

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No.: 72371**

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Elizabeth A. Brown  
Clerk of Supreme Court

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PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

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Appeal Regarding Judgment and Post-Judgment Orders  
Eighth Judicial District Court  
District Court Case No.: A-10-632338-C

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**JOINT APPENDIX – VOLUME 43 OF 88**

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07/15/2014	Reply in Support of Pardee's Motion to Expunge Lis Pendens	48	JA007560- JA007570
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06/06/2013	Second Amended Complaint	16	JA002670- JA002677
04/17/2013	Second Amended Order Setting Civil Non-Jury Trial	16	JA002501- JA002502
12/15/2011	Stipulated Confidentiality Agreement and Protective Order	1	JA000033- JA000039
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06/30/2015	Supplement to Plaintiffs' Pending Motion for Attorney's Fees and Costs, Motion to Strike Judgment, Motion Pursuant to NRCP 52(b) and NRCP 59 to Amend the Court's Judgment, and Plaintiffs' Opposition to Pardee's Motion for Attorney's Fees and Costs	59	JA009110- JA009206
09/27/2013	Supplemental Brief in Support of Defendant's Motion for Partial Summary Judgment	21	JA003204- JA003209
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10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
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12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
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Dated this 28<sup>th</sup> day of February, 2018.

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## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28<sup>th</sup> day of February, 2018, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson

An Employee of McDonald Carano LLP

1 Q. And the reason why you are changing your  
2 testimony is because in 2011 you went to the county  
3 commission and did exactly that. You took a portion of the  
4 multifamily property that you purchased separately in 2006  
5 from Coyote Springs and redesignated it R2 residential  
6 production real estate.

7 Isn't that true, Mr. Lash?

8 A. I'm not aware of that.

9 Q. You were told about that, were you not, sir?  
10 You were shown the maps as a matter fact, weren't you, sir,  
11 between October 28th and today?

12 A. I was shown some maps, yes.

13 Q. Okay. And those maps show that Pardee went  
14 to the county commission and made their application in  
15 December of 2010 after this litigation was commenced and  
16 won approval from the Clark County Commission sitting as  
17 the Clark County Zoning Commission on February 2012-- 2011  
18 to redesignate 332 lots to single family production  
19 residential property.

20 Isn't that true, sir?

21 A. I've already testified. I'm not aware that  
22 is something that happens at the local division.

23 Q. And that is why, sir, you had to change your  
24 testimony? Because that was discovered by your client when  
25 we produced these new exhibits and now you realized that

1 Mr. Jimmerson had a saying that, yes, it would be  
2 entitlement commission if we changed the use and now I need  
3 to change my number.

4 Isn't that what happened?

5 A. That's not what happened.

6 Q. Let me review your testimony with you word  
7 for word beginning, your Honor, at page --

8 MR. J.M. JIMMERSON: Would you like to  
9 approach?

10 MR. J.J. JIMMERSON: 209.

11 THE COURT: What are those?

12 MR. J.M. JIMMERSON: Copies of the testimony.

13 THE COURT: His transcripts?

14 MR. J.M. JIMMERSON: Yes.

15 MR. J.J. JIMMERSON: Transcripts of October  
16 28.

17 THE COURT: I have it back in my office if  
18 you want me to follow.

19 MR. J.J. JIMMERSON: Ms. Lundvall has a copy.

20 THE COURT: I would appreciate it because  
21 then I could read it.

22 MR. J.M. JIMMERSON: We have multiple copies.  
23 Permission to approach.

24 THE COURT: Mine is on my desk.

25 MR. J.M. JIMMERSON: I will get a second copy

1 for the witness.

2 THE COURT: Hold on, Mr. Jimmerson.

3 MR. J.J. JIMMERSON: I think Mr. Lash has a  
4 copy before him.

5 THE COURT: I don't think he does. We have  
6 all the exhibits but not the --

7 MR. J.M. JIMMERSON: Permission to approach,  
8 your Honor.

9 THE COURT: Yes.

10 MR. J.M. JIMMERSON: I believe you're going  
11 to be in tab three.

12 MR. J.J. JIMMERSON: Mr. Lash, having read  
13 your transcript before, do you recall that you saw tab  
14 three, your testimony, Jon Lash, October 28, 2013, sir?

15 A. Let me get there.

16 Q. You bet, sir. Take your time. Do you have  
17 your -- have your testimony before you taken on October 28,  
18 2013 as looks like to me 9:30 a.m.?

19 A. 8:30.

20 Q. Thank you. 8:30. My eyes are so bad without  
21 glasses. And for the plaintiffs James Jimmerson. James M.  
22 Jimmerson?

23 MS. LUNDVALL: Page.

24 BY MR. J.J. JIMMERSON:

25 Q. Page one. Aaron Shipley. I'm trying to make

1 sure he has the front page in front of him?

2 Do you sir?

3 A. Yes.

4 Q. This is the transcript that you reviewed  
5 between October 28th and the present provided to you by our  
6 counsel which you acknowledge you read, correct?

7 A. Yes.

8 Q. And just so it's clear, your transcript of  
9 pages that you reviewed is 374 pages; is that right?

10 A. Yes.

11 Q. Can we turn to the point we're at in your  
12 examination, please turn your attention to page number --  
13 just start at page 252. Let's start then at page -- I'm  
14 sorry if I said 252. I meant 254, line fifteen.

15 And we'll read the next four pages, five  
16 pages together so we have good context and we'll know what  
17 we said. Tell us what was said and by whom between Mr.  
18 Wolfram and yourself in the second of the two conversations  
19 by telephone in this time period, April of 2009 and  
20 November 24th, 2009?

21 MS. LUNDVALL: You're on page 252?

22 MR. J.J. JIMMERSON: 254.

23 THE COURT: 254. He changed pages.

24 BY MR. J.J. JIMMERSON:

25 Q. 254, line 15. I'll start again.

1 Tell us what was said and by whom between Mr.  
2 Wolfram and yourself and the second of the two  
3 conversations by telephone. This time period, April of  
4 2009 through November 24, 2009, answer by Mr. Lash. Just  
5 that he still wasn't getting his answers. He still had a  
6 lot of questions. And so we were trying to figure out what  
7 else we could give him to help him understand.

8 Question. I'm trying to understand your  
9 thinking, Mr. Lash. What harm or prejudice to Pardee would  
10 there be designate use, location and acreage for property  
11 that was purchased by Pardee that wasn't residential  
12 production property like, for example --

13 MS. LUNDVALL: Your Honor, this has nothing  
14 to do with the question about whether or not that there is  
15 some type of a change. There has to be proper foundation  
16 of this witness in order to be proper impeachment.

17 THE COURT: I don't know if you're asking the  
18 question too late in context.

19 MS. LUNDVALL: That has nothing to do with  
20 that particular issue.

21 THE COURT: Hold on. Let's talk one at a  
22 time. Are you trying to put it in contest so that --

23 MR. J.J. JIMMERSON: The change in testimony.

24 THE COURT: You wouldn't get an objection you  
25 didn't read before.

1 MR. J.J. JIMMERSON: The change in testimony  
2 is two pages later, and this is very quick stuff.

3 THE COURT: Okay. I'm going to let him lay  
4 the foundation. If it doesn't, then I'll know it didn't.

5 BY MR. J.J. JIMMERSON:

6 Q. I'm trying to understand your thinking, Mr.  
7 Lash. What harm or prejudice to Pardee would there be to  
8 designate use and location for amount of property that was  
9 purchased by Pardee that wasn't residential production  
10 property like, for example, multifamily or something else  
11 that Pardee might want to buy? What harm or prejudice is  
12 there to your company that would cause you to unilaterally  
13 decide not to provide maps and information about these  
14 takedowns?

15 Answer. Well, it's typically not our general  
16 practice to provide information to a third party that is  
17 not privy to our deals.

18 Question. This is not a third party. This  
19 is someone you have an affirmative obligation in writing to  
20 honor to provide all information about these matters.

21 So knowing that affirmative obligations, why  
22 didn't you provide this just so you could let them  
23 independently determine as you said they should be able to  
24 do as opposed to just trust you or take your word for it.

25 There were objection, and then I asked



1 another question at line seven of page 256.

2 THE COURT: 256, okay.

3 BY MR. J.J. JIMMERSON:

4 Q. And I forget. There is an answer at line  
5 four, Judge. The witness. Our typical procedures only to  
6 give information associated with people that are involved  
7 in the deal question.

8 By Mr. Jimmerson. In this case Wolfram and  
9 Wilkes are involved in this deal, aren't they?

10 Answer. They were involved in the single  
11 family land acquisition. Correct.

12 Now I'm assuming you and you Mr. Whittemore  
13 referenced and Mr. Wilkes noticed to the exclusion of my  
14 clients they are not entitled to participate in that type  
15 of things of changes with regard to definition of the  
16 purchased property or purchased. The amount of the  
17 property, the location of the property, all the things we  
18 discussed together today, haven't you discussed that,  
19 right?

20 Answer. Yes.

21 Question. So if Pardee chose to change in  
22 2024, property that they bought in the last five years  
23 feeling it would be multiparty housing, apartment housing  
24 and changed it to residential, how would our clients ever  
25 know that fact?

1 Just like you've changed other designations,  
2 what stops you from changing the intent two years ago or  
3 four years ago to something you might do 10 years from now  
4 when the economy improves?

5 Answer. I don't think there is anything.

6 Question. Right.

7 Answer. I mean Harvey can say the rest of the  
8 property is going to be all golf courses or all  
9 commercial, and we would be precluded from buying it.

10 Question. I'm talking about the property  
11 you've already bought. You bought multifamily property  
12 that is deemed or designated multifamily. You told us so  
13 and Mr. Whittemore confirms.

14 I'm asking you. You have the right to change  
15 its use, do you not?

16 Answer. We have a right to.

17 Question. And so because you retain the right  
18 to change the use, if you change it to residential, it  
19 would, thus, entitle my clients to the compensation  
20 bargained for and confirmed in their commission agreement,  
21 correct?

