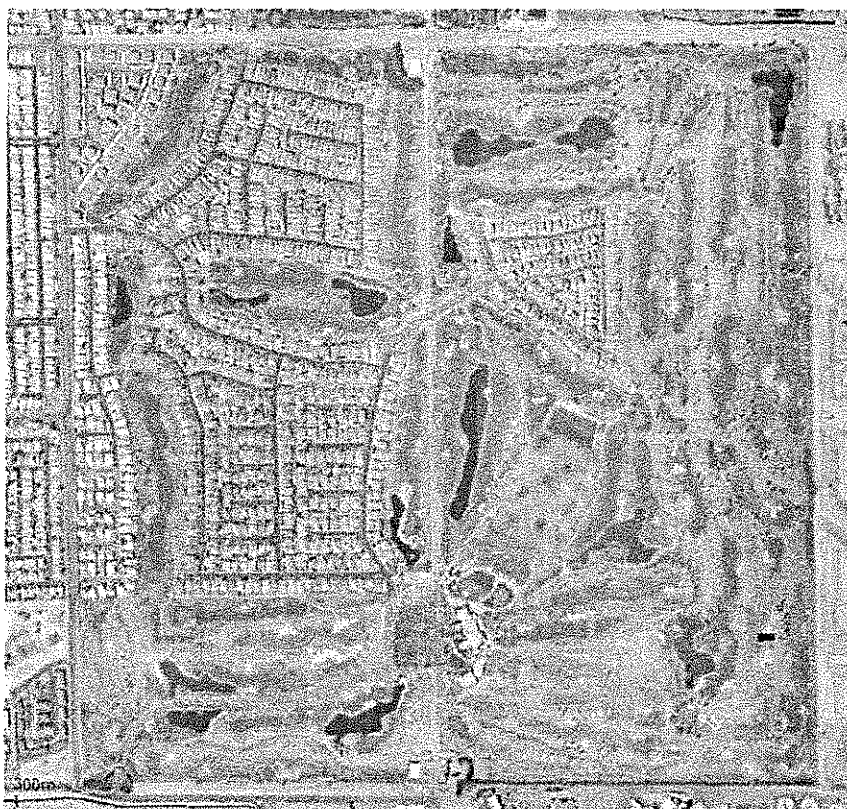
Not only does the planting of mature trees eliminate or reduce the visibility and fishbowl effect, it also reduces or eliminates the "borrowed views" from adjacent properties, across the lot. This is an important and key observation that should have been made, analyzed and reported to the agents that took the survey and factored into the analysis and conclusions within the report under review.

The use of mature trees and landscaping to reduce the visibility into a property, from an adjacent property or from the golf course itself, is common throughout the Las Vegas Valley on various golf courses. Anyone who has ever owned or rented a home should be aware of how the views and visibility of their home and from their home is affected by landscaping on adjacent and nearby properties.

Anyone who is involved and experienced in the development, sale or valuation of real estate, especially luxury homes on a golf course, should be aware of how the original sight lines of primary views and those of borrowed views are impacted over time the maturing of landscape or addition of accessory uses on and adjacent lot.

