Case No. 84221

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the Honorable Timothy C. Williams, District Judge,

Respondents,

and

180 LAND CO, LLC, a Nevada limited-liability company, FORE STARS LTD., a Nevada limited-liability company,

Real Parties in Interest.

Eighth Judicial District Court, Clark County, Nevada
Case No. A-17-758528-J
Honorable Timothy C. Williams, Department 16

APPENDIX TO ANSWER TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF CERTIORARI

VOLUME 3

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPENDIX TO ANSWER TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, WRIT OF CERTIORARI - **VOLUME 3** was filed electronically with the Nevada Supreme Court on the 8th day of March, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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19. The Court further concludes that the Las Vegas Municipal Code Section LVMC 19.10.050 lists single family and multi family residential as the legally permissible uses on R-PD7 zoned properties.

20. Therefore, the Landowners' Motion to Determine Property Interest is **GRANTED** in its entirety and it is hereby **ORDERED** that:

1) the 35 Acre Property is hard zoned R-PD7 at all relevant times herein; and,

2) the permitted uses by right of the 35 Acre Property are single-family and multi-family residential.

DATED this 9th day of October, 2020.

DISTRICT COURT JUDGE ZJ

Respectfully Submitted By:

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DISTRICT COURT

CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited-liability company; DOE INDIVIDUALS I through X; DOE CORPORATIONS I through X; and DOE LIMITED-LIABILITY COMPANIES I through X,

Plaintiffs,

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; ROE GOVERNMENT ENTITIES I through X; ROE CORPORATIONS I through X; ROE INDIVIDUALS I through X; ROE LIMITED-LIABILITY COMPANIES I through X; ROE QUASI-GOVERNMENTAL ENTITIES I through X,

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

~~[PROPOSED]~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF'S MOTION FOR A NEW TRIAL, MOTION TO ALTER OR AMEND AND/OR RECONSIDER THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND MOTION TO STAY PENDING NEVADA SUPREME COURT DIRECTIVES

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Currently before the Court is Plaintiff 180 Land Co, LLC's Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives ("the Motion") filed on December 13, 2018. The alternative relief sought by the Developer is a stay of the proceedings until the Nevada Supreme Court decides an appeal from the judgment entered March 5, 2018 by the Honorable James Crockett in Case No. A-17-752344-J ("Judge Crockett's Order"). The City filed an opposition, to which the Intervenors joined, and the Plaintiff filed a reply. The Court held oral argument on the Motion on January 22, 2019.

Having considered the record on file, the written and oral arguments presented, and being fully informed in the premises, the Court makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

1. Plaintiff 180 Land Co, LLC ("the Developer") filed a Petition for Judicial Review (the "Petition") challenging the Las Vegas City Council's June 21, 2017 decision to deny its four land use applications ("the 35-Acre Applications") to develop its 34.07 acres of R-PD7 zoned property (the "35-Acre Property").

2. On November 21, 2018, this Court entered Findings of Fact and Conclusions of Law on Petition for Judicial Review ("FFCL") that denied the Petition and dismissed the alternative claims for inverse condemnation. The Court concluded that the Las Vegas City Council properly exercised its discretion to deny the 35-Acre Applications and that substantial evidence supported the City Council's June 21, 2017 decision. The Court further concluded that the Developer had no vested rights to have the 35-Acre Applications approved.

3. On February 6, 2019, the Court entered an Order Nunc Pro Tunc that removed those portions of the FFCL that dismissed the inverse condemnation claims. Specifically, the Order *Nunc Pro Tunc* removed FFCL page 23:4-20 and page 24:4-5 but left all findings of fact and all other conclusions of law intact.

4. The Developer seeks a new trial: however, because this matter is a petition for judicial review, no trial occurred.

5. While the Developer has raised new facts, substantially different evidence and new issues of law, none of these new matters warrant rehearing or reconsideration, as discussed infra.

6. The Developer identifies claimed errors in the Court's previous findings of fact in the FFCL and disagrees with the Court's interpretation of law.

7. The Developer has failed to show that the Court's previous findings that the City Council did not abuse its discretion or that sufficient privity exists to bar Plaintiff's Petition under issue preclusion were clearly erroneous.

8. The Developer repeats its arguments that it raised previously in support of its petition for judicial review; namely, that public opposition, the desire for a comprehensive and cohesive development proposal to amend the General Plan's open space designation, and the City

Council's choice not to follow Staff's recommendation purportedly were not ample grounds to affirm the City Council's June 21, 2017 decision.

9. The Developer also reasserts its contentions that: (a) NRS 278.349 gives it vested rights to have the 35-Acre Applications approved; (b) the Queensridge homeowners have no rights in the golf course; (c) no major modification is required; (d) Judge Crockett's Order should be disregarded; and (e) the County Assessor changed the assessed value of the property after the Developer stopped using it as a golf course. The Developer made each of these arguments in the briefs submitted by the Developer in support of the Petition. *See* Pet. Memo. of P&A in support of Second Amended PJR at 5:17-20, 6:3, 7:4-10, 10:4-14:17, 17:8-18:7, 22-42, 26:10-17, 29:10-30:24, n.6, n.37, n.42, n.45, n.79, n.112; Post Hearing Reply Br. at 2:2-4, 2:19-4:3, 7:18-13:14, 13-16, 26:16-29:15, n.79.

10. The Motion also cites to and attaches documents that were not part of the record on review at the time the City Council rendered its June 21, 2017 decision to deny the 35-Acre Applications. *See* Motion at 2:14-3:23, 8:1-21; n.2, n.3, n.18, n.20, n. 21, n.22, citing Exs. 1-6 to the Motion.

11. The transcripts and minutes from the August 2, 2017 and March 21, 2018 City Council meetings on which the Developer relies (Exs. 1 and 6 to the Motion) post-dated the City Council's June 21, 2017 decision to deny the 35-Acre Applications and are, therefore, not part of the record on review.

12. Similarly, the Developer's attacks on Councilmember Seroka are beyond the record on review because he was not on the City Council on June 21, 2017 when the City Council voted to deny the 35-Acre Applications.

13. The Supreme Court's order of affirmance and order denying rehearing related to Judge Smith's orders (Exs. 4 and 5 to the Motion) were entered on October 17, 2018 and November 27, 2018, respectively, after the City Council denied the 35-Acre Applications and, therefore, are not part of the record on review.

14. The Developer previously cited to Judge Smith's underlying orders before the Nevada Supreme Court's actions both before the City Council and before this Court. *See* Pet.'s

P&A at 9:5-10:10, 17:1-2; *see also* 6.29.18 Hrg. Trans. at 109:6-110:13, attached as Exhibit B to City Opp.

15. The Motion relies not only on the aforestated orders, but also the Nevada Supreme Court's decision affirming the orders Judge Smith issued in that case.

16. Judge Smith's orders interpreted the rights of the Queensridge homeowners under the Queensridge CC&Rs, which in the Court's view, have no relevance to the issues in this case or the reasons supporting the Court's denial of the Petition.

17. Judge Smith described the matter before him as the Queensridge homeowners' claims that ***their*** "vested rights" in the CC&Rs were violated. *See* 11.30.16 Smith FFCL at ¶¶2, 7, 29, 108, Ex. 2 to the Motion.

18. Whether the Developer had vested rights to have its development applications approved was not precisely at issue in the matter before Judge Smith. *See id.*

19. Indeed, Judge Smith confirmed that, notwithstanding the zoning designation for the golf course property, the Developer is nonetheless "subject to City of Las Vegas requirements" and that the City is not obligated to make any particular decision on the Developer's applications. 1.31.17 FFCL ¶¶9, 16-17, 71.

20. The Supreme Court's affirmance of Judge Smith's orders has no impact on this Court's denial of the Developer's Petition for Judicial Review.

21. In the Motion, the Developer challenges the Court's application of issue preclusion to Judge Crockett's Order. The Developer reargues its attacks on the substance of Judge Crockett's Order (Motion at 17:21-20:7) and also reargues the application of issue preclusion to Judge Crockett's Order.