22 Objection by Ms. Lundvall.

23 Question -- a new question by Mr. Jimmerson.  
24 If they changed the use of the property, Mr. Lash, and you  
25 changed it to single family residential production, that

1 would entitle my clients to compensation; isn't that true?

2 Answer. I haven't really thought about it.

3 We have no intent to do that. So if you were to change  
4 the present intent and make it residential, that would  
5 entitle my client to compensation under the agreement;  
6 isn't that true?

7 Answer. It probably would be.

8 Question. And you retain as Pardee, not you  
9 personally, but Pardee retains the right to choose and  
10 make that designation in the future as best suits the  
11 company; isn't that true?

12 Answer. Well, we just can't go change use. I  
13 mean, that is a whole public process which is why I was  
14 asking these questions.

15 Question. I understand. But residential is  
16 less dense than multifamily. So anything zoned by  
17 multifamily will absolutely qualify for residential.  
18 Wouldn't you agree, sir?

19 Answer. Not necessarily. We have a situation  
20 in San Diego where we bought 40 to the acre and we're  
21 trying to down zone the property.  
22 And the city needs the units. So they are not letting us  
23 down zone.

24 Question. In that dense area, do you think  
25 that is comparable to the 40,00 acres of vacant land in

1 Coyote Springs?

2 I'm just using that as an example.

3 Question. In any event because you do retain  
4 the right to change the use and if you need to obtain the  
5 governmental approvals in zoning, that would then cause my  
6 clients to -- that then would cause my clients to be  
7 entitled to dollars associated with that if you built  
8 residential, correct?

9 Answer. Correct.

10 And, therefore, I'm saying to you wouldn't it  
11 be faithful to the promise you made, that Pardee made to  
12 our client to provide the location and acreage of the  
13 property and designated use of the property even though  
14 you think it's not residential and therefore they are not  
15 entitled to compensation? Aren't they entitled to know of  
16 all purchases regardless?

17 Answer. Currently it's not and we're under a  
18 strict confidential agreement with CSI.

19 Have you asked my clients to sign a strict  
20 confidentiality agreement, the exact one that has been  
21 signed between CSI and Pardee? You never have, have you?

22 Answer. No. I tell you my clients would sign  
23 such a document if ever asked, end of quote.

24 Are you now changing your testimony as I  
25 listen to your testimony from the words, you have no

1 intent to change the designation which you know is not  
2 true because you have made a change of designation in  
3 2011?

4 MS. LUNDVALL: Your Honor, I'm going to  
5 object.

6 MR. J.J. JIMMERSON: I'll rephrase the  
7 question.

8 THE COURT: He just testified he doesn't  
9 know.

10 BY MR. J.J. JIMMERSON:

11 Q. You're changing the testimony instead of  
12 saying that my clients Wolfram and Wilkes are entitled to  
13 compensation or the agreement to change in use probably  
14 would be, and then you went further to say if you went to  
15 the zoning and got it changed, would they be entitled to  
16 the top of 259, correct?

17 You're now changing both of those answers to  
18 say you wouldn't be -- my client wouldn't be entitled to  
19 compensation if you had non single family use and then  
20 later changed the use to single family use; is that your  
21 testimony?

22 A. That's correct.

23 Q. Thank you.

24 A. I think I testified that I went back and  
25 thought about it. Came up with different reasons

1 independent of what our team is doing, and I was not aware  
2 of the whole --

3 THE COURT: Okay.

4 THE WITNESS: -- thing that Mr. Jimmerson  
5 brought up.

6 BY MR. J.J. JIMMERSON:

7 Q. And the reason you went back and thought  
8 about your answer is because you know in the interim we  
9 found the maps that you're talking about and the zoning  
10 commission where in February of 2011 you received Clark  
11 County Zoning Commission approval to change a portion of  
12 the multifamily parcel to residential single family use?

13 A. I just testified I wasn't aware of that.

14 THE COURT: Say that again. Make sure for  
15 the record. He says he's not aware of that.

16 BY MR. J.J. JIMMERSON:

17 Q. Thank you. Would you look -- you testified  
18 that Ms. Lundvall showed you a map, correct?

19 MS. LUNDVALL: Objection.

20 MR. J.J. JIMMERSON: He said he saw a map.  
21 Who showed you the map? You said you saw a map of this  
22 change.

23 MS. LUNDVALL: No. He did not. And that's  
24 where --

25 THE WITNESS: You asked me if I had seen a

1 lot of maps.

2 BY MR. J.J. JIMMERSON:

3 Q. I didn't ask a lot of maps. I asked did you  
4 see a map that evidenced the downsizing of the density to  
5 single family residential and you said yes.

6 A. I think she asked me if I had seen a lot of  
7 maps in the previous testimony.

8 Q. What maps have you seen since October?

9 A. I don't think I've seen any maps.

10 Q. Okay. Would you look, please, at -- I think  
11 it's Defendant's exhibit. It's Plaintiff's Exhibit 15.

12 So what do you have there?

13 THE COURT: Fifteen.

14 BY MR. J.J. JIMMERSON:

15 Q. I'll take that away from you. Appreciate it.  
16 You've done that 15 times.

17 All right. Now, looking at Plaintiff's  
18 Exhibit 15, this is your letter to Mr. Wolfram of November  
19 24th; is that right?

20 A. Yeah.

21 Q. All right. You recognize that document,  
22 correct?

23 A. Yes.

24 Q. And when I asked you the questions that we  
25 just read into the record, you remember that I referenced

1 the time period between April of 2009 and November 24 of  
2 2009?

3 Do you recall that?

4 A. Yes.

5 Q. The two conversations you claimed to have had  
6 with Mr. Wolfram during that time period, the significance  
7 of November 24, 2009, of course, is your letter that you  
8 wrote to them on that date.

9 You have before you now, right?

10 A. Yes.

11 Q. All right.

12 A. It even starts off by saying this letter  
13 follows our recent conversation.

14 Q. Right. Very good. There is something new  
15 since Jon Lash is on the stand although you may have heard  
16 about it through communications with your lawyer, that is  
17 the testimony of Harvey Whittemore to a map that's attached  
18 to that letter which you now turning your attention to the  
19 map attached to Exhibit 15 in the original court clerk's  
20 exhibits --

21 MS. LUNDVALL: Your Honor, once again, and  
22 I'm now as far as I need to make some kind of objection to  
23 try to make sure the witness understands the questions  
24 that are being posed to him. I don't think it's  
25 appropriate for counsel to throw out some comments about



1 Harvey Whittemore's testimony.

2 MR. J.J. JIMMERSON: Because it has Harvey  
3 Whittemore's handwriting, Judge. So he can understand  
4 what it's about. Am I going to have him look at it and he  
5 not be told why it's there?

6 MS. LUNDVALL: Your Honor, from that  
7 perspective I'm going to --

8 THE COURT: It can be misleading. I  
9 understand what you're saying. So what it is -- look at  
10 the map that is attached to 15. Since you were here, Mr.  
11 Lash, we had Mr. Whittemore do some writing on it. That  
12 may help the questions he's going to ask. That was the  
13 foundation. It's different from when you were here. All  
14 right.

15 THE WITNESS: I'm not that versed in these  
16 maps.

17 THE COURT: And you know what, you can only  
18 testify to what you have knowledge of. And Mr.  
19 Jimmerson's understanding that. So if you don't and he  
20 doesn't know, unless he asks you different things, that's  
21 why just because he's asking doesn't mean you're supposed  
22 to know. But he has to ask too, all right. Okay.

23 Let's start again. Now we're going to look  
24 at map part of 15.

25 BY MR. J.J. JIMMERSON:

1 Q. Mr. Lash, I asked you some questions about  
2 Exhibit 15, October 20, 2013, correct?

3 A. Yes.

4 Q. Your counsel, Ms. Lundvall, asked you many  
5 questions about this same exhibit this morning and  
6 afternoon, correct?

7 A. Yes.

8 Q. All right. So let's talk about the very same  
9 exhibit that you have knowledge about in 2000 -- October 28  
10 and knowledge again today on December 10, 2013.

11 I will represent to you that Mr. Whittemore  
12 in that map -- and, Judge, just for the record, I would  
13 like to have a color copy of that. I don't have that in my  
14 set of books like Ms. Lundvall doesn't either. Maybe we  
15 can get copies of that.

16 THE COURT: Sure. That's the map that is  
17 attached that --

18 MR. J.J. JIMMERSON: That has the squiggly.  
19 The clerk has.

20 THE COURT: I think I have it. The clerk has  
21 it. After court today please come up and we'll -- or  
22 tomorrow morning.

23 THE CLERK: I think there is a color copy in  
24 that book.

25 THE COURT: There is. I have one because

1 Mr. Whittemore did it for me. We made sure there was one.  
2 He's saying they don't have one.

3 THE CLERK: I can't make color copies. Our  
4 copier is not capable.

5 THE COURT: We don't have a color copier  
6 machine.

7 MR. J.J. JIMMERSON: Some way if you'll allow  
8 Ms. Lundvall and Mr. Shipley to take it to their office or  
9 allow me to do the same, I'll have them run five copies  
10 and bring it right back.

11 THE COURT: That's why we didn't make it.

12 MS. LUNDVALL: We have no objection to doing  
13 that.

14 THE COURT: No problem.

15 MS. LUNDVALL: Thank you.

16 BY MR. J.J. JIMMERSON:

17 Q. To represent to you accurately and  
18 succinctly, Mr. Whittemore says that the red -- sort of the  
19 country of India that is right below the map that is right  
20 here in red, is the 250 acres that is covered by the  
21 multi-family agreement between CSI and Pardee Homes of  
22 Nevada.

23 THE COURT: Are you aware of that? We need  
24 some foundation with him. Are you aware of that or have  
25 you seen these maps before?

1 THE WITNESS: I know the multifamily was in  
2 that area. I don't know precisely anymore.

3 THE COURT: Okay. Go ahead.

4 BY MR. J.J. JIMMERSON:

5 Q. So another question I would have for you,  
6 where is the multifamily property that was purchased by  
7 Pardee Homes under this side agreement that you didn't  
8 disclose to my clients?