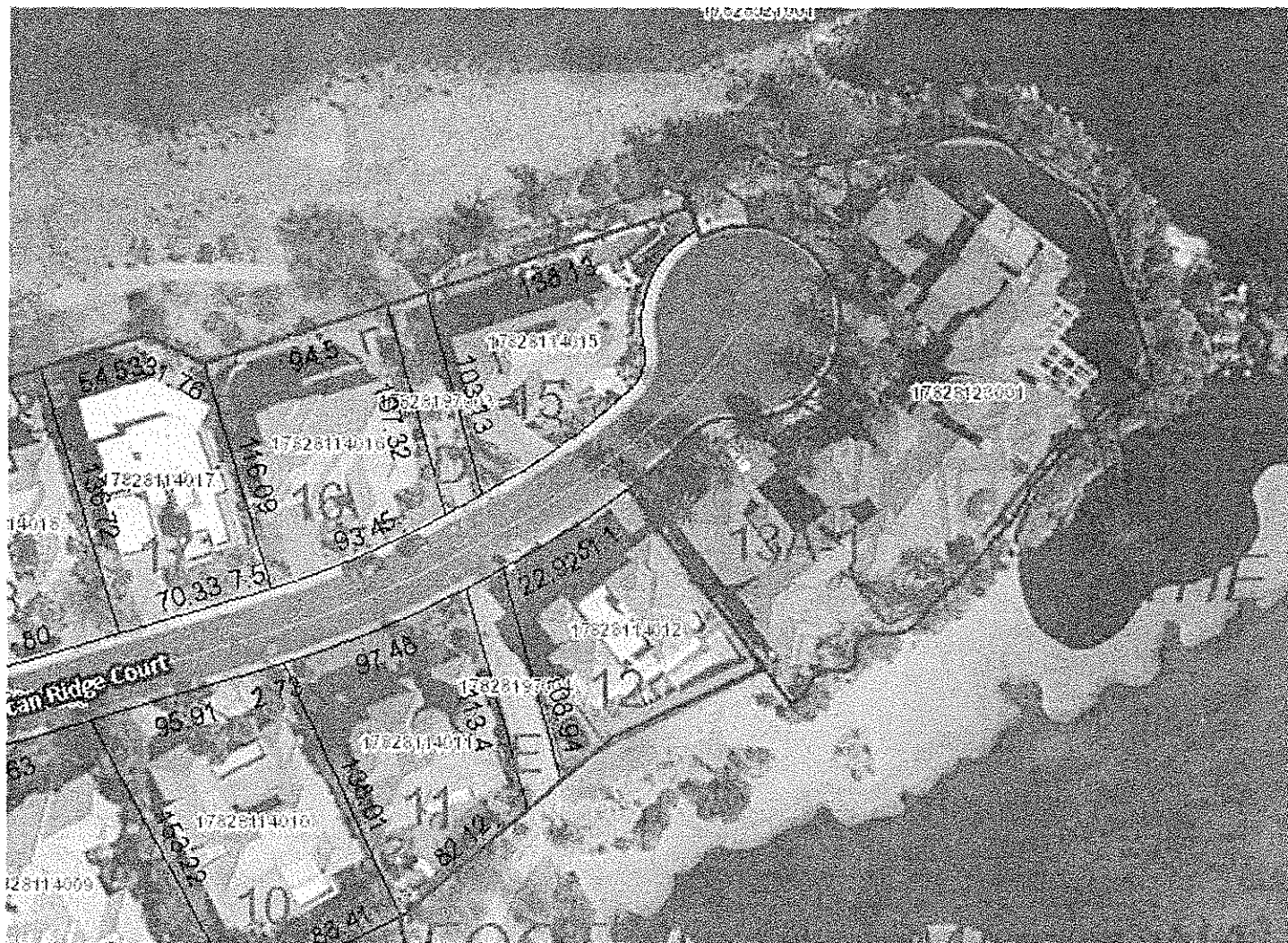
Irrespective of the use of mature landscaping to offset the fishbowl effect, the fact that views from golf course frontage lots are not guaranteed (by law), has been widely publicized, locally and nationally. Several local golf courses have been closed and repurposed.

Those with frontage along the golf course lost the views for which they paid significant premiums. This was the case at Stallion Mountain County Club and at The Falls Golf Course at Lake Las Vegas. While developers often use golf courses as a sales tool and charge premiums for lots with golf course frontage and or with golf course views, the owners of the golf course have no obligation to preserve those views, to maintain the course or to keep the course open.



Above to the left, is the multi-course Stallion Mountain Golf Course in 2004 and above right, is the same golf course in 2014, reduced to one course of 18 holes. Homes with expansive golf course views lost those views when the course owner sold part of the course to a housing developer.

Similarly, property owners have no obligation to allow a “borrowed view” from the adjacent property, across their property, to remain open and unobstructed, especially when that same view may contribute to the fishbowl effect and a loss of privacy.



The use of landscaping to create privacy is evident throughout MacDonald Ranch Highlands. In the photo above, lot 13-A1 was built in 2009. The landscaping on the north side of the cul-d-sac, both on the lot and on the golf course, obscures views of the golf course lake from lot 15.

The use of mature landscape to offset the fishbowl effect and to increase privacy is common and shown below in aerials of MacDonald Ranch. It should be noted that property aerials covering over 20 years are publically available online via the Clark County Open Web Mapper.