22. The Court finds no conflict between Judge Crockett's Order and Judge Smith's orders and therefore rejects the Developer's argument that such orders are "irreconcilable."

23. In its Motion, the Developer argues that this Court's factual findings are incorrect and need amendment. Two findings from the FFCL the Developer argues are incorrect are ¶¶12-13, which the Developer contends are different than Judge Smith's findings. Motion at 20, n.67.

24. As stated supra in finding No. 17, Judge Smith's orders are irrelevant to this Petition for Judicial Review. Thus, the Court finds no cause exists to alter or amend the findings in the FFCL.

II. CONCLUSIONS OF LAW

A. The Court May Not Consider Matters Outside The Record On Review

1. The scope of the Court's review is limited to the record made before the administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982). That scope cannot be expanded with a motion for reconsideration of the Court's denial of a petition for judicial review. *See id.*

2. The Developer's Motion cites to matters that post-dated the City Council's June 21, 2017 Decision and that are otherwise outside the record on review.

3. Because the Court's review is limited to the record before the City Council on June 21, 2017, the Court may not consider the documents that post-date the City Council's June 21, 2017 decision submitted by the Developer. *See Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

B. No "Retrial" Is Appropriate For A Petition For Judicial Review

4. Under NRCP 59(a), the Court may grant a new trial on some or all issues based upon certain grounds specifically enumerated in that rule.

5. Where a petition for judicial review is limited to the record and does not involve the Court's consideration of new evidence, a motion for a new trial is not the appropriate mechanism to seek reconsideration of the denial of a petition for judicial review.

6. "Retrial" presupposes that a trial occurred in the first instance, but no trial occurred here or is allowed for a petition for judicial review because the Court's role is limited to reviewing the record below for substantial evidence to support the City Council's decision. *See City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P. 3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

7. Moreover, a motion for a new trial under NRCP 59(a), which is the authority cited by the Developer (at 16:22-23), may only be granted based upon specific enumerated grounds

cited in the rule, none of which is invoked by the Developer. As a result, no "retrial" may be granted.

C. The Developer's Repetition of its Previous Arguments is Not Grounds for Reconsideration

8. Pursuant to EDCR 2.24(a), no motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court.

9. "Although Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000), quoting 12 Moore's Federal Practice §59.30[4] (3d ed. 2000) (discussing the federal corollary of NRCP 59(e)).

10. A Rule 59(e) motion may not be used "to relitigate old matters." 11 Fed. Prac. & Proc. Civ. §2810.1 (3d ed.); *accord Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008).

11. "Rehearings are not granted as a matter of right and are not allowed for the purpose of re-argument, unless there is a reasonable probability that the court may have arrived at an erroneous conclusion." *Geller v. McCowan*, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947) (citations omitted) (discussing petition for rehearing of appellate decision).

12. Because the Developer has not raised sufficient new facts, substantially different evidence or new issues of law for rehearing or reconsideration showing an erroneous conclusion, the Court rejects the Developer's repetitive arguments.

D. NRCP 52(b) Does Not Apply Where the Developer Does Not Identify Any of the Court's Findings of Fact That Warrant Amendment

13. Although it brings its motion to alter or amend pursuant to NRCP 52(b), that rule is directed only at amendment of factual "findings," not legal conclusions. *See id.* "Rule 52(b) merely provides a method for amplifying and expanding the lower court's findings, and is not intended as a vehicle for securing a re-hearing on the merits." *Matter of Estate of Herrmann*, 100 Nev. 1, 21 n.16, 677 P.2d 594, 607 n.16 (1984).

14. The only findings mentioned in the Motion (at ¶¶12-13) are supported by the portion of the record cited by the Court, namely, the Peccole Ranch Master Development Plan. Judge Smith's findings in support of his interpretation of the Queensridge CC&Rs do not alter the Court's findings.

15. Because the Developer has not identified any findings that should be amended under NRCP 52(b), the Court declines to amend any of its findings.

E. The Developer May Not Present Arguments and Materials it Could Have Presented Earlier But Did Not

16. The Developer's Motion cannot be granted based upon arguments the Developer could have raised earlier but chose not to.

17. "A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters.*, 229 F.3d at 890.

18. "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

19. Contrary to the Developer's assertion (Motion at 16:1-2), the Court considered all of the arguments in its Petition related to Judge Smith's orders. The Court simply rejected them because Judge Smith's interpretation of the Queensridge CC&R's does not affect the City Council's discretion under NRS Chapter 278 and the City's Unified Development Code to deny the 35-Acre Applications.

F. The Supreme Court's Affirmance of Judge Smith's Orders Has No Impact on this Court's Denial of the Developer's Petition for Judicial Review

20. The fact that the Supreme Court affirmed Judge Smith's orders is not grounds for reconsideration because Judge Smith's orders interpreted the Queensridge homeowners' rights under the CC&R's, not the City Council's discretion to deny re-development applications.

21. As a result, the Developer's assertion (at 3:4-5) that Judge Smith's Orders are "irreconcilable" with Judge Crockett's Decision does not accurately reflect the scope of the matter before Judge Smith.

22. This Court correctly concluded that the Developer does not have vested rights to have the 35-Acre Applications approved, and neither Judge Smith's orders, nor the Supreme Court's orders of affirmance, alter that conclusion.

G. The Court Correctly Determined That Judge Crockett's Order Has Preclusive Effect Here

23. The Developer has failed to show that the Court's conclusion that sufficient privity exists to bar the Developer's petition under the doctrine of issue preclusion was clearly erroneous.

24. The Court correctly determined that Judge Crockett's Order has preclusive effect here and, as a result, the Developer must obtain the City Council's approval of a major modification to the Peccole Ranch Master Developer Plan before it may develop the 35-Acre Property.

25. The Court's conclusion that the City Council's decision was supported by substantial evidence was independent of its determination that Judge Crockett's Order has preclusive effect here. Judge Crockett's Order was only a "further" (i.e., not exclusive) reason to deny the Developer's petition for judicial review.

H. The Developer Does Not Identify Any Clear Error That Warrants Reconsideration

26. The sole legal grounds for reconsideration asserted by the Developer is purported "clear error."

27. The only legal conclusions in the FFCL with which the Developer takes issue are the Court's determinations that public opposition constitutes substantial evidence for denial of the 35-Acre Applications and that the City Council properly exercised its discretion to insist on comprehensive and orderly development for the entirety of the property of which the 35-Acre Property was a part. Motion at 20:8-24:7. In making these arguments, however, the Developer never contends that the Court incorrectly interpreted the law cited in the FFCL. *See id.* It therefore

cannot satisfy its burden of showing "clear error." The Developer has failed to show that the Court's previous conclusion that the City Council did not abuse its discretion was clearly erroneous.

28. The Court's analysis of these issues was correct. The *Stratosphere* and *C.A.G.* cases hold that public opposition from neighbors, even if rebutted by a developer, constitutes substantial evidence to support denial of development applications. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 500-01, 654 P.2d at 533. The Developer's Motion is silent as to this point.

29. Citing NRS 278.349(3)(e), the Developer contests the Court's reliance on *Nova Horizon* and *Cold Springs* that zoning must substantially conform to the master plan and that the master plan presumptively governs a municipality's land use decisions. *Nova Horizon*, 105 Nev. at 97, 769 P.2d at 724; *Citizens for Cold Springs*, 126 Nev. at 266, 236 P.3d at 12. The Developer's discussion fails to discredit the *Nova Horizon* decision given NRS 278.349(3)(a) and does not address the *Cold Springs* case.

30. Having failed to demonstrate any clear error in the Court's decision, the Developer fails to satisfy its burden for reconsideration.

31. Nothing presented in the Motion alters the Court's conclusion that the City Council properly exercised its discretion to deny the 35-Acre Applications and the June 21, 2017 decision was supported by substantial evidence. *See City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (*citing Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)); *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by statute on other grounds*; *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

32. As the Court correctly concluded, its job was to evaluate whether substantial evidence supports the City Council's decision, not whether there is substantial evidence to support a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836 n.36, 138 P.3d 486, 497 (2006).