9 MS. LUNDVALL: Think that maybe we can have a  
10 question without a commentary?

11 BY MR. J.J. JIMMERSON:

12 Q. It's a question. You didn't send us a copy  
13 of the multiparty agreement, did you, multifamily  
14 agreement?

15 A. That's correct.

16 Q. You intentionally withheld it; is that  
17 correct?

18 A. That's correct.

19 Q. Where is the property located on that map  
20 that you caused to be drawn through your engineer that you  
21 had on, you know, on --

22 A. I believe it's in the vicinity where the red  
23 is, but I can't verify its exact bounds with the  
24 dimensions.

25 Q. Would you agree with Mr. Whittemore's design

1 generally within that red area is where the multifamily  
2 property is located?

3 A. Generally, yes.

4 MR. JIMMERSON: All right. Thank you. May I  
5 approach the witness, your Honor?

6 THE COURT: Absolutely.

7 BY MR. J.J. JIMMERSON:

8 Q. Show you now -- this is what I call  
9 residential five in terms of an area. I don't want to mark  
10 on the document. We'll call it the most south and west  
11 portion of the -- we'll call that that area --

12 A. Up to the green.

13 Q. No. No. In this area.

14 A. Just the cross-section.

15 Q. Right. Just about the size of 80 acres.

16 A. All right.

17 Q. All right. Now, through the testimony of Mr.  
18 Whittemore, we learned on October 29th, the day after,  
19 after you testified, that the last transaction or one of  
20 the very last transactions from 2009 was the squaring up of  
21 property and in exchange of property.

22 Where property on the other side of the  
23 parkway PJA Parkway owned by you, owned by Pardee, was  
24 traded for sellers exchange parcel right in the same area  
25 that I just pointed out to you in Exhibit 15?

1                   Okay. Are you familiar with that exchange  
2 parcel?

3                   A. I'm familiar with the exchange concept. As  
4 far as the location of the actual properties, I'm not.

5                   Q. Okay. Let me show you then Exhibit Number  
6 13, please. That's just two before. And just maybe turn  
7 the page down or put a pen there so we can go back to 15 in  
8 a minute. Let me just show you 13.

9                   A. Which is again number eight?

10                  Q. Yes, sir.

11                  A. Amendment 8.

12                  Q. Amendment 8 was the last of the amendments to  
13 the amended statement.

14                   MS. LUNDVALL: Did we give the designation of  
15 confidentiality, your Honor?

16                  BY MR. J.J. JIMMERSON:

17                  Q. We would so stipulate. June 18, 2009 is the  
18 date of this Eighth Amendment. And would you look, please,  
19 at Exhibit E of the document which to help you is going to  
20 be found, I believe, at exhibit bates stamp number --  
21 forgive me. 1190.

22                   So look at the bottom right-hand corner.  
23 Find CSI Wolfram 1190. This is description of seller  
24 exchange parcel.

25                   Do you see that, sir?

1 A. Yes.

2 Q. Okay. And if you turn two pages earlier, Mr.  
3 Lash, if you would, you'll see Exhibit D, description of  
4 buyers exchange parcel at bates stamp 1188.

5 Do you see that?

6 A. Yes.

7 Q. As explained to us by Mr. Whittemore at the  
8 moment before exchange, Pardee owned this parcel at 1188  
9 26.89 acres.

10 Do you see that, sir?

11 A. Yes.

12 Q. And to the left to the west of -- to the left  
13 of Coyote Springs Parkway.

14 Do you see that?

15 A. Yes.

16 Q. And it trades or exchanges this parcel for  
17 then you go two pages deeper, 1190. The almost identical,  
18 the 26.89 acres in the darker gray cross hash figure on  
19 Exhibit E.

20 Do you see that?

21 A. Yes.

22 Q. And so at a moment in time before the  
23 exchange had been open owned by Coyote Springs adjoining  
24 the Coyote Springs property that you see right to the east,  
25 right to the right of that CSI and then immediately after

1 the exchange you, Pardee acquired this property and gave up  
2 the rights to the other parcel I just showed you in Exhibit  
3 D all within Exhibit 13?

4 A. I believe that's correct.

5 Q. All right. 26.89 acres fairly closely  
6 aligned. In other words, on each side of Coyote Springs  
7 Parkway exchanged for 26.89 acres of the other. Agreed?

8 A. Correct.

9 Q. Now, something else was happening here in  
10 2009, and that is you're looking at the cost of utilities  
11 and trunks and the location of the community center where  
12 model homes to be showed where changed from a little bit  
13 more in the north down to the present location that you see  
14 here in Exhibit E.

15 Do you recall that occurring?

16 A. Yes.

17 Q. And, therefore, you wanted to tie -- and,  
18 therefore, at this parcel you wanted to exchange and  
19 acquire, because taken together, the Pardee property on the  
20 left where it says Pardee and the exchange parcel on the  
21 right is the dark gray hash together would be where Pardee  
22 intended to first build its single family production  
23 housing. Agreed?

24 A. Yes.

25 Q. And, in fact, you went so far to point out



1 that in the dark gray hash would be where model homes would  
2 be built by your company, by CSI, and other builders that  
3 might have agreements with you and CSI?

4 A. Which is adjacent to Town Center?

5 Q. That is exactly right. You got it.

6 A. Right.

7 Q. My next question is withdrawn.

8 Is it true that the property to the west of  
9 the exchange parcel that is marked Pardee is property  
10 acquired by Pardee under the multifamily signed agreement?

11 A. That happens in Exhibit 15.

12 Q. That's right. I'm going to show you another  
13 map to convince you that what we're saying is true. I  
14 don't want you to just follow along.

15 A. Show me on this map where the golf course is.  
16 This says golf course.

17 Q. It's down here.

18 A. Show me on this map where the same parcel is.

19 Q. Right here. Now, to help you, go to Exhibit  
20 12, please. And within that Exhibit 12 find map B6 which  
21 is that bates stamp CSI Wolfram 1161.

22 A. All right.

23 Q. Now, I know you know the property, but Coyote  
24 Springs Parkway and the Denali intersect right there,  
25 correct?

1 A. Yes.

2 Q. Would you show that to the Judge, please.  
3 Judge, would you take a look at where Mr. Lash is telling  
4 you is the intersection of Denali Summit Road and Coyote  
5 Springs point blank?

6 A. Right here. Coyote Springs.

7 THE COURT: So he's asking --

8 BY MR. J.J. JIMMERSON:

9 Q. Let the record reflect he's referring to the  
10 western part of the property where you have the parkway two  
11 matching. I don't know how to mark it right here.

12 A. It shows on this map.

13 Q. Go ahead, if you would.

14 A. You got Coyote. You've got Denali.

15 THE COURT: Right there.

16 BY MR. J.J. JIMMERSON:

17 Q. Would you mark a black X there for us,  
18 please?

19 A. (Witness complies.)

20 THE COURT: It helps all of us.

21 BY MR. J.J. JIMMERSON:

22 Q. Isn't the property I've just shown you  
23 exchange parcel and the property -- part of the property  
24 acquired by Pardee and multifamily -- this property right  
25 here, let's call it res 5, residential five?

1 MS. LUNDVALL: That question is misleading  
2 because this is in Exhibit 12. I'm going to place an  
3 objection here, because the question is misleading.  
4 Exhibit 12 deals with only multifamily. It does not deal  
5 with the buyers exchange parcel.

6 MR. J.J. JIMMERSON: You're right. It does  
7 absolutely include the buyers exchange parcel and I'm  
8 asking the question.

9 THE COURT: I think you're asking a different  
10 question.

11 BY MR. J.J. JIMMERSON:

12 Q. It's a different question. Isn't the parcel  
13 to the left of Exhibit B -- let me show you again. Isn't  
14 that parcel, a portion of that parcel, this picture doesn't  
15 show anything. That's the question, sir.

16 A. I believe so. You've got Denali Summit at  
17 the top and Coyote Springs kind of at the bottom, I  
18 believe it is.

19 Q. All right. Thank you. Listen, I want to be  
20 fair to you. Are you being square with us or are you not  
21 being square with us when you say you don't know that your  
22 company applied for and received a change of designation of  
23 use two years ago, February 11, for that same property?

24 A. I'm being square with you.

25 Q. Let me show you the map. I would like to

1 refresh your recollection.

2 MS. LUNDVALL: Your Honor, at this point in  
3 time, we're now trying to introduce new exhibits for which  
4 The Court has already made a ruling.

5 THE COURT: What are these exhibits?

6 MR. J.J. JIMMERSON: These are Clark County  
7 zoning map commission maps that we located after Mr.  
8 Whittemore testified on Tuesday, October 29, 2013, where  
9 he now told us where a portion of the residential property  
10 was. But which is as you can see from the exhibits, were  
11 already marked with single family production model  
12 property directly akin to the exchange parcel that he was  
13 speaking to when I was examining him. You know, it hit me  
14 like a ton of bricks. The same single family development  
15 to the west of that was identical to the same small little  
16 squares of the exchange property. So when I went to that  
17 -- and then Mr. Whittemore did say that that property to  
18 the west that was under the name Pardee was acquired as  
19 part of the multifamily residential. So if it's  
20 multifamily, my client is not entitled to commission.  
21 Well, just as a matter of, you know, malpractice  
22 prevention, just, you know, you wake up in the morning at  
23 3:00 o'clock in the morning. I went to the county with my  
24 son and Mr. Wolfram, particularly my son. And Mr. Wolfram  
25 brought back certified copies of the map showing that --

1 THE COURT: Let me hear the foundation.

2 MR. J.J. JIMMERSON: That Pardee in December  
3 of 2010 applied for a rezoning of that very property we're  
4 talking about to single family production residential and  
5 received approval in February of 2011. And we have both  
6 the application in Pardee's name. We have the Clark  
7 County Commission Zoning decision. You can take judicial  
8 notice under 47.130 and 40 of County records. We can dial  
9 right now on that television and show you the action the  
10 Clark County commission to do exactly as I represented to  
11 you.