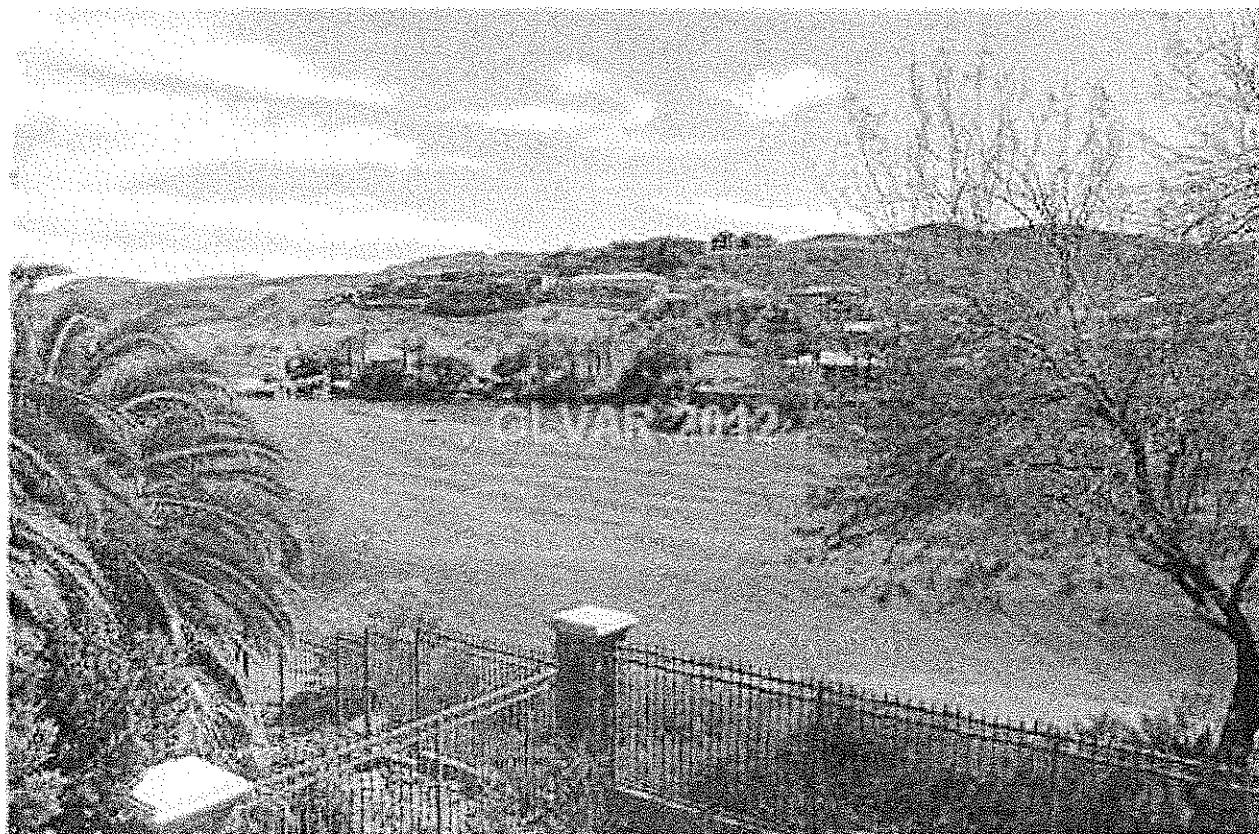
The landscaping between the homes provides privacy from adjacent lots and from the golf course. Below, is an aerial taken in 2005, prior to the owners planting trees and landscaping. Clearly, the sight lines (borrowed views) across the adjacent lots from both the golf course and the individual homes are impacted by the landscaping planted by the owners.



To illustrate the impact of maturing landscape, look at the following photos



Trees on the course and lots are maturing, obscuring the views.





Trees not on the property affect the city view.



The tree on the adjacent lot (and subject lot) will grow and partially block the city view.

While the market in general will pay premiums for select views (and therefore some views contribute to the value of a property), from the photos and aerials, those same views can and will be altered by many factors.

The photos and aerial are proof that while market participants will pay a premium for golf course frontage, they will also plant trees between their lot and the neighbor's lot, obscuring the "expanded and borrowed view" across the neighbor's lot.

The planting of trees between adjacent lots is common throughout MacDonald Ranch Highlands and other golf course communities in the Las Vegas Valley. These trees obscure (partially or totally) the expanded lot view (borrowed view across the adjoining lot).

Market participants are willing to pay significant premiums for homes with golf course frontage, only to subsequently block the borrowed view across the adjacent lots, via the use of mature trees. The reasonable and logical conclusions from this are:

- The golf course frontage and view of the course is the attribute valued by the buyer and;
- The owner does not value the "borrowed view" because they are willing to obscure that view via the planting of trees.

Market participants may associate desirability to a borrowed view, even when they know it may or will be obscured at some future time. Desiring a borrowed view does not establish they are willing to pay for it. Market participants that purchase multi-million dollar homes on a golf course are typically not novice buyers.

They are generally educated and well informed and many (if not most) have been prior homeowners. In addition, many have owned prior homes in high-end communities and many have likely had a home before, fronting a golf course or another lot, where the neighbor planted a tree, built an addition to the home, etc.

These market participants are (or should be) aware of several simple facts. While CC&Rs may influence what is built, generally, they do not address or preclude the ability of adjacent lot/land owners from increasing privacy on their lot, by locating buildings or planting mature trees that may alter the view of the surrounding area, from the lot of another.