33. This is because the administrative body alone, not a reviewing court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99, 787 P.2d at 784.

I. The Developer Failed to Advance Any Argument to Justify a Stay

34. The Motion lacks any argument or citation whatsoever related to its request for a stay.

35. "A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported." EDCR 2.20(c) (emphasis added).

36. Because the Developer provides no points and authorities in support of its motion for stay, the motion for stay must be denied.

J. Effect On The Developer's Inverse Condemnation Claims

37. The Developer's petition for judicial review and its inverse condemnation claims involve different evidentiary standards.

38. Relative to the petition for judicial review, the Developer had to demonstrate that the City Council abused its discretion in that the June 21, 2017 decision was not supported by substantial evidence; whereas, relative to its inverse condemnation claims, the Developer must prove its claims by a preponderance of the evidence.

39. Because of these different evidentiary standards, the Court concludes that its conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims.

ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives is DENIED.

IT IS FURTHER ORDERED THAT the Court's conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims, which will be subject to further action by the Court.

DATED: April 6th, 2019.

TIMOTHY C. WILLIAMS
District Court Judge

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Exhibit 8

ORD
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DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X,

Plaintiffs,

vs.

CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X,

Defendant.

Case No.: A-17-758528-J
Dept. No.: XVI

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

Hearing Date: March 22, 2019
Hearing Time: 1:30 p.m.

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenors' (from the Petition for Judicial Review[1]) Oppositions and the Landowners Replies[2] to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

I. The Landowners' Countermotion to Supplement/Amend the Pleadings

The Landowners moved this Court to supplement/amend their pleadings. The Landowners attached a copy of their proposed amended/supplemental complaint to their request pursuant to NRCP Rule 15. This matter is in its early stages, as discovery has yet to commence so no prejudice

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[1] The Intervenors have not moved nor been granted entry into this case dealing with the Landowners' inverse condemnation claims, they have moved and been granted entry into the severed petition for judicial review.

[2] The Landowners withdrew this Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time, accordingly, no arguments were taken nor rulings issued.

or delay will result in allowing the amendment. The City argues that permitting the amendment would result in impermissible claim splitting as the Landowners currently have other litigation pending which also address the City action complained of in the amended/supplemental complaint. However, those other pending cases deal with other property also allegedly affected by the City action and do not seek relief for the property at issue in this case.

Leave to amend should be freely given when justice so requires. NRCP Rule 15(a)(2); Adamson v. Bowker, 85 Nev. 115, 121 (1969). Absent undue delay, bad faith or dilatory motive on the part of the movant, leave to amend should be freely given. Stephens v. Southern Nev. Music Co., 89 Nev. 104 (1973). Justice requires leave to amend under the facts of this case and there has been no showing of bad faith or dilatory motive on the part of the Landowners.

Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion to Supplement/Amend the Pleadings is **GRANTED**. The Landowners may file the amended / supplemental complaint in this matter.

II. The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims

The City moved this Court for judgment on the pleadings on the Landowners' inverse condemnation claims pursuant to NRCP 12(c). Only under rare circumstances is dismissal proper, such as where plaintiff can prove no set of facts entitling him to relief. Williams v. Gerber Prod., 552 F.3d 934, 939 (9th Cir. 2008). The Nevada Supreme Court has held that a motion to dismiss "is subject to a rigorous standard of review on appeal," that it will recognize all factual allegations as true, and draw all inferences in favor of the plaintiff. Buzz Stew, LLC v. City of North Las Vegas, 181 P.3d 670, 672 (2008). The Nevada Supreme Court rejected the reasonable doubt standard and held that a complaint should be dismissed only where it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief. Id., *see also* fn. 6. Additionally, Nevada is a notice pleading state. NRCP Rule 8; Liston v. Las Vegas Metropolitan Police Dep't, 111 Nev. 1575 (1995) (referring to an amended complaint, deposition testimony, interrogatory responses and pretrial demand statement as a basis to provide notice of facts that support a claim). Moreover, the Nevada Supreme Court has adopted the "policy of this state that

cases be heard on the merits, whenever possible." Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

A. The Landowners' Inverse Condemnation Claims

The Landowners have asserted five (5) separate inverse condemnation claims for relief, a Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking and, finally, a Temporary Taking. Each of these claims is a valid claim in the State of Nevada:

Categorical Taking - "Categorical [taking] rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical use of her property." McCarran Intern. Airport v. Sisolak, 122 Nev. 645, 663, 137 P. 3d 1110, 1122 (2006).

Penn Central Regulatory Taking - A Penn Central taking analysis examines three guideposts: the regulations economic impact on the property owner; the regulations interference with investment backed expectations; and, the character of the government action. Sisolak, supra, at 663.

Regulatory Per Se Taking - A Per Se Regulatory Taking occurs where government action "preserves" property for future use by the government. Sisolak, supra, at 731.

Non-regulatory Taking / De Facto Taking - A non-regulatory/de facto taking occurs where the government has "taken steps that directly and substantially interfere with [an] owner's property rights to the extent of rendering the property unusable or valueless to the owner." State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015). "To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights." Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. Ct. App. 1977).

Temporary Taking - "[T]emporary deprivations of use are compensable under the Taking Clause." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1011-12 (1992); Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012).

Here, the Landowners have alleged facts and provided documents sufficient to sustain these inverse condemnation claims as further set forth herein, which is sufficient to defeat the City's motion for judgment on the pleadings.

B. The Landowners' Property Interest

"An individual must have a property interest in order to support a takings claim....The term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110, 1119 (2006). "It is well established that an individual's real property interest in land supports a takings claim." ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639, 645, 173 P.3d 734, 738 (2007) *citing to* Sisolak and Clark County v. Alper, 100 Nev. 382 (1984). Meaning a landowner merely need allege an ownership interest in the land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners have made such an allegation.

The Landowners assert that they have a property interest and vested property rights in the Subject Property for the following reasons:

1) The Landowners assert that they own approximately 250 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005; 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-202-001 ("250 Acre Residential Zoned Land"). This action deals specifically and only with Assessor Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres" and/or "Landowners' Property" or "Property").

2) The Landowners assert that they had a property interest in the 35 Acre Property; that they had the vested right to use and develop the 35 Acre Property; that the hard zoning on the 35 Acre Property has always been for a residential use, including R-PD7 (Residential Planned Development District – 7.49 Units per Acre). The City does not contest that the hard zoning on the Landowners' Property has always been R-PD7.

3) The Landowners assert that they had the vested right to use and develop the 35 Acre Property up to a density of 7.49 residential units per acre as long as the development is comparable and compatible with the existing adjacent and nearby residential development. The Landowners' property interest and vested property rights in the 35 Acre Property are recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

4) The Landowners assert that their property interest and vested right to use and develop the 35 Acre Property is further confirmed by the following:

a) On March 26, 1986, a letter was submitted to the City Planning Commission requesting zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) and the zoning that was sought was R-PD7 as it allows the developer flexibility and shows that developing the 35 Acre Property for a residential use has always been the intent of the City and all prior owners.

b) The City has confirmed the Landowners' property interest and vested right to use and develop the 35 Acre Property residentially in writing and orally in, without limitation, 1996, 2001, 2014, 2016, and 2018.

c) The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which specifically and further demonstrates that the R-PD7 Zoning was codified and incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As part of this action, the City "repealed" any prior City actions that could conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

d) At a November 16, 2016, City Council hearing, Tom Perrigo, the City Planning Director, confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

e) Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

f) The City Planning Staff has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

g) The City's own 2020 master plan confirms the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

h) The City issued two formal Zoning Verification Letters dated December 20, 2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

i) The City confirmed the Landowners' vested right to use and develop the 35 Acres prior to the Landowners' acquisition of the 35 Acres and the Landowners materially relied upon the City's confirmation regarding the Subject Property's vested zoning rights.