12 THE COURT: I'm sure they say what they say.  
13 That's not really the issue.

14 MR. J.J. JIMMERSON: Well, it is the issue,  
15 because that is not -- you wouldn't expect -- I'm not  
16 going to argue with you, your Honor.

17 You wouldn't expect Pardee to do something  
18 like that to my clients. You wouldn't expect them to  
19 treat them. You just wouldn't.

20 THE COURT: I'm trying to find out what  
21 you're doing, you're representing to The Court. You knew  
22 you could not find out that that copy we've been talking  
23 about, that multifamily designated property had been  
24 changed. There's nothing you got in discovery that would  
25 help you with that. We argued about this yesterday. That

1 it would have been in the multifamily agreement.

2 Can I just finish?

3 MR. J.J. JIMMERSON: Yes, ma'am.

4 THE COURT: Please. I'm trying to sort  
5 through.

6 MR. J.J. JIMMERSON: I do apologize.

7 THE COURT: So, and we're back. And so that  
8 was not produced. And we went through all of that. So  
9 what you're saying now is that you got new information  
10 from Mr. Whittemore when he testified that you did not  
11 have before, because you didn't have the multifamily  
12 agreements, correct?

13 MR. J.J. JIMMERSON: Right.

14 THE COURT: And you got that new information.  
15 So when you got that new information from Mr. Whittemore,  
16 you then took that and did this discovery. I'm just  
17 trying to figure out where we're at.

18 MR. J.J. JIMMERSON: Exactly. It is Mr.  
19 Whittemore's gloss.

20 THE COURT: His what?

21 MR. J.J. JIMMERSON: His gloss, his  
22 interpretation, his explanation that turned the light bulb  
23 on. We didn't know where the multifamily was with  
24 specificity.

25 MS. LUNDVALL: Your Honor, from this

1 perspective, that is a false statement based upon the  
2 exhibits that are before The Court already.

3 MR. J.J. JIMMERSON: No, it's not.

4 MS. LUNDVALL: They have the maps with which  
5 I -- with specific identification of where the multifamily  
6 were located. In addition, they have the exhibits which  
7 was amendment 8 that identified the buyers exchange. They  
8 have all of the documentary evidence that served as the  
9 foundation for Mr. Whittemore's testimony.

10 THE COURT: But he -- but his testimony put  
11 it together for them.

12 MR. J.J. JIMMERSON: That's number one. And  
13 number two, the exchange parcel was part of the 84  
14 million. We're not asking for that.

15 THE COURT: No. I understand that you're now  
16 doing a new area. You're saying -- I understand where  
17 we're going, because this is a new issue. I understand  
18 it's a brand new issue that's come up.

19 MR. J.J. JIMMERSON: In addition, I've not  
20 yet asked to admit a document. I very well may ask to do  
21 that in a few moments.

22 So you understand you have the right without  
23 admitting anything to take judicial notice of county  
24 records that are on file?

25 THE COURT: No. I understand that.

1 MR. J.J. JIMMERSON: And you can take a look  
2 at the map that we have. Plug it in for you, this map,  
3 and the application, check, show you to see exactly what  
4 I'm telling you is true.

5 MS. LUNDVALL: Your Honor, from this  
6 perspective, a couple things along this particular line.

7 THE COURT: Let's get -- I want to go through  
8 it. It's not a surprise to you, obviously, because your  
9 client is the one that did it. I understand that.

10 MR. J.M. JIMMERSON: And we produced copies  
11 of all these records approximately two weeks ago, your  
12 Honor. They were contemplated.

13 MR. J.J. JIMMERSON: It's not a surprise  
14 today.

15 THE COURT: I know that, but it didn't happen  
16 during discovery.

17 MS. LUNDVALL: What it is is that they were  
18 well-aware of the multifamily agreement. As the court had  
19 learned yesterday, they never asked for those multifamily.

20 MR. J.J. JIMMERSON: We didn't demand it. We  
21 didn't move to compel. We did absolutely ask for them.

22 THE COURT: I understand when you didn't  
23 produce it, then you didn't do the motion.

24 MR. J.J. JIMMERSON: This is also a suit for  
25 a counter and not that we have to beat them to death on a



1 motion to compel. I appreciate that. I would be very  
2 happy to move to compel. Trust me, I was plainly  
3 embarrassed by yesterday.

4 But here is my point. Here is my point.  
5 When they are intentionally refusing to disclose the  
6 documents for reasons Mr. Lash has indicated, and then his  
7 own staff goes back and rezones this to single family  
8 production --

9 MS. LUNDVALL: That is a false statement. He  
10 indicates exactly when those maps were filed. It was in  
11 December of 2010.

12 MR. J.J. JIMMERSON: That's correct. That's  
13 right.

14 MS. LUNDVALL: And so, therefore, he couldn't  
15 have known of any of these documents since December of  
16 2010.

17 MR. J.J. JIMMERSON: He's had three years to  
18 know about it, Counsel.

19 MS. LUNDVALL: The issue, your Honor, is  
20 this. They were also well-aware by having the amendments  
21 of what it is that the parties were doing. To suggest now  
22 that we're going to inject a brand new issue into this  
23 case for which that has never been raised, whether it be  
24 in the complaint, whether it be in discovery, whether it  
25 be in the pretrial activity that we did, the pretrial

1 disclosures that we did.

2 Counsel makes the suggestion that somehow  
3 that documents that they delivered to my office on a  
4 Wednesday at 5:00 o'clock before Thanksgiving that consume  
5 an entire bankers box, an entire bankers box that are  
6 brand new. Never been seen before. Never been shown in  
7 this, that somehow that they can now be injected into this  
8 trial, that is trial by ambush.

9 And to make a misrepresentation to this  
10 court, a misrepresentation to this court, that has been  
11 suggested that between Mr. Lash's testimony and in October  
12 when he has taken the stand now in December, that we did  
13 something during that interim period of time and therefore  
14 that's what they are trying to introduce is a false  
15 statement.

16 THE COURT: I don't take it that way to be  
17 honest. I take it that this was a new issue that came up.  
18 I understand that. I tried to look through things. I  
19 understand. And if the door -- you asked a legitimate  
20 question, and the door was -- Mr. Lash, I understand that.

21 MS. LUNDVALL: Mr. Lash testified he doesn't  
22 know anything about this.

23 THE COURT: But he -- this issue is really  
24 related on the commissions.

25 MR. J.J. JIMMERSON: That' right.

1 THE COURT: And I understand he's clarifying  
2 changes. There is no question his position. My concern  
3 is this is an issue that is related to the commission  
4 agreement, okay. And so that is relevant. Obviously, I  
5 have not heard it before. Maybe it just came up to Mr.  
6 Jimmerson.

7 MR. J.J. JIMMERSON: It certainly did.

8 THE COURT: And I understand that. And I  
9 also don't want trial by ambush, because I think it is a  
10 legitimate issue now.

11 MR. J.J. JIMMERSON: And these are public  
12 records.

13 THE COURT: I'm trying to figure out a way,  
14 because I do understand you can't get a bankers box, you  
15 know, you have to have a chance to prepare. I understand  
16 that. I don't know how many weeks, I don't know. You  
17 know, I mean --

18 MS. LUNDVALL: Well, he can represent to the  
19 court that what we received was on Wednesday at 5:00  
20 o'clock.

21 MR. J.J. JIMMERSON: The 27th.

22 MS. LUNDVALL: Before Thanksgiving.

23 MR. J.J. JIMMERSON: Two weeks ago.

24 MS. LUNDVALL: When I as far as saw these  
25 documents was on the Monday when we get back from

1 Thanksgiving vacation, and we now are a week later in  
2 trial.

3 MR. J.J. JIMMERSON: Nine days later.

4 MS. LUNDVALL: And so to the extent, your  
5 Honor, that what we're doing is at this point in time is  
6 entirely trying to, number one, expand the scope of my  
7 cross-examination, expand the scope of this case for which  
8 that there has been no notice, and to make a suggestion,  
9 in addition, your Honor, that we did something during this  
10 interim period of time which I take huge offense at.

11 THE COURT: I'm not looking at -- I'm just  
12 looking at the dynamics of what happened. I understand  
13 what happened. I don't think anybody intentionally meant  
14 to hide anything. I don't think you intentionally didn't  
15 pursue an avenue. We can see every avenue. I understand  
16 that.

17 It's just it's a situation where something  
18 came out, and I understand that it was an issue. And that  
19 happened in testimony. It does happen. That's why you  
20 can sometimes amend your complaint. I understand that.

21 I'm just trying to figure out a way. I don't  
22 expect you to be able to do all of it in a week either. I  
23 understand that. So we've got to fashion some type of  
24 remedy that I don't feel comfortable now closing the door  
25 on them because of the testimony, because it's related to

1 the -- whether they would or would not get a commission  
2 which is the whole foundation for this case.

3 MR. J.J. JIMMERSON: Not to mention, you  
4 could bring a new lawsuit for this new property, why would  
5 you want to do that when we have it all here?

6 THE COURT: I don't want to do that. I don't  
7 want to make anybody else go through all this. I'm trying  
8 to think of a way to fashion what you do need to do.

9 MS. LUNDVALL: Two additional points, your  
10 Honor. Number one, each and every piece of information  
11 that he's describing that he learned from Mr. Whittemore.  
12 Where did he learn it? Where did he learn to be able to  
13 ask Mr. Whittemore questions?

14 THE COURT: From depositions.

15 MS. LUNDVALL: No. Not even from his  
16 deposition.

17 MR. J.J. JIMMERSON: Didn't come up in depo.  
18 I learned on the fly here.

19 THE COURT: Hold on.

20 MS. LUNDVALL: It came up in the Eighth  
21 Amendment. The Eighth Amendment which is found at Exhibit  
22 13, the Eighth Amendment is what lays out all of this  
23 information.