There was a case (Smith vs. Solky) where the landowner so valued his view that he purchased the adjacent site when he built his home. He then resold the adjacent site with a deed restriction that precluded the buyer of the adjacent lot from building a home or “planting trees” that would exceed 17 feet from ground level or 1994.7 feet above sea level.

While Smith had legal control over the height of buildings and trees on the adjacent lot, the trees on other lots and around the perimeter have matured and range between 40 feet to 60 feet high and with canopies of 30 feet or more. These trees have grown to a point where the once expansive city view is limited to a very narrow window.

No such restrictions regarding the planting of trees exist in the deeds and or in the CC&Rs for the lots adjacent to 590 Lairmont Place and or for the land owned by the golf course. To our knowledge, the common areas along Stephanie Street and the Dragon Ridge Country Club building and grounds do not have such restrictions.

The owners of those properties are permitted to plant mature trees and or to construct buildings that may affect the borrowed views from 590 Lairmont Place. While the buildings may be subject to set backs from the property lines, as can be seen from the aerials and photographs in this review report, the setbacks do not apply to trees, bushes, etc.

Maturing trees already exist on the golf course, along Stephanie Street and all over the Dragon Ridge Country Club building and parking lot. As of the date of value, these trees were in place. The home on 586 Lairmont Place (north of the subject property) is a foreclosure and has been vacant.

While to date only a single palm tree was planted in the rear yard, future tree plantings could affect the view to the northwest, from the second level of 590 Lairmont Place. Similarly and as discussed before, trees planted on the adjacent lot to the south (594 Lairmont Place) even if limited to the original lot lines, would fully or partially obscure the borrowed view from 590 Lairmont Place, towards the east and southeast (clubhouse and mountains).

Pages 25-26

Here the report under review identifies two concepts related to views. The first is “borrowed view” and the second is visibility. On page 25 under “borrowed view,” the report under review indicated:

The subject property rears the ninth green with no development located on the opposite side of the fairway/green and a landscaping buffer between the green and the rear property line. The primary view of the green is to the northeast and the primary view of the fairway is to the north. Secondary views of the mountains and clubhouse exist to the east and southeast. The north view is unaffected and the northeast view is only slightly affected by the new property boundaries and future construction.

This statement is not entirely accurate and it does not fully detail the various views from the subject property.

- There is development directly opposite the subject property in the form of Stephanie Street, housing that backs to Stephanie Street, the Dragon Ridge Country Club, public and employee parking lots. The subject property is viewable from all of these properties.
- The statement seems to imply that the subject backs to a landscaped or green area when in fact; the subject property is buffered (from 10 feet to 55 feet) from the landscaped grass/green area of the golf course by an undeveloped natural desert and rocky area.
- While the second level of the home does have golf course and other views from the bedroom areas, the first level views from the patio and interior room areas is partially obscured by desert trees and bushes planted around the green area. As these trees and bushes mature, much of the golf course will be obscured from views on this level. At the same time, golfers with errant golf shots, will be able to walk up and around the landscape and will have direct views into the rear yard, pool area and glass areas on the first and second levels.
- Limited views of the mountains exist to the east. However, the views are not placed into context or quantified in the report under review. Additionally, the report under review misstates the building setbacks that affect the borrowed view of the mountains across the building envelope of the adjacent lot before the additional land area was acquired and after the land was acquired. This will be addressed later in our review.

Primary, secondary and borrowed views were not analyzed and quantified or classified from the perspective of the type of view, where the view was from (floor level, front, rear, yard area, room, etc.) and how the view would be impacted (or could be impacted) under normal conditions over time by factors internal or external to the property. This was the case within the report under review and within the agent survey used as a basis for the report's findings.

It is critical to understand several key points:

- While participants in the market are willing to pay a premium for a lot abutting a golf course, “informed or knowledgeable buyers” (as required by the definition of market value), purchase golf course frontage lots knowing the view of the golf course or view from their lot is not guaranteed in perpetuity.
- In Nevada and other states, golf course land has been reverted to residential uses. Stallion Mountain and The Falls course at Lake Las Vegas are examples. Both projects have repurposed prior golf course fairway land for use as residential lots. In doing so, many of the homes that once fronted along and had a view of the course, no longer have a golf course or open area view.

Virtually all golf courses have residential lots fronting on them where the maturing of trees, bushes and other plants have altered (negatively) the views once enjoyed by adjacent or nearby lots. This is occurring at the subject property. It is common throughout the valley as trees located on the lot and external to the lot mature and alters the views from the interior and exterior areas of the property.