j) The City has approved development on approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

k) The City has never denied an application to develop in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

l) There has been a judicial finding that the Landowners have the "right to develop" the 35 Acre Property.

m) The Landowners' property interest and vested right to use and develop the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is so widely accepted that even the Clark County tax Assessor has assessed the property as residential for a value of approximately $88 Million and the current Clark County website identifies the 35 Acre Property "zoned" R-PD7.

n) There have been no other officially and properly adopted plans or maps or other recorded document(s) that nullify, replace, and/or trump the Landowners' property interest and vested right to use and develop the 35 Acre Property.

o) Although certain City of Las Vegas planning documents show a general plan designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre Property, that designation was placed on the Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, any alleged PR-OS on any City planning document is being shown on the 35 Acre Property in error. The City's Attorney confirmed the City cannot determine how the PR-OS designation was placed on the Subject Property.

p) The 35 Acre Property has always been zoned and land use planned for a residential use. The City has argued that the Peccole Concept Plan applies to the Landowners' 35 Acre Property and that plan has always identified the specific 35 Acre Property in this case for a residential use. The land use designation where the 35 Acre Property is located is identified for a residential use under the Peccole Concept Plan and no major modification of Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre Property for a residential use.

Any determination of whether the Landowners have a "property interest" or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law. The Nevada Supreme Court in both the Sisolak and Schwartz v. State, 111 Nev. 998, fn 6 (1995)

decisions held that all property owners in Nevada, including the Landowners in this case, have the vested right to use their property, even if that property is vacant, undeveloped, and without City approvals. The City can apply "valid" zoning regulations to the property to regulate the use of the property, but if those zoning regulations "rise to a taking," Sisolak at fn 25, then the City is liable for the taking and must pay just compensation.

Here, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings.

C. City Actions the Landowners Claim Amount to A Taking

In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).

The City has argued that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of

constitutional magnitude and requires all government actions against the property at issue to be considered.

The Landowners assert that the following City actions individually and/or cumulatively amount to a taking of their Property:

1. City Denial of the 35 Acre Property Applications.

The Landowners submitted complete applications to develop the 35 Acre Property for a residential use consistent with the R-PD7 hard zoning. *Exhibit 22:App LO 00000932-949.* The City Planning Staff determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified Development Code (Title 19), and appropriately recommended approval. *Exhibit 22: 4 App LO 00000932-949 and Exhibit 23: 4 App LO 00000950-976.* Tom Perrigo, the City Planning Director, stated at the hearing on the Landowners' applications that the proposed development met all City requirements and should be approved. *Exhibit 5: 2 App LO 00000376 line 566 - 377 line 587.* The City Council denied the 35 Acre Property applications, stating as the sole basis for denial that the City did not want piecemeal development and instead wanted to see the entire 250 Acre Residential Zoned Land developed under one Master Development Agreement ("MDA").

2. City Action #2: Denial of the Master Development Agreement (MDA).

To comply with the City demand to have one unified development, for over two years (between July, 2015, and August 2, 2017), the Landowners worked with the City on an MDA that would allow development on the 35 Acre Property along with all other parcels that made up the 250 Acre Residential Zoned Land. *Exhibit 25: 5 App LO 00001132-1179.* The Landowners complied with each and every City demand, making more concessions than any developer that has ever appeared before this City Council. A non-exhaustive list of the Landowners' concessions, as part of the MDA, include: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas (*Exhibit 29: 8 App LO 00001836; Exhibit 24: 4 App LO 00000998 lines 599-601; Exhibit 30: 8 App LO 00001837*); 2) building two new parks, one with a vineyard; (Id.) and, 3) reducing the number of units, increasing the minimum acreage lot size, and reducing the number and height of towers. *Exhibit 5: 2 App LO 00000431 lines 2060-2070; Exhibit 29: 8 App LO*

00001836; and Exhibit 30: 8 App LO 00001837. In total, the City required at least 16 new and revised versions of the MDA. *Exhibit 28: 5-7 App LO 00001188-00001835.* The City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement." *Exhibit 24: 4 App LO 00000985 line 236 – 00000986 line 245; LO 00001071-00001073; and Exhibit 40: 9 App LO 00002047-2072.* And, as will be explained below, the MDA also met and exceeded any and all major modification procedures and standards that are set forth in the City Code.

On August 2, 2017, the MDA was presented to the City Council and the City denied the MDA. *Exhibit 24: 5 App LO 00001128-112.* The City did not ask the Landowners to make more concessions, like increasing the setbacks or reducing the units per acre, it simply and plainly denied the MDA altogether. *Id.* As the 35 Acre Property is vacant, this meant that the property would remain vacant.

3. City Action #3: Adoption of the Yohan Lowie Bills.

After denial of the MDA, the City adopted two Bills that solely target the 250 Acre Residential Zoned Land and preserve the Landowners' Property for public use. City Bill No. 2018-5 and Bill No. 2018-24 (now City Ordinances LVMC 19.16.105) not only target solely the Landowners' Property (no other golf course in the City is privately owned with residential zoning and no deed restrictions); but also requires the Landowners to preserve their Property for public use (LVMC 19.16.105 (E)(1)(d), (G)(1)(d)), provide ongoing public access to their Property (LVMC 19.16.105(G)(1)(d)), and provides that failure to comply with the Ordinances will result in a misdemeanor crime punishable by imprisonment and $1,000 per day fine. (LVMC 19.16.105 (E)(1)(d), (G)(5)(b)&(c)). The Ordinance requires the Landowners to perform an extensive list of requirement, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City. LVMC 19.16.105.

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4. City Action #4: Denial of an Over the Counter, Routine Access Request.

The Landowners have sufficiently alleged that in August of 2017, the Landowners filed with the City a routine over the counter request (specifically excluded from City Council review - LVMC 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii)) for three access points to streets the 250 Acre Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way. *Exhibit 58: 10 App LO 00002359-2364.* The City denied the access applications citing as the sole basis for the denial, "the various public hearings and subsequent debates concerning the development on the subject site." *Exhibit 59: 10 App LO 00002365.* The City required that the matter be presented to the City Council through a "Major Review." The City has required that this extraordinary standard apply only to the Landowners to gain access to their property.

The Nevada Supreme Court has held that a landowner cannot be denied access to abutting roadways, because all property that abuts a public highway has a special right of easement to the public road for access purposes and this is a recognized property right in Nevada. Schwartz v. State, 111 Nev. 998 (1995). The Court held that this right exists "despite the fact that the Landowner had not yet developed access."Id., at 1003.

5. City Action #5: Denial of an Over the Counter, Routine Fence Request.

The Landowners have sufficiently alleged that in August, 2017, the Landowners filed with the City a routine request to install chain link fencing to enclose two water features/ponds that are located on the 250 Acre Residential Zoned Land. *Exhibit 55: 10 App LO 00002345-2352.* The City Code expressly states that this application is similar to a building permit review that is granted over the counter and not subject to City Council review. LVMC 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii). The City denied the application, citing as the sole basis for denial, "the various public hearings and subsequent debates concerning the development on the subject site." *Exhibit 56: 10 App LO 2343.* The City then required that the matter be presented to the City Council through a "Major Review" pursuant to LVMC 19.16.100(G)(1)(b) which states that "the Director determines that the proposed development could significantly impact the land uses on the site or on surrounding properties." *Exhibit 57: 10 App LO 00002354-2358.*

The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to interested City departments for comments/recommendation/requirements, and publicly noticed Planning Commission and City Council hearings. The City has required that this extraordinary standard apply despite the fact that LVMC 19.16.100 F(3) specifically prohibits review by the City Council, "[t]he Provisions of this Paragraph (3) shall not apply to *building permit level reviews* described in Paragraph 2(a) of this Subsection (F). Enumerated in Paragraph 2(a) as only requiring a "building level review" are "onsite signs, walls and fences."