24 THE COURT: But it doesn't lay out the  
25 information.

1 MS. LUNDVALL: Yes, it does.

2 MR. J.J. JIMMERSON: Multifamily agreement.

3 MS. LUNDVALL: Yes, it does. And it  
4 identifies.

5 THE COURT: Here is my question. Does it  
6 address the issue that if they designated as some other  
7 high density and changed it to residential?

8 Is that addressed anywhere?

9 MR. J.J. JIMMERSON: No.

10 MS. LUNDVALL: No. And Mr. Wolfram from the  
11 witness --

12 MR. J.J. JIMMERSON: That's the whole point.

13 MS. LUNDVALL: But Mr. Wolfram from the  
14 witness stand -- and that's one of the things I'm trying  
15 to figure out. Mr. Wolfram from the witness stand this  
16 morning testified if Pardee had obtained multifamily land  
17 and later made a change to single family land, then  
18 nowhere within the four corners of his commission  
19 agreement did that entitle him to a commission.

20 THE COURT: Wouldn't that be the  
21 interpretation by the Judge to say that?

22 MR. J.J. JIMMERSON: Of course.

23 THE COURT: Not Mr. Wolfram's testimony or  
24 your testimony. That's the whole thing that would have to  
25 be an interpretation.

1 MS. LUNDVALL: This is the --

2 MR. J.J. JIMMERSON: Are those words  
3 specifically in the commission agreement, that's what Ms.  
4 Lundvall's are the words if you change a designation of  
5 the property later on entitled commission, are those  
6 specific words in there.

7 Mr. Wolfram said, no, those words are not  
8 there. But there is a non circumvention agreement that  
9 was specifically negotiated between Mr. Lash, Wolfram and  
10 Mr. Wilkes regarding all matters relating to the payments  
11 of commissions. And all does mean all. I don't inspire  
12 intent on behalf of Mr. Lash. But you heard his testimony  
13 this morning in response to Ms. Lundvall's questions.

14 Did you do something after your testimony on  
15 October 28, 2013 regarding Exhibit 15, your map.

16 Yes, I did.

17 What did you do, Mr. Lash?

18 I went to our engineers and I had them  
19 reconfirm.

20 Objection. Hearsay.

21 Well, I'll allow it for your understanding.

22 THE COURT: Reconfirm that the map was  
23 correct. I have the testimony.

24 MR. J.J. JIMMERSON: You heard all of that,  
25 and what I infer -- what I infer is that that review

1     sometime between October 28 and December 10, 2013, coupled  
2     to our production of these documents on November 27th,  
3     2013 to Wednesday before Thanksgiving where it is clearly  
4     evidence. These documents are public records judicial  
5     notice that they, in fact, perhaps totally unbeknownst to  
6     Mr. Lash but not unbeknownst to Kliff Andrews, Nevada's  
7     head guy, rezoned that multifamily property res five just  
8     one portion approximately 30, 40 acres to single family  
9     production residential property on February 12, 2011.

10           THE COURT: Is that something Mr. Andrews can  
11     testify to because...

12           MS. LUNDVALL: Mr. Andrews is scheduled to  
13     testify. And, once again, I'm going to take offense to as  
14     far as his question, the question posed to Lash as to  
15     whether or not he had seen any of this new proposed  
16     evidence in his testimony was no. I could tell you this  
17     much --

18           THE COURT: That's not getting to the bottom  
19     line where we need to go. Let's cut through that. Let's  
20     get to the bottom line where we need to go, number one.

21           MR. J.J. JIMMERSON: Number one, he changes  
22     his testimony, Judge, to say now if we did that, oh, I  
23     don't know if we did it, but if we did it, you wouldn't be  
24     entitled to a commission.

25           MS. LUNDVALL: There was a hypothetical.



1 MR. J.J. JIMMERSON: So that certainly  
2 suggests possibly one reasonable inference, I know he did.  
3 Ms. Lundvall told me. Well, I wasn't personally involved.  
4 I've been told they did it, because the documents Mr.  
5 Jimmerson provided and I better change my testimony.

6 THE COURT: Honestly to try to figure out how  
7 it happened if somebody was devious, I'm not interested in  
8 that. I'm interested in going forward.

9 MR. J.J. JIMMERSON: We agree, Judge.

10 THE COURT: So this evidence can come in  
11 fairly to your client without being prejudiced. That's  
12 what I'm trying to figure out here in the middle of trial.  
13 Who did what to whom really is not helping this situation.  
14 So let's do this. Here is my question.

15 MS. LUNDVALL: If, in fact, you allow this  
16 evidence in, your Honor --

17 MR. J.J. JIMMERSON: She has to.

18 THE COURT: You mean the testimony about it  
19 -- I didn't say anything about the maps yet. He's not  
20 even trying to introduce that. I'm just talking about  
21 questions here, guys. That's all I'm ruling on, Ms.  
22 Lundvall.

23 MS. LUNDVALL: From that perspective I'm not  
24 going to quarrel about the questions. What I'm trying to  
25 quarrel about is because what happened, what lead to this

1 huge argument is that Mr. Jimmerson went over and said,  
2 all right, I'm going to show you a map, and it's a new  
3 map. And he starts rolling it out. And what I knew was  
4 that that was a new piece of evidence for which that the  
5 Court had already ruled upon and, therefore, I placed my  
6 objection. And that's what started this entire dispute.

7 THE COURT: Where we're at right now, I  
8 certainly feel like that is an issue that can come into  
9 this trial. Obviously he asked Mr. Lash about it. There  
10 was no objection. He answered those questions earlier.  
11 It was the 28th of October, right?

12 MR. J.J. JIMMERSON: Yes, ma'am.

13 THE COURT: It was also in your cross. So  
14 that certainly is the legitimate area that can be asked.  
15 You can ask Mr. Lash about it. His testimony speaks for  
16 itself. I'm not looking -- and I will tell you right now,  
17 both of you, I'm not inferring that anybody is  
18 intentionally doing anything. I certainly --

19 MR. J.J. JIMMERSON: Doesn't matter. It's a  
20 dollar claims. There is no punitive damages claim. I  
21 just want my client to have a fair compensation.

22 THE COURT: I understand, but it's an issue  
23 that I want to address, because it does center around the  
24 commission agreement. So that area whether we let those  
25 in, if Mr. -- I don't know, because he doesn't have the

1 foundation to do it anyway right now if Mr. Kliff --  
2 what's his last name?

3 THE WITNESS: Andrews.

4 THE COURT: Andrews. Does he spell Kliff  
5 with a K because I keep doing K?

6 MS. LUNDVALL: It is with a K.

7 THE COURT: I had something with Kliff Clash.  
8 Kliff Andrews.

9 MR. J.J. JIMMERSON: That's the rock star.

10 THE COURT: I've been doing this too long you  
11 guys.

12 If he does, then we'll go from there if he --  
13 because I assume if he knows about it and at least can  
14 speak about it, then we can get the testimony that there  
15 was this piece of property. I now understand the  
16 property. I mean, he's given a foundation for that.

17 The next step we'll wait and see. I don't  
18 feel he can give the foundation, because I don't think  
19 you're lying. And I don't know if -- I don't think he's  
20 trying to lie. I know you asked the question are you  
21 being up front but if there is another witness I'm going  
22 to let Mr. Andrews because he obviously I don't know who  
23 whose name are on that from.

24 MR. J.J. JIMMERSON: It's his engineers.  
25 I'll confirm in just a minute.

1 THE COURT: All right. If we need to bring  
2 somebody else in, I don't know, but at this point I'm  
3 going to let -- then we'll make a decision based on they  
4 are public records. Is that what you said?

5 I assume you'll lay the foundation that  
6 Pardee had people involved in it were aware of it. This  
7 isn't a surprise to them which is a prejudice that  
8 concerns me, obviously. So let's go from there. That's  
9 tentatively where I am right now.

10 MS. LUNDVALL: Can we take down the  
11 information?

12 THE COURT: I'm sorry. I didn't even look at  
13 it. I'm looking at you all trying to resolve this issue  
14 that is in front of me right now.

15 MR. J.J. JIMMERSON: Mr. Lash does not have  
16 eyes in the back of his head, so you he couldn't see it.

17 THE WITNESS: I didn't look at it.

18 MR. J.J. JIMMERSON: I have two comments.  
19 One is we did not move to introduce this as an exhibit  
20 and, number two, respectively because it's public record,  
21 you have judicial notice.

22 THE COURT: I do know what I can do.

23 MR. J.J. JIMMERSON: It's mandatory in that  
24 regard.

25 MS. LUNDVALL: Hold on.

1 MR. J.J. JIMMERSON: 47.150 makes it  
2 mandatory.

3 MS. LUNDVALL: I think the Court has made a  
4 ruling. Mr. Jimmerson is trying to contradict that  
5 ruling.

6 THE COURT: No. What I ruled on is if it  
7 wasn't produced at discovery at the time and also it's a  
8 new -- honestly, it was an issue I didn't want introduced  
9 yet, because I felt it was a new issue. Now this opened  
10 the door to it being an irrelevant --

11 MR. J.J. JIMMERSON: And she's asked --  
12 opened the door.

13 THE COURT: Doesn't matter. However it got  
14 into evidence, okay, guys, it's in evidence. Now I do  
15 feel it has to be addressed because of Mr. Lash's  
16 testimony, okay. So that's a little bit different. Now  
17 we're going to have to go to the next step. What is the  
18 judicial notice? And I'll look at it before I get off the  
19 bench.

20 MR. J.J. JIMMERSON: Two key statutes. NRS  
21 47.130 and 47.150.

22 THE COURT: I'll work on it and these are --  
23 you have the foundation. I assume they are maps that are  
24 recorded.

25 MS. LUNDVALL: From this perspective, I don't

1 believe they have established the foundation we have.

2 THE COURT: We haven't gotten there. I just  
3 want to look at the law so I know what they do need to  
4 establish for foundation. I want to get a jump on it. So  
5 it's coming -- I understand that. So I don't want to say  
6 that I did establish as a rule of law that, no, we're not  
7 going to do it. This is changed. And I do feel it's a  
8 legitimate issue. I don't want your client referenced  
9 either, so it is an issue that is open now.