Various other issues in the Report under Review

Views and Privacy – Failure to create a baseline

While the report under review repeatedly emphasizes the value contribution of views and privacy, the report under review does not really focus upon, consider or properly evaluate the view and privacy entitlements of the subject property. In doing so, the report under review fails to consider the following, and to accurately portray or represent these factors in the agent survey. As a result, the agent surveys are flawed.

On page 26 of the report under review:

Locations along a fairway or green require some sacrifice of privacy from golfers that utilize the course. Any adjacent property can impact the privacy of a given site by completing a living area or recreational addition (e.g. a pool or a sport court) to an adjacent property that allows a neighbor to look into the rear yard and/or into the living area of the house.

This is factual. While the appraiser points out that golf course lots sacrifice privacy to some degree, the report under review focuses on the loss of privacy resulting from the fishbowl effect and construction of an addition or building. In the report under review, the

emphasis is upon a loss of privacy due to construction of new improvements, without any analysis as to the loss of privacy that existed prior to the additional land area being added to the adjacent lot.

In order to evaluate any potential damages (as recommended by the book Real Estate Damages) related to visibility and the loss of privacy (resulting from the land addition, future development, etc.), it is critical that the appraiser first establish a base line as to:

- What level of privacy existed prior to the sale of the additional lot?
- How will that privacy be impacted in the future by development of the lot (in contrast to the above) conclusions?
- If the property suffers from a loss in privacy, is this measurable in the market or accepted?

If the loss in privacy is accepted as offset by the addition of the view, is there any measurable loss specifically attributable to the planned development of the adjacent lot that would not have occurred if only the adjacent lot was developed vs. the adjacent lot and the new lot?

Baseline – Existing Conditions Not Considered in the report under review

Throughout the report under review, the appraiser cites the book “Real Estate Damages” Applied Economic and Detrimental; Conditions”, by Randall Bell with Orell Anderson and Michael Saunders. The authors are respected appraisers and have significant experience with identifying and measuring the loss in value (if any) due to detrimental conditions, stigma or other conditions that subsequently influence the value of real estate.

Additionally, the appraiser cites the use of the Detrimental Condition Matrix (although the matrix shown on page 27 of the report under review is not the one in Bell’s book). The appraiser also uses and repeatedly cites the DC Model from Bell’s book. This model assigns six points at which the appraiser or expert can make a determination as to the presence of a detrimental condition (if present in a property) and assess the potential damages to the property’s value (if any).

Nowhere in the report under review does the expert analyze existing conditions and discuss existing conditions and the impact from those conditions to set a “baseline for analysis.”

External Factors Affecting the Subject Property

There are many potential external factors that may or may not have a material impact on the value of the subject property, that were not factored into the analysis in the report under review, that were not disclosed in the analysis and or that had an error that has a substantial effect on the appraiser's conclusions.

- As the landscaping (trees, bushes, etc.) on the golf course, along Stephanie Street, in the parking lot of the Dragon Ridge Country Club and the trees planted near the homes east of Stephanie mature, **the subject's view from all levels will be negatively impacted.**
- Views from the lower level of the subject property (especially the public areas or guest areas of the residence) are already impacted (as evidenced by the photos).
- The pool and rear yard area are 10 feet +/- below the sidewalk grade of Stephanie Street and 4 feet +/- below the adjacent lot to the southeast. The land slopes downward towards the subject property from Stephanie Street and from the Dragon Ridge Clubhouse and parking lot areas (as evidenced by the photos).
- In the report under reviews analysis of the subject's limited views to the southeast, that were across the "hypothetical building setbacks" of the adjacent lot, the appraiser's property development setbacks were wrongly applied. This resulted in a perception of a view that is incorrect and that would not exist had the appraiser correctly applied the setbacks. Even so, this is a "borrowed view" and the report under review does not consider it being blocked by landscaping and trees.
- It is important to note that the fence line (of the adjacent lot) along Stephanie Street represents the rear property line of that property. The 30 foot required building setbacks are taken from that line, not the property line between the two lots or the original property line abutting the golf course. These two lines are side yard boundaries and the setback from them would be 10 feet for a main residence and 6 feet for an accessory building (garage, guest house, etc.), any of which could be multiple stories.
- The report under review does not recognize or comprehend;
 - The setbacks do not prevent the owner of the adjacent parcel from planting mature trees (along the west, north and east boundaries of the original lot)
 - This would substantially reduce (if not obscure) the borrowed view across the land towards the southeast.



The subject property is shown in the aerial above, outlined in violet. As this photo illustrates, there is development on the opposite side of the golf course in the form of Stephanie Street, houses along Stephanie Street, the Dragon Ridge County Club and parking lot for the golf course.