6. City Action #6: Denial of a Drainage Study.

The Landowners have sufficiently alleged that in an attempt to clear the property, replace drainage facilities, etc., the Landowners submitted an application for a technical drainage study, which should have been routine, because the City and the Landowners already executed an On-Site Drainage Improvements Maintenance Agreement that allows the Landowners to remove and replace the flood control facilities on their property. *Exhibit 78: 12 App LO 00002936-2947.* Additionally, the two new City Ordinances referenced in City Action #3 require a technical drainage study. However, the City has refused to accept an application for a technical drainage study from the Landowners claiming the Landowners must first obtain entitlements, however, the new City Ordinances will not provide entitlements until a drainage study is received.

7. City Action #7: The City's Refusal to Even Consider the 133 Acre Property Applications.

The Landowners have sufficiently alleged that as part of the numerous development applications filed by the Landowners over the past three years to develop all or portions of the 250 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed to develop residential units on the 133 Acre Property (part of the 250 Acre Residential Zoned Land) consistent with the R-PD7 hard zoning. *Exhibit 47: 9 App LO 00002119-10 App LO 2256. Exhibit 49: 10 App LO 00002271-2273.* The City Planning Staff determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and recommended approval. *Exhibit 51: 10 App. LO 00002308-2321.* Instead of approving the

development, the City Council delayed the hearing for several months until May 16, 2018 - the same day it was considering the Yohan Lowie Bill (now LVMC 19.16.105), referenced above in City Action #3. *Exhibit 50: 10 App LO 00002285-2287.* The City put the Yohan Lowie Bill on the morning agenda and the 133 Acre Property applications on the afternoon agenda. The City then approved the Yohan Lowie Bill in the morning session. Thereafter, Councilman Seroka asserted that the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike all of the applications for the 133 Acre Property filed by the Landowners. *Exhibit 6: 2 App LO 00000490 lines 206-207.* The City then refused to allow the Landowners to be heard on their applications for the 133 Acre Property and voted to strike the applications. *Exhibit 51: 10 App LO 00002308-2321 and Exhibit 53: 10 App LO 00002327-2336.*

8. City Action #8: The City Announces It Will Never Allow Development on the 35 Acre Property, Because the City Wants the Property for a City Park and Wants to Pay Pennies on the Dollar for it.

The Landowners have sufficiently alleged that in documents obtained from the City it was discovered that the City has already allocated $15 million to acquire the Landowners' private property - "$15 Million-Purchase Badlands and operate." *Exhibit 35: 8 App LO 00001922.* In this same connection, Councilman Seroka issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowners' private property into a "fitness park." *Exhibit 34: 8 App LO 00001915.* In an interview with KNPR Seroka stated that he would "turn [the Landowners' private property] over to the City." *Id. at LO 00001917.* Councilman Coffin agreed, stating his intent referenced in an email as follows: "I think your third way is the only quick solution…Sell off the balance to be a golf course with water rights (key). Keep the bulk of Queensridge green." *Exhibit 54: 10 App LO 00002344.* Councilman Coffin and Seroka also exchanged emails wherein they state they will not compromise one inch and that they "need an approach to accomplish the desired outcome," which, as explained, is to prevent all development on the Landowners' Property so the City can take it for the City's park and only pay $15 Million. *Exhibit 54: 10 App LO 00002340.* In furtherance of the City's preservation for public use, the City has announced that it will never allow any development on the 35 Acre Property or any other part of the 250 Acre Residential Zoned Land.

As it is universally understood that tax assessed value is well below market value, to "Purchase Badlands and operate" for "$15 Million," (which equates to less than 6% of the tax assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this shows that the City's actions are in furtherance of a City scheme to specifically target the Landowners' Property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

9. City Action #9: The City Shows an Unprecedented Level of Aggression To Deny All Use of the 250 Acre Residential Zoned Land.

The Landowners have sufficiently alleged that the City has gone to unprecedented lengths to interfere with the use and enjoyment of the Landowners's Property. Council members sought "intel" against one of the Landowners so that the "intel" could, presumably, be used to deny any development on the 250 Acre Residential Zoned Land (including the 35 Acre Property). In a text message to an unknown recipient, Councilman Coffin stated:

> Any word on your PI enquiry about badlands [250 Acre Residential Zoned Land] guy?
> While you are waiting to hear **is there a fair amount of intel on the scum** behind [sic] the badlands [250 Acre Residential Zoned Land] takeover? **Dirt will be handy if I need to get rough.** *Exhibit 81: 12 App LO 00002969. (emphasis supplied).*

Instructions were then given by Council Members on how to hide communications regarding the 250 Acre Residential Zoned Land from the Courts. Councilman Coffin, after being issued a documents subpoena, wrote:

> "Also, his team has filed an official request for all txt msg, email, anything at all on my personal phone and computer under an erroneous supreme court opinion…So everything is subject to being turned over so, for example, your letter to the c[i]ty email is now public and this response might become public (to Yohan). I am considering only using the phone but awaiting clarity from court. **Please pass word to all your neighbors. In any event tell them to NOT use the city email address but call or write to our personal addresses. For now…PS. Same crap applies to Steve [Seroka]** as he is also being individually sued i[n] Fed Court and also his personal stuff being sought. This is no secret so let all your neighbors know." *Exhibit 54: 10 App LO 00002343. (Emphasis added).*

Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the Nevada Public Records Act *NRS 239.001(4)* by instructing them on how not to trigger any of the search terms being used in the subpoenas. "Also, please pass the word for everyone to not use B…l..nds in title or text of comms. That is how search works." Councilman Seroka testified at the

Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could use their private property for which they have a vested right to develop. *Exhibit 21: 4 App LO 00000930-931.* And, In reference to development on the Landowners' Property, Councilman Coffin stated firmly "I am voting against the whole thing," (*Exhibit 54: 10 App LO 00002341*)

10. City Action #10: the City Reverses the Past Approval on the 17 Acre Property.

The Landowners have sufficiently alleged that in approving the 17 Acre Property applications the City agreed the Landowners had the vested right to develop without a Major Modification, now the City is arguing in other documents that: 1) the Landowners have no property rights; and, 2) the approval on the 17 Acre Property was erroneous, because no major modification was filed:

> "[T]he Developer must still apply for a major modification of the Master Plan before a takings claim can be considered…" *Exhibit 37: 8 App LO 00001943 lines 18-20*;
>
> "Moreover, because the Developer has not sought a major modification of the Master Plan, the Court cannot determine if or to what extent a taking has occurred." *Id. at LO 00001944 lines 4-5*;
>
> "According to the Council's decision, the Developer need only file an application for a major modification to the Peccole Ranch Master Development Plan …to have its Applications considered." *Exhibit 39: 9 App LO 00002028 lines 11-15*;
>
> "Here, the Council's action to strike the Applications as incomplete in the absence of a major modification application does not foreclose development on the Property or preclude the City from ultimately approving the Applications or other development applications that the Developer may subsequently submit. It simply held that the City would not consider the Applications without the Developer first submitting a major modification application." *Id. at LO 00002032 lines 18-22.*

The reason the City changed its position is the City is seeking to deny the Landowners their constitutional property rights so the Landowners' Property will remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

11. City Action #11: The City Retains Private Counsel to Advance an Open Space Designation on the 35 Acre Property.

The Landowners have sufficiently alleged that the City has retained and authorized private counsel to advance an "open space" designation/major modification argument in this case to prevent any and all development on the 35 Acre Property. This is a contrary position from that taken by the

City over the past 32 years on at least 1,067 development units in the Peccole Concept Plan area. *Exhibit 105.* As explained above, over 1,000 units have been developed over the past 32 years in the Peccole Concept Plan area and not once did the City apply the "open space"/major modification argument it is now advancing, even though those +1,000 units were developed contrary to the land use designation on the Peccole Concept Plan. The City has specifically targeted the Landowners and their Property and is treating them differently than it has treated all other properties and owners in the area (+1,000 other units in the area) for the purpose of forcing the Landowners' Property to remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

Here, the Landowners have alleged facts and provided documents sufficient to show their Property has been taken by inverse condemnation, which is sufficient to defeat the City's motion for judgment on the pleadings.