10 MR. J.J. JIMMERSON: Okay. Thank you.

11 THE COURT: It has to be addressed. How far  
12 we go in the evidence, I don't know. I'll just take it as  
13 it comes. I'll look at it just to make sure I know the  
14 foundation.

15 MR. J.J. JIMMERSON: Thank you, your Honor.

16 THE COURT: Are we at least were all kind of  
17 for today we're at 423 on the same page. Okay.

18 BY MR. J.J. JIMMERSON:

19 Q. Let's take some baby steps on this, and I  
20 appreciate where you're at, Mr. Lash. Let's trowel some  
21 ground that you feel comfortable with and you do have  
22 personal knowledge.

23 You testified that you had an engineer look  
24 at your map of November 15, 2009, and asked him or her to  
25 confirm that all the properties that were depicted on that

1 map which is what page three of your Exhibit Number 15 were  
2 general, each true and accurate. I understand it might not  
3 be exact. It wasn't necessarily intended to be exact, but  
4 it's a pretty good replication of what property had been  
5 acquired for single family production use?

6 MS. LUNDVALL: Your Honor, I'm going to  
7 object. Misstates his testimony. His testimony was that  
8 he had confirmed that was the property that had been  
9 purchased for the \$84 million.

10 THE COURT: Okay. With that understanding,  
11 that was my understanding which that was single family  
12 production residence property.

13 MS. LUNDVALL: Thank you, your Honor.

14 THE COURT: So we all know what 84 million  
15 with that.

16 BY MR. J.J. JIMMERSON:

17 Q. You didn't intentionally retain an engineer?  
18 This is the same engineer who does your drawings for the  
19 last several years, correct?

20 A. I believe so.

21 Q. All right.

22 A. My communication was to Jim Rizzi, and he got  
23 back to me that the engineer has verified that is the  
24 purpose. I didn't talk to the engineer but --

25 Q. Within your organization in Nevada, tell us

1 the -- or the individual. Sorry.

2 What I really mean, how does Rizzi fit with  
3 somebody else equivalent with Kliff Andrews with you?

4 A. Kliff Andrews is the division president.

5 Q. Okay. So would that be a Nevada president?

6 A. That would be a Nevada president.

7 Q. Go ahead, sir.

8 A. We have a president in San Diego.

9 THE COURT: We don't need him.

10 BY MR. J.J. JIMMERSON:

11 Q. Does that president have anything to do with  
12 Nevada? Is that why you're adding him as a person?

13 A. No. You want to know the relationship?

14 THE COURT: I think he meant in Nevada.

15 BY MR. J.J. JIMMERSON:

16 Q. I really just meant in Nevada. What is the  
17 organizational chart?

18 A. So you have the president and then you've got  
19 a series of people, Jim Rizzi, Jim Giordano are the names  
20 we mentioned earlier do report to Mr. Andrews.

21 Q. Would they ever report directly to you? If  
22 you asked them to do something, they will directly report  
23 to you?

24 A. Yes. They will do what I asked, but they  
25 don't report to me.



1 Q. I understand. But in this litigation you may  
2 skip Andrews and call Rizzi and say, listen, I need you to  
3 confirm this. It's kind of a relation you have with these  
4 fellows?

5 A. Yes.

6 Q. Not a problem. So you didn't specially go  
7 hire a new engineer to have them reviewed?

8 A. I don't believe so.

9 Q. What is the name of the company that does  
10 your drawings, engineering drawings?

11 A. We use a company called Slater Hanifan.

12 Q. That's the name you mentioned before?

13 A. Which is a couple of guys that used to be at  
14 GC Wallace. I believe we still use GC Wallace which is a  
15 --

16 Q. Is Slater Hanifan the name of the two fellows  
17 that left GC Wallace?

18 A. I believe Jerry Slater and Ken Hanifan.

19 Q. Have they been in the -- in the past been  
20 authorized by you and by Pardee Homes of Nevada, Inc. Maybe  
21 through Mr. Andrews or through you to do engineering work  
22 for Coyote Springs?

23 A. Absolutely.

24 Q. In fact, they are the main engineers,  
25 correct?

1 A. Yes.

2 Q. All right. So I want to show you what we  
3 marked as Exhibit 42, 43.

4 MS. LUNDVALL: Your Honor, now we've got same  
5 thing.

6 THE COURT: He's proposing. He's not asking  
7 to move it into evidence. He's using it to ask him a  
8 question, right?

9 MS. LUNDVALL: Well, without --

10 MR. J.J. JIMMERSON: Just to refresh his  
11 recollection.

12 MS. LUNDVALL: He's not able to as far as use  
13 the contents of the document --

14 MR. J.J. JIMMERSON: I'm not going to.

15 MS. LUNDVALL: -- by which to ask a question  
16 if it's not into evidence.

17 THE COURT: True.

18 BY MR. J.J. JIMMERSON:

19 Q. I know the rules of evidence. I practiced  
20 them for 40 years?

21 Can you confirm the author of these plans,  
22 please?

23 MS. LUNDVALL: Objection, your Honor.

24 THE COURT: He's laying foundation.

25 MS. LUNDVALL: He's asking as far as the

1 contents of these documents.

2 MR. J.J. JIMMERSON: Who is the author? Who  
3 is the author? I won't look at it or point.

4 MS. LUNDVALL: He's asking for the content of  
5 the document.

6 MR. J.J. JIMMERSON: I'm asking who drew  
7 those plans.

8 THE COURT: But it's in the document. So  
9 you're making the distinction who drew them is the content  
10 as opposed to what's in them? You want me to make that  
11 distinction into how do I lay foundation if I don't lay  
12 foundation?

13 MS. LUNDVALL: It's the camels nose into the  
14 tin. If he starts asking him any questions concerning  
15 evidence that this court has previously said is  
16 inadmissible and you have yet to say it is admissible  
17 evidence, then he's asking for the content.

18 THE COURT: Are you using it to refresh his  
19 recollection of who Pardee uses as an engineer?

20 MR. J.J. JIMMERSON: Recently as of two years  
21 ago.

22 MS. LUNDVALL: He doesn't need his  
23 recollection refreshed. He's already testified.

24 THE COURT: Yeah. Slater Hanifan or GC  
25 Wallace.

1 THE WITNESS: Yeah. I believe in Coyote  
2 Springs is Slater Hanifan.

3 THE COURT: Then we have a straight answer.  
4 We don't have the come conflict between GC Wallace or  
5 Slater Hanifan.

6 BY MR. J.J. JIMMERSON:

7 Q. Okay. I'm going to show you these documents,  
8 and I want you to flip through them. And the question is  
9 simply is have you ever seen these documents before?

10 A. No.

11 THE COURT: If the answer is no, the answer  
12 is no. He answered no.

13 MR. J.J. JIMMERSON: Thank you. The title of  
14 the documents --

15 MS. LUNDVALL: Your Honor, now once again,  
16 once we get into these issues, if he starts getting into  
17 the content --

18 THE COURT: He's already said he hasn't seen  
19 the documents yet.

20 MS. LUNDVALL: Thank you.

21 MR. J.J. JIMMERSON: The title of the  
22 document.

23 MS. LUNDVALL: Your Honor, once again, he's  
24 not able to reference content of these.

25 THE COURT: What is it that you want to ask?

1 Just give me an offer.

2 MR. J.J. JIMMERSON: What is the title of the  
3 documents? Answer. Village for Coyote Springs.

4 Is Village for of part of the multifamily  
5 agreement.

6 I don't know. Yes or no.

7 THE COURT: Just ask that.

8 MR. J.J. JIMMERSON: That's what I am asking.

9 THE COURT: You don't have to ask the title  
10 of the document. Just say.

11 BY MR. J.J. JIMMERSON:

12 Q. Do you know whether or not Village Four is  
13 part of the multifamily purchase property?

14 A. I don't know.

15 Q. Multifamily acquisition by separate agreement  
16 somewhere between 2006 and 2010 --

17 A. The answer is I don't know.

18 Q. Okay. If Pardee made an application to the  
19 County Zoning Department in December of 2010 to rezone and  
20 lower the density from that which may have previously  
21 existed to single family residential production property,  
22 would Slater Hanifan been authorized by someone within your  
23 company to do so?

24 A. You're asking would they be the engineer of  
25 record?

1 Q. Yes?

2 A. Yes.

3 Q. Let me show you exhibit number -- it's 39.

4 THE COURT: These are proposed ones?

5 MR. J.J. JIMMERSON: Yes, it is. I want to  
6 show you and mark it for the record. Exhibit 40 is the  
7 Pardee.

8 MS. LUNDVALL: Your Honor, I would ask not as  
9 far as referring to the contents of the document.

10 MR. J.J. JIMMERSON: I just said what it is.  
11 I said tentative map application for Pardee by Coyote  
12 Springs. Exhibit 39 is the County Commission approval of  
13 the rezoning and exhibit --

14 MS. LUNDVALL: Same issue. All we're doing,  
15 your Honor, is now trying to allow an attorney to suggest  
16 --

17 THE COURT: What do you want to ask  
18 What's your question?

19 MR. J.J. JIMMERSON: I just want to ask him.  
20 Let's start with this. Can you recognize Exhibit 39 as a  
21 tentative map application authorized by Pardee Homes of  
22 Nevada, Inc. for residential five, a part of the  
23 multifamily?

24 THE COURT: He's trying to find a record now.

25 MS. LUNDVALL: But he's asking about the

1 content of the document.

2 THE COURT: He's asking him to identify it.

3 MR. J.J. JIMMERSON: You bet.

4 MS. LUNDVALL: Well, yeah.

5 THE COURT: He can't go any farther than  
6 that, and that's what we are doing.

7 MS. LUNDVALL: He's piece by piece what he's  
8 trying to do --

9 THE COURT: He's trying to get into the  
10 contents.

11 MS. LUNDVALL: He's trying to get into the  
12 contents.

13 THE COURT: I'll let him identify.

14 MR. J.J. JIMMERSON: There is no prejudice to  
15 the defendant other than allowing to try to defeat our  
16 client's through lawful compensation.