Fishbowl Effect

- The golf course fairway and hole abuts the subject property for 116.09 linear feet along the rear property line.
- All fencing along the rear property line is open wrought iron allowing the rear of the home, pool area and other rear and side yards to be visible from the golf course.
- The rear 20 to 25 feet +/- of the side yard fencing on the subject property is also open wrought iron fencing.
- The home, second level and first level rooms (facing the golf course and Stephanie Street) along with the pool and rear yard areas are visible from the golf course, the putting green of the ninth hole (100+/- feet) Stephanie Street (260+/- feet east), the employee's parking lot and from the existing property to the east – 586 Lairmont Place.
- The adjacent property to the southeast is elevated 3 to 4 feet (or higher in some areas) above the subject property. In most cases, the subject property's existing

fence does not screen out the view of the subject property through the windows, etc. of anyone more than four feet high.

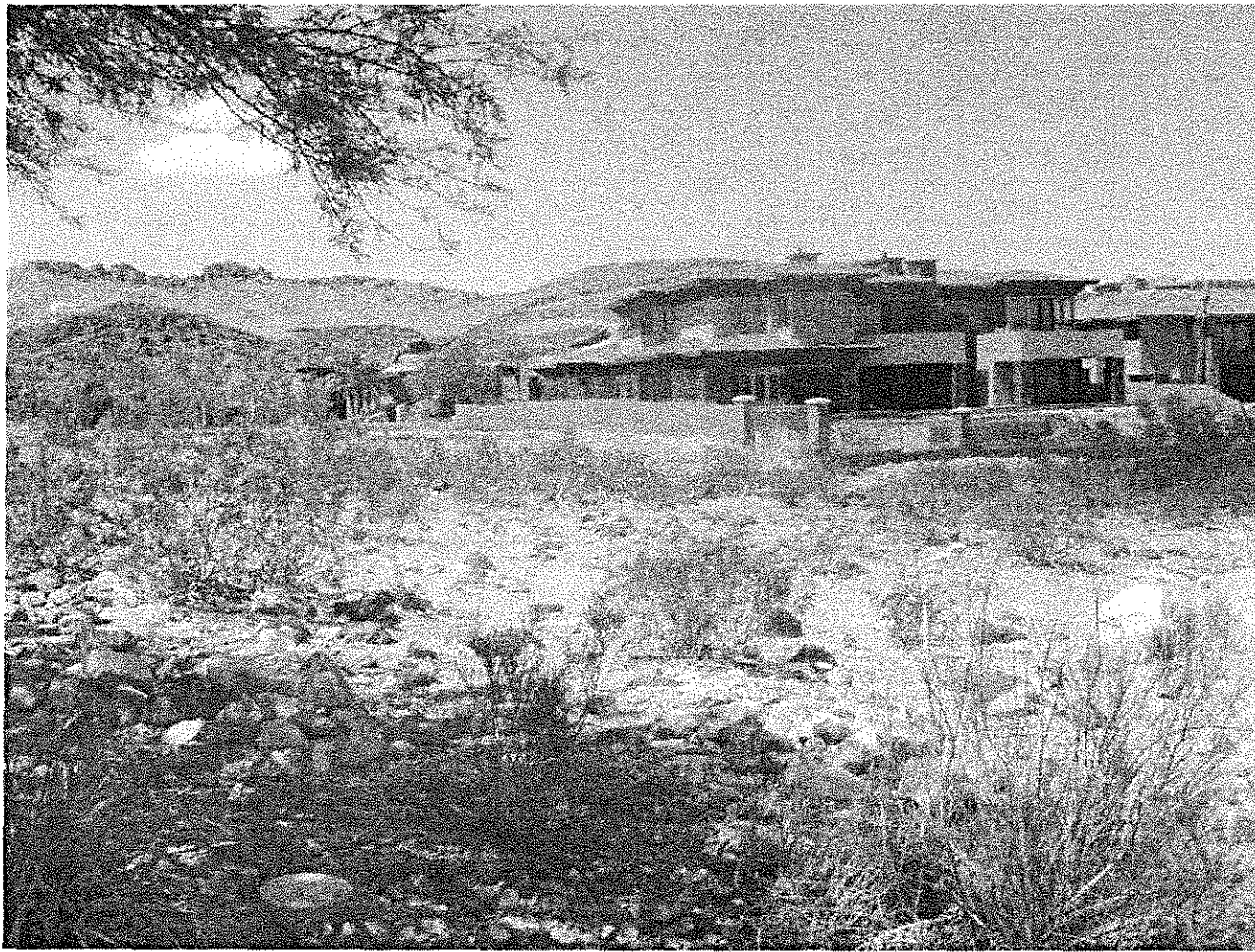
- The elevation of Stephanie Street near MacDonald Ranch Drive is close to the second floor elevation of the subject property. This places anyone of average height in the position to view into the main bedroom windows of the subject property from Stephanie Street. Note that Stephanie Street is the secondary gate to MacDonald Ranch Highlands. It will carry an increasing amount of traffic as the southern and eastern portions of this 1213-acre project are being developed. Stephanie Street currently carries a large number of vehicles daily due to the golf course and construction traffic. This will only increase over time as more homes are added.
- The subject property is also visible from homes on River Dee Place