D. The City's Argument that the Landowners have No Vested Property Right

The City contends that the Landowners do not have a vested right to use their property for anything other than open space or a golf course. As set forth above, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings.

E. The City's Argument that the Landowners' Taking Claims are Not Ripe

The City contends that the Landowners's taking claims are not ripe, because they have not filed a major modification application, which the City contends is a precondition to any development on the Landowners' Property. This City argument is closely related to the City's vested rights argument as the City also contends the Landowners have no vested right to use their property for anything other than a golf course until such time as they submit a major modification application. The Landowners have alleged that a ripeness/exhaustion of administrative remedies analysis does not apply to the four inverse condemnation claims for which the Landowners' are requesting a judicial finding of a taking - regulatory per se, non-regulatory/de facto, categorical, or temporary

taking of property[4] and, therefore, the City's ripeness/exhaustion of administrative remedies argument has no application to these four inverse condemnation claims. The Landowners further allege that the ripeness analysis only applies to the Landowners' inverse condemnation Penn Central Regulatory Takings Claim and, if the Court applies the ripeness analysis, all claims are ripe,[5] including the Penn Central claim.

1. The Landowners Allege Facts Sufficient to Show They Made At Least One Meaningful Application and It Would be Futile to Seek Any Further Approvals From the City.

"While a landowner must give a land-use authority an opportunity to exercise its discretion, once [...] the permissible uses of the property are known to a reasonable degree of certainty, a [regulatory] taking claim [Penn Central claim] is likely to have ripened."[6] The purpose of this rule is to understand what the land use authority will and will not allow to be developed on the property at issue. But, "[g]overnment authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision."[7] "[W]hen exhausting available remedies, including the filing of a land-use permit application, is futile, a matter is deemed ripe for review."[8]

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[4] Hsu v. County of Clark, supra, ("[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Id., at 732); McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (2006) ("Sisolak was not required to exhaust administrative remedies or obtain a final decision from the Clark County Commission by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Id. at 664).

[5] The Nevada Supreme Court has stated regulatory takings claims are generally "not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41 (2015) (*quoting* Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)).

[6] Palazzolo v. Rhode Island, 533 U.S. 606, 620, (2001) ("The central question in resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether petitioner obtained a final decision from the Council determining the permitted use for the land." *Id.*, at 618.).

[7] Palazzolo, at 621. *Citing to* Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

[8] State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,

In City of Monterey v. Del Monte Dunes 526 U.S. 687, 119 S.Ct. 1624 (1999) the United States Supreme Court held that a taking claim was ripe where the City of Monterey required 19 changes to a development application and then asked the landowner to make even more changes. Finally, the landowner filed inverse condemnation claims. Similar to the City argument in this case, the City of Monterey asserted the landowners' inverse condemnation claims were not ripe for review. The City of Monterey asserted that the City's decision was not final and the landowners' claim was not ripe, because, if the landowner had worked longer with the City of Monterey or filed a different type of application with the City of Monterey, the City of Monterey may have approved development on the landowner's property. The United States Supreme Court approved the Ninth Circuit opinion as follows: "to require additional proposals would implicate the concerns about repetitive and unfair procedures" and "the city's decision was sufficiently final to render [the landowner's] claim ripe for review." Del Monte Dunes, at 698. The United States Supreme Court re-affirmed this rule in the Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448 (2001) holding the "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Id at 622.

As set forth above, the Landowners have alleged facts and provided documents sufficient to show they submitted the necessary applications to develop the 35 Acre Property, that the City denied every attempt at development, and that it would be futile to seek any further development

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143 L.Ed. 2d 882 (1999) "[a]fter five years, five formal decisions, and 19 different site plans, [internal citation omitted] Del Monte Dunes decided the city would not permit development of the property under any circumstances." Id., at 698. "After reviewing at some length the history of attempts to develop the property, the court found that to require additional proposals would implicate the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v. Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island, at 622.

applications from the City, which is sufficient to defeat the City's motion for judgment on the pleadings.

2. The Landowners Allege Facts Sufficient to Show That a Major Modification Application Was Not Required To Ripen Their Inverse Condemnation Claims

The Landowners further allege that no major modification of the Peccole Concept Plan was necessary to develop the 35 Acre Property, because the Landowners were seeking to develop the 35 Acre Property residentially and the land use designation on the Peccole Concept Plan for the 35 Acre Property is a residential use. *Exhibit 107.* Therefore, there was no need to "modify" the Peccole Concept Plan to develop the 35 Acre Property residentially.

The Landowners have also alleged that the City has never required a major modification application to develop properties included in the area of the Peccole Concept Plan. The Landowners allege the City has approved development for approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that were developed with a use contrary to the Peccole Concept Plan and not once did the City require a major modification application.

Here, the Landowners have alleged facts and provided documents sufficient to show that a major modification was not required to ripen their inverse condemnation claims, which is sufficient to defeat the City's motion for judgment on the pleadings.

3. The Landowners Allege Facts Sufficient to Show That, Even if a Major Modification Application was Necessary to Ripen Their Inverse Condemnation Claims, They Met this Requirement

Specific to the City's assertion that a major modification application is necessary to ripen the Landowners' inverse condemnation claims, the Landowners allege that even if a major modification application is required, the MDA the Landowners worked on with the City for over two years, referenced above, included and far exceeded all of the requirements of a major modification application. Exhibit 28. Moreover, the Landowners have cited to a statement by the City Attorney wherein he stated on the City Council record as follows: "Let me state something for the record just to make sure we're absolutely accurate on this. There was a request for a major modification that

accompanied the development agreement [MDA], that was voted down by Council. So that the modification, major mod was also voted down." Exhibit 61, City Council Meeting of January 3, 2018 Verbatim Transcript – Item 78, Page 80 of 83, lines 2353-2361. Additionally, the Landowners allege that they also submitted an application referred to as a General Plan Amendment (GPA), which includes and far exceeds the requirements of the City's major modification application and the City denied the GPA as part of its denial of any use of the 35 Acre Property. Exhibit 5.

Here, the Landowners have alleged facts and provided documents sufficient to show that, even if a major modification application is required to ripen their inverse condemnation claims, they met these requirements, which is sufficient to defeat the City's motion for judgment on the pleadings.

F. The City's Argument that the Statute of Limitation has Run on the Landowners Inverse Condemnation Claims

The City contends that, if there was a taking, it resulted from the City action related to adoption of the City's Master Plan and the City's Master Plan was adopted more than 15 years ago and, therefore, the statute of limitations has run on the Landowners' inverse condemnation claims. The Landowners contend that a City Plan cannot result in a taking, that the City must take action to implement the Plan on a specific property to make the City liable for a taking.

The statute of limitations for an inverse condemnation action in Nevada is 15 years. White Pine Limber v. City of Reno, 106 Nev. 778 (1990). Nevada law holds that merely writing a land use designation over a parcel of property on a City land use plan is "insufficient to constitute a taking for which an inverse condemnation action will lie." Sproul Homes of Nev. v. State ex rel. Dept of Highways, 96 Nev. 441, 443 (1980) *citing to* Selby Realty Co. v. City of San Buenaventura, 169 Cal.Rptr. 799, 514 P.2d 111, 116 (1973) (Inverse claims could not be maintained from a City's "General Plan" showing public use of private land). *See also* State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015) (City's amendment to its master plan to allow for a road widening project on private land did not amount to a regulatory taking). This rule and its policy are set forth by the Nevada Supreme Court as follows:

> If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential

> public use on one of the several authorized plans, the process of community planning would either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation. Sproul Homes, supra, at 444.

Accordingly, the date that would trigger the statute of limitations would not be the master plan or necessarily the designation of the Property as PR-OS, but it will be the acts of the City of Las Vegas / City Council that would control.

Here, the Landowners have alleged facts and provided documents sufficient to show their property has been taken by inverse condemnation based upon the acts of the City of Las Vegas / City Council that occurred less than 15 years ago. Therefore, the City's statute of limitations argument is denied.