17 MS. LUNDVALL: You know something, that is  
18 offensive, and I'm going to move to strike that.

19 MR. J.J. JIMMERSON: I said defendants, not  
20 Ms. Lundvall. I don't ever personalize anything. It's  
21 Pardee's efforts to not pay compensation.

22 MS. LUNDVALL: You know something, I find  
23 this outrageous, simply outrageous, your Honor. And I'm  
24 going to ask that the Court instruct counsel that all of  
25 these side comments, all of the side commentary somewhere

1 along the line has to stop.

2 MR. J.J. JIMMERSON: It goes both ways,  
3 Judge. And it's important elements.

4 THE COURT: I understand it goes both ways.  
5 I understand you both have lived with this a long time. I  
6 understand that. And I tried to give leeway, because I  
7 don't have a jury here. And I know what to filter, what  
8 is appropriate or not.

9 But now we're at the point we're not going  
10 forward. And I told myself when we get to the point that  
11 we're not moving forward, that I will -- we do need to  
12 please keep forward.

13 I understand just to keep forward on this  
14 substance, because it's not affecting my judgment. But  
15 it's slowing this trial down. And we -- you know, it's  
16 not exactly at a quick pace here. And I'm trying to give  
17 you guys as much time.

18 So I will -- my ruling is I'll allow him to  
19 identify. But after that, that's it. Only based on if he  
20 can identify the, record his foundation has been he's been  
21 at a different level. He hasn't been actively involved in  
22 Nevada.

23 MS. LUNDVALL: The question would be has he  
24 seen these documents.

25 THE COURT: That's fine. I'll allow that



1 question.

2 MS. LUNDVALL: Has he seen these documents  
3 before?

4 THE WITNESS: The answer is no.

5 MS. LUNDVALL: All right. If he's not seen  
6 --

7 THE COURT: And then you can ask, if you want  
8 to ask the next question, as part of your work for Pardee,  
9 do you work with these kind of records. If you want to  
10 lay that foundation, I'll allow it. But if you haven't  
11 seen them before, no.

12 MR. J.J. JIMMERSON: Do you see that Pardee  
13 Homes is the applicant?

14 THE COURT: Now that is asking. Now I know.

15 MR. J.J. JIMMERSON: I want to make it clear.  
16 I'm not asking about something unrelated to this case,  
17 Judge.

18 THE COURT: You know what --

19 MR. J.J. JIMMERSON: I wouldn't do that.

20 THE COURT: You know what, and I'm not  
21 looking at it that way. I have a good idea what's in  
22 there now. I can't consider it yet. I have a -- I mean,  
23 just from descriptions from the questions I know.

24 MS. LUNDVALL: You know what --

25 THE COURT: It's not in evidence. So just

1 wait and see if we can lay a foundation through Mr. --

2 MS. LUNDVALL: And all of these theatrics.

3 THE COURT: -- Andrews. I'm sorry.

4 MS. LUNDVALL: All the theatrics of opposing  
5 counsel has accomplished what he's wanting to accomplish.  
6 He's trying to suggest to you what the contents of these  
7 documents are and that's inappropriate.

8 THE COURT: He's already asked it in the  
9 questions. As I know questions are not evidence, Ms.  
10 Lundvall. I'm very aware of that. I have known that in  
11 my 30 year career. I am not -- once again, I've let it go  
12 a little further because it's a bench trial.

13 I don't have a jury here. When you admonish  
14 them, don't consider the question and, you know, they may  
15 not even understand what you're saying. It's not  
16 evidence. I do understand that. I'm not considering any  
17 of that until we find out if I actually let it in. I  
18 understand that.

19 Okay. I will know from his questions how  
20 they are trying to tie it in is all I can say. Doesn't  
21 mean I'm going to consider it.

22 MS. LUNDVALL: Mr. Lash's testimony has been  
23 he's never seen these documents before.

24 THE COURT: I did hear that. And then if you  
25 want to do another question.

1 MR. J.J. JIMMERSON: Did you authorize  
2 Hanifan Slater to submit this application on behalf of  
3 Pardee Homes?

4 THE WITNESS: No.

5 THE COURT: To submit that on any application  
6 on behalf of Pardee Homes?

7 THE WITNESS: No.

8 BY MR. J.J. JIMMERSON:

9 Q. You didn't authorize it?

10 A. My testimony is no.

11 Q. Does that mean they did so without Pardee  
12 Home of Nevada, Inc.'s, approval?

13 A. The way you asked it, I gave the approval. I  
14 didn't give the approval.

15 Q. Thank you. Do you know if Pardee Homes  
16 authorized Hanifan Slater to submit this?

17 A. I don't. That would be -- that would be a  
18 decision at the team level.

19 THE COURT: The Nevada level?

20 THE WITNESS: Yes.

21 BY MR. J.J. JIMMERSON:

22 Q. And does Pardee Homes of Nevada, Inc. Own  
23 Coyote Village?

24 MS. LUNDVALL: Your Honor, from this  
25 perspective, once again, we're getting into the content.

1 THE WITNESS: I don't know.

2 THE COURT: He answered it. He doesn't know.

3 BY MR. J.J. JIMMERSON:

4 Q. All right. Is the Hanifan Slater Group  
5 located on Arville street?

6 A. I don't know.

7 THE COURT: He doesn't know.

8 MS. LUNDVALL: He's going to walk through  
9 each one of the pieces of evidence in here and ask it in  
10 the form of the question in the hopes he's going to try to  
11 --

12 MR. J.J. JIMMERSON: There is no hopes.

13 You're going to make a call whether to  
14 ultimately allow it or not, and you're going to decide.  
15 Independently of that, you're allowed to take judicial  
16 notice. I will tell you this. You understand the case.

17 If you believe, as we believe, that they are  
18 not permitted to do what they did, then his -- Mr. Lash's  
19 non knowledge or absence of knowledge about it isn't going  
20 to change the outcome of this case.

21 We can put Andrews on. We can put every  
22 other person on by rebuttal or otherwise.

23 THE COURT: All I know now is that the  
24 testimony he at one point said we can -- even though we  
25 pay multifamily, we can rezone it. And one point he said

1 I think they would deserve a commission and another not.  
2 That's all I have in front of me. I don't know anything  
3 else on evidence. And we're still going to do that door.  
4 But we're not going to do it through Mr. Lash. And I do  
5 want to do the research on the judicial notice. And I did  
6 take notice. They gave it to you. You got it the day  
7 after Thanksgiving.

8 MR. J.J. JIMMERSON: Day before Thanksgiving.

9 MS. LUNDVALL: 5:00 o'clock Wednesday, 5:00  
10 o'clock.

11 MR. J.J. JIMMERSON: That's true.

12 MS. LUNDVALL: Nice time to deliver it.

13 BY MR. J.J. JIMMERSON:

14 Q. All right. Would you look at now, please,  
15 Exhibit 39?

16 MS. LUNDVALL: Notwithstanding the fact they  
17 had it since the end of October.

18 BY MR. J.J. JIMMERSON:

19 Q. Here is my question. These are minutes or  
20 approval by the County Commission Pardee's application.  
21 Here is my question. Were you in attendance?

22 A. No.

23 Q. Were you reported to by Hanifan Slater or by  
24 Kliff Andrews or by Mr. Rizzi or any of the -- any other  
25 person of Pardee Homes that we were successful?

1 MS. LUNDVALL: Your Honor, from this  
2 perspective, you can't refer to the contents of the --  
3 BY MR. J.J. JIMMERSON:

4 Q. February 16, 2011, to get this property  
5 residential five rezoned to production?

6 A. No.

7 THE COURT: If it gets in, I'll consider it.  
8 Right now I have no rezoning in front of me. I understand  
9 that we do need to revisit this. And I'll try look at the  
10 judicial notice.

11 And, I mean, I do need the foundation.  
12 Obviously, he's going to have to lay the foundation which  
13 not through you. He's laid it through his questions. I  
14 understand.

15 BY MR. J.J. JIMMERSON:

16 Q. Mr. Lash, a portion, not all but a portion of  
17 the exchange property that I showed you, not all of it, but  
18 a portion, I show you the lines counted to the property  
19 owned by your -- by you through multifamily acquisition  
20 which I've been spending some time together was rezoned.  
21 Here is my question. Isn't it true that since this was the  
22 very location that you have testified would be the  
23 beginning point of your home construction where you would  
24 start your first construction of production housing by  
25 Pardee, did you need to have it rezoned, in other words,

1 zones, zoned, I won't say rezoned, zoned residential single  
2 family housing?

3 MS. LUNDVALL: I move to strike as far as all  
4 the preface.

5 BY MR. J.J. JIMMERSON:

6 Q. I'll revise the question. In order to begin  
7 your construction of single family homes, isn't it true you  
8 needed to approach the county to obtain zoning for the  
9 applicable zoning use R2 single family production housing?

10 A. That I'm not aware.

11 Q. Are you denying that you would need to  
12 approach the county to get zoning to build the homes there  
13 at the location you said was your company's present intent  
14 to start?

15 A. Your Honor, this is a team. We may have a  
16 discussion back in corporate this is where the Town Square  
17 is going and this is where we want to start, or we don't  
18 get into the logistics of whether something needs to be  
19 rezoned. And, you know, who are we going to hire as  
20 engineers and when are we going to go to the commission,  
21 and what are the meeting notes. I mean, it's at a much  
22 higher level than corporate.

23 Q. So I'm going to ask you. Did you have any  
24 conversations with your Nevada team, as you used that term,  
25 that it's time to get the core combination of exchange

1 parcel next to multifamily res five parcel, 332 lots zoned  
2 R2 for production residential in the last three years?

3 A. No.

4 Q. Okay. In light of the terms of the  
5 commission agreement, Exhibit 1, would you agree with me  
6 that you are obliged to affirmatively notify Mr. Wilkes and  
7 Mr. Wolfram that if it's true that you were rezoning,  
8 redesignating a portion of the property to single family  
9 production residential property?