The property already exists within a fishbowl as evidenced by the above. In addition, the private gates are not operational (and will not be as long as there is construction on Lairmont Place). This permits construction workers or anyone to access Lairmont Place during the daytime, further reducing privacy. At present, seven of the sixteen lots on Lairmont Place are undeveloped.

The following are photographs of the subject and adjacent property areas. These photographs illustrate the existing fishbowl conditions that affect the subject and are common in golf course communities.



Subject property from the ninth green – glass areas open to view.



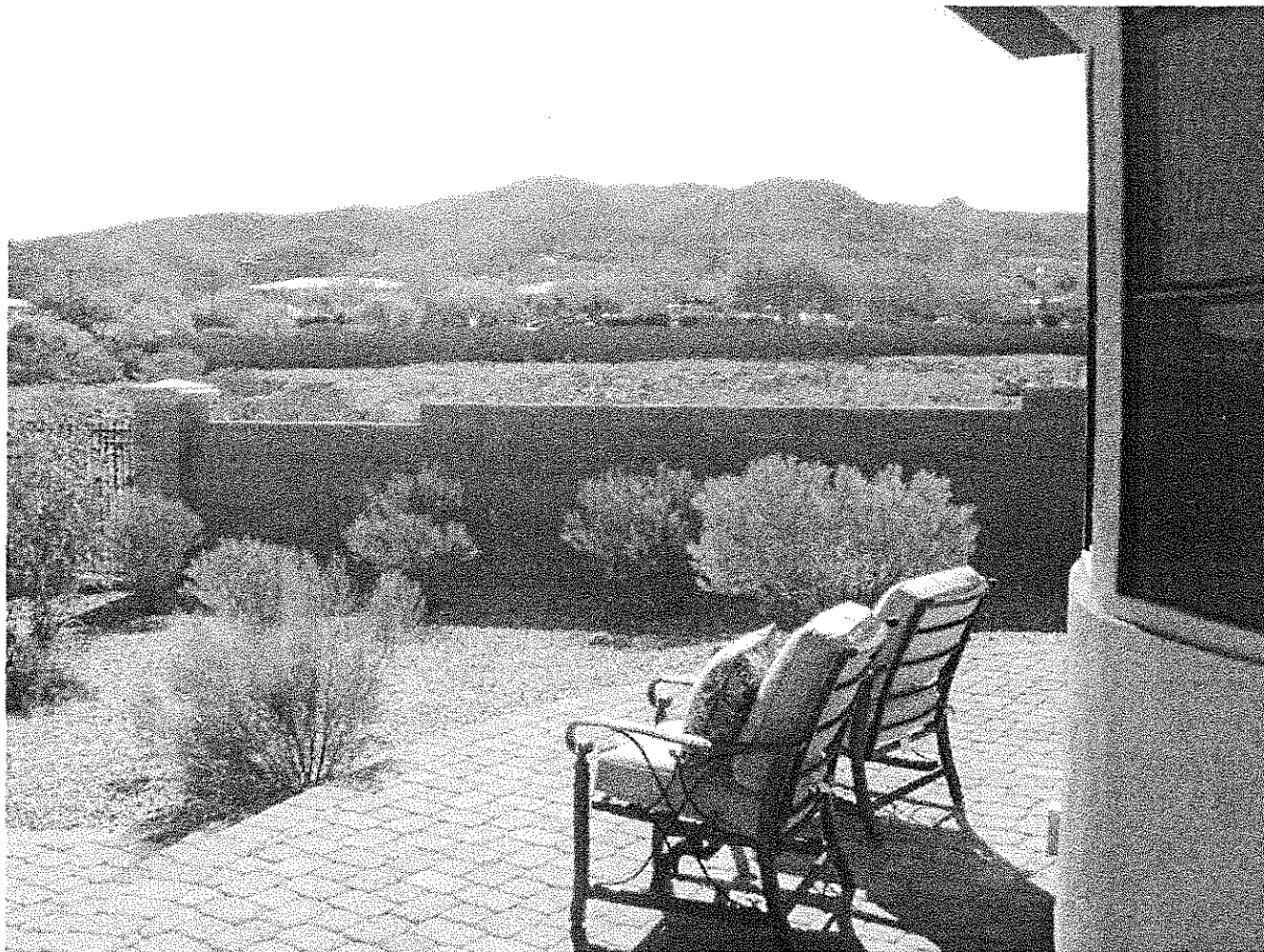
The subject property from Stephanie Street