G. The City's Argument that the Court Should Apply Its Holding in the Petition For Judicial Review to the Landowners Inverse Condemnation Claims

The City contends that the Court's holding in the Landowners' petition for judicial review should control in this inverse condemnation action. However, both the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them "two disparate sets of claims" the City argued that:

> "The procedural and structural limitations imposed by petitions for judicial review and complaints, however, are such that they cannot afford either party ample opportunity to litigate, in a single lawsuit, all claims arising from the transaction. For instance, Petitioner's claim for judicial review will be "limited to the record below," and "[t]he central inquiry is whether substantial evidence supports the agency's decision." United Exposition Service Company v. State Industrial Insurance System, 109 Nev. 421,424, 851 P.2d 423,425 (1993). On the other hand, Petitioner's inverse condemnation claims initiate a new a civil action requiring discovery (not limited to the record below), and the central inquiry is whether Petitioner (as plaintiff) can establish its claims by a preponderance of the evidence. Thus, allowing Petitioner's four "alternative" inverse condemnation claims (i.e., the complaint) to remain on the Petition will create an impractical situation for the Court and parties, and may allow Petitioner to confuse the record for judicial review by attempting to augment it with discovery obtained in the inverse condemnation action." (October 30, 2017, City of Las Vegas Motion to Dismiss at 8:2)

The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. This is true, as only City Action #1 above was considered in the petition for judicial review, not City Actions #2-11. And, as stated above, this Court must consider all city actions in the aggregate in this inverse condemnation proceeding.

As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different fact, different legal standards and different burdens of proof.

Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev. 2007), McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of Monterey v. Del Monte Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council. Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).

The Court has previously entered a Nunc Pro Tunc Order in this case recognizing the petition for judicial review matter is different from the inverse condemnation matter:

> "this Court had no intention of making any findings, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as a part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed nunc pro tunc." (Order filed February 6, 2019).

For these reasons, it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims.

H. Conclusion on The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims

The City moved the Court for judgment on the pleadings pursuant to NRCP 12(c). The rule is designed to provide a means of disposing of cases when material facts are not in dispute, and a judgment on the merits can be achieved by focusing on the contents of the pleadings. It has utility only when all material allegations of facts are admitted in the pleadings and only questions of law remain.

This Court reviewed extensive briefings and entertained three and a half to four hours of oral arguments which contained factual disputes and argument throughout the entire hearing. The Court cannot say as a matter of law that the Landowners have no case, there are still factual disputes that must be resolved. Moreover, the court finds that this case can be heard on the merits as that policy is provided in Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

Accordingly, IT IS HEREBY ORDERED that The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims is **DENIED**.

III. The Landowners Rule 56 Motion for Summary Judgment on Liability for the Landowners Inverse Condemnation Claims

The Landowners countermoved this Court for summary judgment on the Landowners' inverse condemnation claims. Discovery has not commenced nor as of the date of the hearing have the parties had a NRCP 16.1 case conference. The Court finds it would be error to consider a Rule 56 motion at this time.

Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims is **DENIED** without prejudice.

IT IS SO ORDERED.

DATED this ~~8th~~ day of ~~April~~, 2019. CH
May 14,

DISTRICT COURT JUDGE

Respectfully Submitted By:
LAW OFFICES OF KERMITT L. WATERS

By: _____

Kermitt L. Waters, ESQ., NBN 2571
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Exhibit 26

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CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. AND NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

v.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO, LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; and FRANK PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT GRANTING DEFENDANTS FORE STARS, LTD., 180 LAND CO LLC, SEVENTY ACRES LLC, EHB COMPANIES LLC, YOHAN LOWIE, VICKIE DEHART AND FRANK PANKRATZ'S NRCP 12(b)(5) MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Hearing Date: November 1, 2016
Hearing Time: 8:00 a.m.

Courtroom 11B

This matter coming on for Hearing on the 2nd day of November, 2016 on Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's NRCP 12(B)(5) Motion To Dismiss Plaintiffs' Amended Complaint, James J. Jimmerson of the Jimmerson Law Firm, P.C. appeared on behalf of Defendants, Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz; Stephen R. Hackett of Sklar Williams, PLLC and Todd D. Davis of

EHB Companies LLC, appeared on behalf of Defendant EHB Companies LLC; and Robert N. Peccole of Peccole & Peccole, Ltd. appeared on behalf of the Plaintiffs.

The Court, having fully considered the Motion, the Plaintiffs' Oppositions thereto, the Defendants' Replies, and all other papers and pleadings on file herein, including each party's Supplemental filings following oral argument, as permitted by the Court, hearing oral argument, and good cause appearing, issues the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

Complaint and Amended Complaint

1. Plaintiffs initially filed a Complaint in this matter on July 7, 2016 which raised three Claims for Relief against all Defendants: 1) Declaratory and Injunctive Relief; 2) Breach of Contract and 3) Fraud.

2. On August 4, 2016, before any of the Defendants had filed a responsive pleading to the original Complaint, Plaintiffs filed their Amended Complaint which alleged the following Claims for Relief against all Defendants: 1) Injunctive Relief; 2) Violations of Plaintiffs' Vested Rights and 3) Fraud.

3. Plaintiffs Robert and Nancy Peccole are residents of the Queensridge common interest community ("Queensridge CIC"), as defined in NRS 116, and owners of the property identified as APN 138-31-215-013, commonly known as 9740 Verlaine Court, Las Vegas, Nevada ("Residence"). (Amended Complaint, Par. 2).

4. At the time of filing of the Complaint and Amended Complaint, the Residence was owned by the Robert N. and Nancy A. Peccole Family Trust ("Peccole Trust"). The Peccole Trust acquired title to the Residence on August 28, 2013 from Plaintiff's Robert and Nancy Peccole, as individuals, and transferred ownership of the residence to Plaintiff's Robert N. and Nancy A. Peccole on September 12, 2016.

5. Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust, have no ownership interest in the Residence and therefor have no standing in this action.

6. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their present ownership interest in the Residence on September 12, 2016 and therefore had full knowledge of the plans to develop the land upon which the Badlands Golf Course is presently operated at the time they acquired the Residence.

7. Plaintiffs' Amended Complaint alleges that the City of Las Vegas, along with Defendants Fore Stars Ltd., Yohan Lowie, Vickie DeHart and Frank Pankratz, openly sought to circumvent the requirements of state law, the City Code and Plaintiffs' alleged vested rights, which they allegedly gained under their Purchase Agreement, by applying to the City for redevelopment, rezoning and by interfering with and allegedly violating the drainage system in order to deprive Plaintiffs and other Queensridge homeowners from notice and an opportunity to be heard and to protect their vested rights under the Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge (hereinafter "Master Declaration" or "Queensridge Master Declaration")(*See* Amended Complaint, Par. 1).

8. Plaintiffs allege that Defendant Fore Stars Ltd. convinced the City of Las Vegas Planning Department to put a Staff sponsored proposed amendment to the City of Las Vegas Master Plan on the September 8, 2015 Planning Commission Agenda. The Amended Complaint alleges that the proposed Amendment would have allowed Fore Stars Ltd. to exceed the density cap of 8 units per acre on the Badlands Golf Course located in the Queensridge Master Planned Community. (Amended Complaint, Par. 44).

9. Plaintiffs allege that Defendant Fore Stars Ltd., recorded a Parcel Map relative to the Badlands Golf Course property without public notification and process required by NRS 278.320 to 278.4725. Plaintiffs further allege that the requirements of NRS 278.4925 and City of Las Vegas Unified Development Code 19.16.070 were not met when the City Planning Director certified the Parcel Map and allowed it to be recorded by Fore Stars, Ltd. and that the City of Las Vegas should have known that it was unlawfully recorded. (Amended Complaint, Par. 51, 61 and 62).

10. Plaintiffs allege in their First Claim for Relief that they are entitled to Injunctive Relief against the Developer Defendants and City of Las Vegas enjoining them from taking any action that violates the provisions of the Master Declaration.