10 A. I just testified no.

11 Q. You didn't even have the obligation to notify  
12 them that you were going to change it from multifamily to  
13 single family? Is that your testimony, sir?

14 A. Correct.

15 Q. Under the terms?

16 A. But my testimony is they are not a party to  
17 the multifamily agreement, the custom lot agreement, or  
18 the golf course agreement. We did not give them the  
19 agreements, and we have confidentiality agreements that we  
20 would violate if we did.

21 Q. Now, would you turn your attention to the  
22 testimony that I read into the record that began at page  
23 250?

24 A. You have to bring me back to the testimony.

25 Q. I certainly will.



1 MR. J.M. JIMMERSON: Permission to approach,  
2 your Honor?

3 THE COURT: Absolutely. There you go.

4 BY MR. J.J. JIMMERSON:

5 Q. 257 and 258. Exhibit 3, why don't you read  
6 pages, same page, 257, just lines eight through the end and  
7 then the first eight of the second page of 258. So 8  
8 through 25 and 1 through 8 of 257 and 258 to yourself.

9 A. These are the same pages we read earlier?

10 Q. They are. And this is the testimony you gave  
11 five weeks ago in 2013, specifically on October 28 of 2013,  
12 correct?

13 A. Yes.

14 Q. Okay. And if in fact there has been a  
15 submission to the Clark County Commission on December 2010  
16 and approved by them in February 2011, to change from a  
17 multifamily use to a production of single family production  
18 use which you say you're unaware of, let's examine your  
19 words. I asked you. You also already confirmed you have  
20 the right to change the use.

21 Then I asked you at page 257 if they change  
22 the use of the property and you change it to be single  
23 family residential production, that would entitle my  
24 clients to compensation; isn't that true?

25 Answer. I haven't rethought about it. We

1 have no intent to do that?

2 Do you see that?

3 A. Yep.

4 Q. Okay. And is it your testimony then that in  
5 2013, October 28, when you sat here just five weeks ago,  
6 three years in this litigation, that Pardee Homes had no  
7 intent to change the designation of use from multifamily to  
8 single family?

9 A. That is my testimony. I wasn't aware that we  
10 were contemplating it.

11 Q. And if it is demonstrated to your  
12 satisfaction that is, in fact, exactly what happened, would  
13 you be amending that answer as well?

14 A. I think what when I gave my testimony, I was  
15 not aware of it so...

16 Q. Now, what is there about your company -- and  
17 I mean this on the square. What is it about your company  
18 that allows them to change a designation of use from  
19 multifamily to single family residential property without  
20 your knowing about it?

21 A. I'm not sure I understand your question.

22 Q. You're in the middle of litigation involving  
23 this issue. How is it that you could not be involved in a  
24 decision by your own company and your Nevada team to rezone  
25 the property to production residential property?

1 MS. LUNDVALL: Your Honor, that question then  
2 assumes that he after he said the preface contained --

3 MR. J.J. JIMMERSON: I'm happy to -- I agree  
4 that is a --

5 THE COURT: Assuming it did happen...

6 BY MR. J.J. JIMMERSON:

7 Q. Assuming it did happen, how could it be in  
8 the structure of your company and in the midst of this  
9 litigation, you wouldn't know that?

10 A. Well, if it's in the realm of responsibility  
11 for Kliff Andrews, he has the ability or authority to do  
12 that.

13 Q. So you wouldn't anticipate him to be able to  
14 take a power on the witness stand and say he knows nothing  
15 about any of this, would you?

16 MS. LUNDVALL: Your Honor, I'm going to  
17 object to that.

18 MR. J.J. JIMMERSON: Let me rephrase the  
19 question.

20 THE COURT: Rephrase that, please.

21 BY MR. J.J. JIMMERSON:

22 Q. Would you expect Mr. Andrews to know nothing  
23 about a zoning application of December 2010, approved by  
24 the county on February 16 of 2011, of 332 lots made up of  
25 those parcels?

1 A. He probably does know about it.

2 MR. J.J. JIMMERSON: Okay. All right. Thank  
3 you, your Honor. Would this be a good time to go to  
4 break, or do you want to go right to 5:00 o'clock?

5 THE COURT: Are you coming back tomorrow?

6 MR. J.J. JIMMERSON: He's here for three  
7 days. He's not coming back tomorrow. We have no court  
8 tomorrow.

9 MS. LUNDVALL: What I'm trying to see is how  
10 much longer Mr. Jimmerson has.

11 THE COURT: How much longer do you think?

12 MR. J.J. JIMMERSON: Two to three hours.  
13 Maybe two hours. I'm not trying to -- we covered the guts  
14 of the redirect. Excuse me. But there are some other  
15 areas. Ms. Lundvall took about three hours with him. Two  
16 hours. Three hours.

17 THE COURT: All right. So we're looking at  
18 scheduling then Friday, right, because we're not --

19 MR. J.J. JIMMERSON: Thursday morning.

20 THE COURT: Thursday morning, okay. You all  
21 agree on scheduling, I'll be here. I'm fine.

22 MR. J.J. JIMMERSON: We're here. Mr. Lash,  
23 see you then.

24 THE COURT: So you're not going to put Mr.  
25 Andrews on in between?

1 MR. J.J. JIMMERSON: If he was available I  
2 would love to do that and get through this. If you would  
3 allow that, I most certainly would.

4 THE COURT: No. We need to finish this. I  
5 know what you're going to say. For some reason I had in  
6 my head, I thought you were going to be finished today and  
7 Mr. Andrews was --

8 MR. J.J. JIMMERSON: That was the plan,  
9 Judge. That was absolutely the plan.

10 THE COURT: So far I got that plan, but it  
11 didn't work out. It doesn't work out.

12 MR. J.J. JIMMERSON: Mr. Andrews is going to  
13 be here on Thursday.

14 MS. LUNDVALL: You know something, at this  
15 point in time, I think we're planning on finishing with  
16 Mr. Lash. And then I don't know who else as far as...

17 MR. J.J. JIMMERSON: See, now Mr. Andrews  
18 isn't going to come and testify, the one guy can validate  
19 this.

20 Do you understand, Judge? You have to see  
21 where you have to let this in. Can you believe that they  
22 are going to pull Kliff Andrews, the one guy that Mr. --

23 THE COURT: Do you have him under subpoena  
24 power?

25 MR. J.J. JIMMERSON: I'll have to today. He

1 was promised by Ms. Lundvall to you.

2 MS. LUNDVALL: You know, this is what I love,  
3 the theatrics. It's very amusing.

4 THE COURT: I'm not enjoying it very much.  
5 It's not quite as entertaining from the bench, because I  
6 so much want to do substance not --

7 MR. J.J. JIMMERSON: So do I, Judge.

8 MS. LUNDVALL: It's reached the point in the  
9 day where to me it's entertaining, these theatrics. We've  
10 never said we're not going to bring Kliff Andrews. The  
11 question is whether or not we're going to finish with Mr.  
12 Lash, and the Court has indicated that you want to finish  
13 with this witness.

14 THE COURT: I think sometimes you get a  
15 history in a case and people kind of jump. As much as I  
16 hate to admit it, I understand it. I was there. But  
17 we're all working through it. I'm sure you didn't mean  
18 that you're not going to hide Mr. Andrews and send him to  
19 Bora Bora tomorrow, correct?

20 MR. J.M. JIMMERSON: Lucky for Mr. Andrews if  
21 that is the case.

22 THE COURT: MR. J.M. JIMMERSON will volunteer  
23 to be Mr. Andrews.

24 MR. J.M. JIMMERSON: I'll be his escort,  
25 Judge.

1 THE COURT: I don't know where I came up with  
2 Bora Bora. Sounded like a good idea.

3 MR. J.J. JIMMERSON: This case is turned into  
4 the --

5 THE COURT: Mr. Lash. All right. So we'll  
6 be back Thursday morning, right?

7 MR. J.M. JIMMERSON: Yes, your Honor, bright  
8 and early.

9 THE COURT: All right. Is 8:30 working out  
10 for you? It just works out better for me. Long days.

11 All right. Thank you. And I will get my law  
12 clerk before you leave to start working on this.

13

14 (Whereupon the proceedings concluded at 4:49 p.m.)

15 \* \* \* \*

16 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF  
17 PROCEEDINGS.

18 /s/Angela Campagna

19

20 ANGELA CAMPAGNA, CCR #495

21

22

23

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25





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June 14, 2010

James J. Jimmerson, Esq.  
Jimmerson Hansen Attorneys at Law  
415 South Sixth Street, Suite 100  
Las Vegas, NV 89101

Re: Coyote Springs Real Estate Commissions  
Your Clients: Jim Wolfram (Award Realty Group) and  
Walt Wilkes (General Realty)

Dear Mr. Jimmerson:

This will respond to Mr. Wolfram's letter of April 21, 2010 and to yours of May 17, 2010, both addressed to Jon Lash at Pardee Homes ("Pardee").

Despite the length of your letter of May 17, 2010 and its attachments, the issue is not what land Pardee owns, but what land is *within the express scope of the September 1, 2004 commission letter* (the "Commission Letter") which your clients and Pardee signed.

The map prepared by Mr. Wolfram that he enclosed with his letter of April 21, 2010 includes additional real property not within the scope of the Commission Letter.

Please note that, by its terms, the Commission Letter was concerned only with the sale of certain property pursuant to Paragraphs 1 and 2 of the Option Agreement as defined therein, and the Commission Letter provided in relevant part that it "represents our entire understanding concerning the subject matter hereof."

James J. Jimmerson, Esq.  
June 14, 2010  
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Pardee denies any allegation that it materially breached any representation to provide documents. Pardee further denies that it has any contractual obligation to provide any documents to your clients except for such documents as expressly contemplated in the Commission Letter, all of which were timely furnished to your clients long ago.

If your clients' claim is reassessed in light of the foregoing, it can readily be established that no further compensation is due them pursuant to the Commission Letter.

Very truly yours,

**PARDEE HOMES**

By:

  
Charles E. Curtis,  
Legal Counsel

cc: Jon Lash