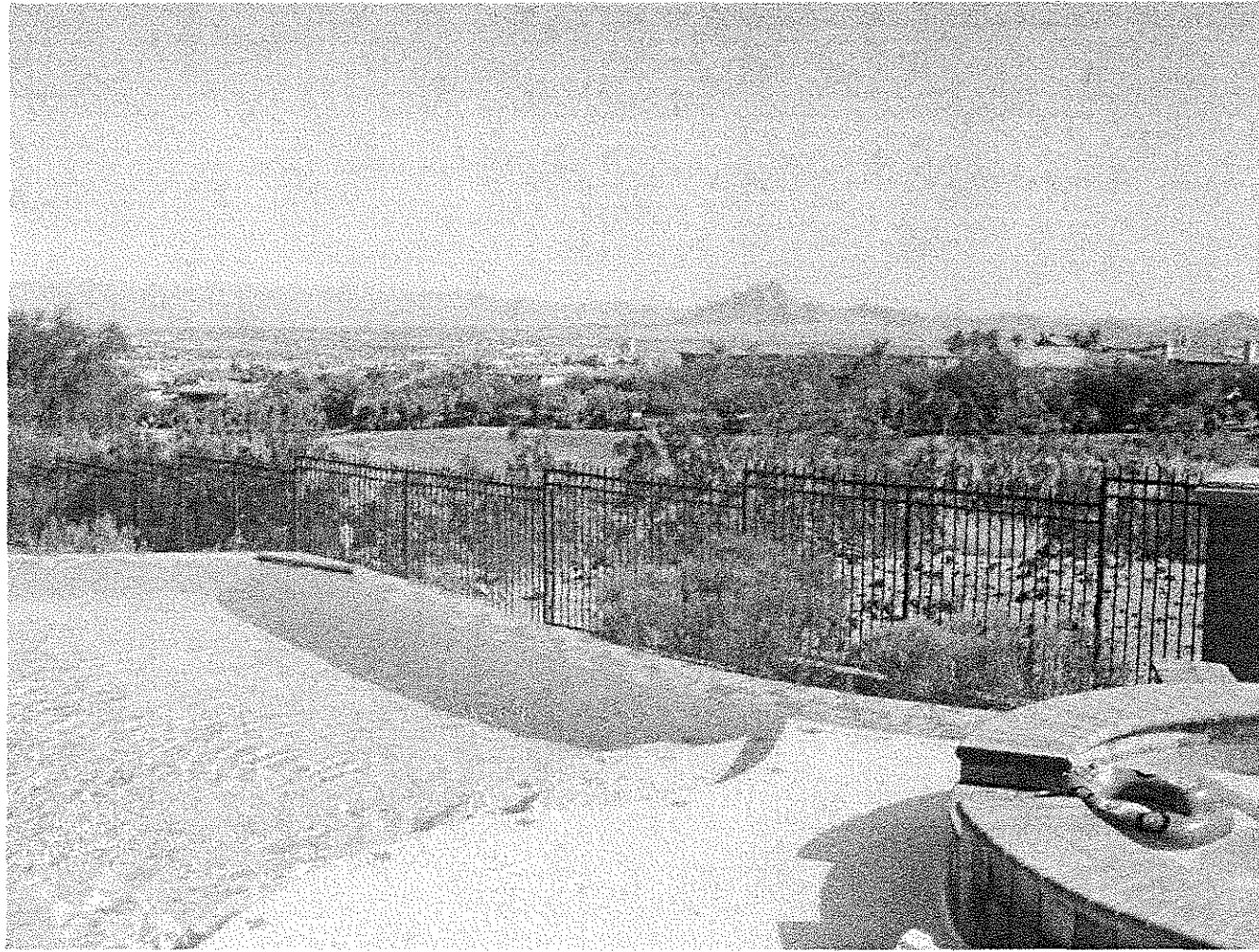


View from second level master bedroom towards the clubhouse parking lot.



The same view from the lower level, towards the clubhouse parking lot. The adjacent lot is about four+/- feet higher and allows anyone to overlook the fence and look down into the rear yard, pool and spa area of the subject property, from the original lot.





Open fencing already permits the fishbowl effect from the course and the adjacent lots