11. Plaintiffs allege in their Second Claim for Relief that Developer Defendants have violated their "vested rights" as allegedly afforded to them in the Master Declaration.

12. Plaintiffs allege the following "Specific Acts of Fraud" committed by some or all of the Defendants in this case:

1. Implied representations by Peccole Nevada Corporation, Larry Miller, Bruce Bayne and Greg Goorjian. (Amended Complaint, ¶ 76).

2. A "scheme" by Defendants Peccole Nevada Corporation, Larry Miller, Bruce Bayne, all of the entities listed in Paragraph 34 as members of Fore Stars, Ltd, and Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies LLC in collusion with each other whereby Fore Stars, Ltd would be sold to Lowie and his partners and they in turn would clandestinely apply to the City of Las Vegas to eliminate Badlands Golf Course and replace it with residential development including high density apartments. (Amended Complaint, ¶ 77).

3. The City of Las Vegas, through its Planning Department and members joined in the scheme contrived by the Defendants and participated in the collusion by approving and allowing Fore Stars to illegally record a Merger and Resubdivision Parcel Map and accepting an illegal application designed to change drainage system and subdivide and rezone the Badlands Golf Course. (Amended Complaint, ¶ 78).

4. That Yohan Lowie and his agents publicly represented that the Badlands Golf Course was losing money and used this as an excuse to redevelop the entire course. (Amended Complaint, ¶ 79).

5. That Yohan Lowie publically represented that he paid $30,000,000 for Fore Stars of his own personal money when he really paid $15,000,000 and borrowed $15,800,000. (Amended Complaint, ¶ 80).

6. Lowie's land use representatives and attorneys have made public claims that the golf course is zoned R-PD7 and if the City doesn't grant this zoning, it will result in an inverse condemnation. (Amended Complaint, ¶ 81).

Plaintiffs' Motions for Preliminary Injunction against the City of Las Vegas and against the Developer Defendants and Orders Denying Plaintiffs' Motions for Rehearing, for Stay on Appeal and Notice of Appeal.

13. On August 8, 2016, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin the City of Las Vegas from entertaining or acting upon agenda items presently before the City Planning Commission that allegedly violated Plaintiffs' vested rights as home owners in the Queensridge common interest community.

14. The Court denied Plaintiffs' Motion for Preliminary Injunction in an Order entered on September 30, 2016 because Plaintiffs failed to demonstrate that permitting the City of Las Vegas Planning Commission (or the Las Vegas City Council) to proceed with its consideration of the Applications constitutes irreparable harm to Plaintiffs that would compel the Court to grant Plaintiffs the requested injunctive relief in contravention of the Nevada Supreme Court's holding in *Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

15. On September 28, 2016—the day after their Motion for Preliminary Injunction directed at the City of Las Vegas was denied—Plaintiffs filed a virtually identical Motion for Preliminary Injunction, but directed it at Defendants Fore Stars Ltd., Seventy Acres LLC, 180 Land Co LLC, EHB Companies LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz (hereinafter "Developer Defendants").

16. On October 5, 2016, Plaintiffs improperly filed a Motion for Rehearing of Plaintiffs' Motion for Preliminary Injunction.[1]

17. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in relation to the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas.

18. On October 17, 2016, the Court, through Minute Order, denied the Plaintiffs' Motion for Rehearing, Motion for Stay Pending Appeal and Motion for Preliminary Injunction

[1] The Motion was procedurally improper because Plaintiffs are required to seek leave of Court prior to filing a Motion for Rehearing pursuant to EDCR 2.24(a) and Plaintiffs failed to do so. On October 10, 2016, the Court issued an Order vacating the erroneously-set hearing on Plaintiffs Motion for Rehearing, converting Plaintiffs Motion to a Motion for Leave of Court to File Motion for Rehearing and setting same for in chambers hearing on October 17, 2016.

against Developer Defendants. Formal Orders were subsequently entered by the Court thereafter on October 19, 2016, October 19, 2016 and October 31, 2016, respectively.

19. The Court denied Plaintiffs' Motion for Rehearing of the Motion for Preliminary Injunction because Plaintiffs could not show irreparable harm, because they possess administrative remedies before the City Planning Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, and because Plaintiffs failed to show a reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any change of circumstances since that time that would show a reasonable likelihood of success as of October 17, 2016.

20. The Court denied Plaintiffs' Motion for Stay Pending Appeal on the Order Denying Plaintiffs' Motion for Preliminary Injunction against the City of Las Vegas because Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs failed to show that the object of their potential writ petition will be defeated if their stay is denied, they failed to show that they would suffer irreparable harm or serious injury if the stay is not issued and they failed to show a likelihood of success on the merits.

21. The Court denied Plaintiffs' Motion for Preliminary Injunction against Developer Defendants because Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for which compensatory damages are an inadequate remedy and failed to show a reasonable likelihood of success on the merits. The Court also based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations against interfering with or seeking advanced restraint against an administrative body's exercise of legislative power:

> In Nevada, it is established that equity cannot directly interfere with, or in advance restrain, the discretion of an administrative body's exercise of legislative power. [Citation omitted] This means that a court could not enjoin the City of Reno from entertaining Eagle Thrifty's request to review the planning commission recommendation. ***This established principle may not be avoided by the expedient of directing the injunction to the applicant instead of the City Council.***

Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n, 85 Nev. 162, 165, 451 P.22d 713, 714 (1969) (emphasis added).

22. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas. Subsequently, on October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as moot.

Defendants' Motion to Dismiss

23. Defendants Fore Stars, Ltd., 180 Land Co., LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz filed a Motion to Dismiss Amended Complaint on September 6, 2016.

24. The Amended Complaint makes several allegations against the Developer Defendants:

1) that they improperly obtained and unlawfully recorded a parcel map merging and re-subdividing three lots which comprise the Badlands Golf Course land;
2) that, with the assistance of the City Planning Director, they did not follow procedures for a tentative map in the creation of the parcel map,;
3) that the City accepted unlawful Applications from the Developer Defendants for a general plan amendment, zone change and site development review and scheduled a hearing before the Planning Commission on the Applications;
4) that they have violated Plaintiffs' "vested rights" by filing Applications to rezone, develop and construct residential units on their land in violation of the Master Declaration and by attempting to change the drainage system; and
5) that Developer Defendants have committed acts of fraud against Plaintiffs.

25. The Developer Defendants contended that they properly followed procedures for approval of a parcel map because the map involved the merger and re-subdividing of only three parcels and that Plaintiffs' arguments about tentative maps only apply to transactions involving five or more parcels, whereas parcel maps are used for merger and re-subdividing of four or

fewer parcels of land. *See* NRS 278.461(1)(a)("[a] person who proposed to divide any land for transfer or development into four lots or less… [p]repare a parcel map…").

26. The Developer Defendants further argued that Plaintiffs erroneously represent that a parcel map is subject to same requirements as a tentative map or final map of NRS 278.4925. Tentative maps are used for larger parcels and subdivisions of land and subdivisions of land require "five or more lots." NRS 278.320(1).

27. The Developer Defendants argued that Plaintiffs have not pursued their appeal remedies under UDC 19.16.040(T) and have failed to exhaust their administrative remedies. The City similarly notes that they seek direct judicial challenge without exhausting their administrative remedies and this is fatal to their claims regarding the parcel map in this case. *See Benson v. State Engineer*, 131 Nev. ____, 358 P.3d 221, 224 (2015) and *Allstate Insurance Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993-94 (2007).

28. The Developer Defendants also argued that Plaintiffs have failed to exhaust their administrative remedies prior to seeking judicial review. The Amended Complaint notes that the Defendants' Applications are scheduled for a public hearing before the City Planning Commission and thereafter, before the City of Las Vegas City Council. The Planning Commission Staff had recommended approval of all seven (7) applications. *See* Defendants' Supplemental Exhibit H, filed November 2, 2016. The Applications were heard by the City Planning Commission at its Meeting of October 18, 2016. The Planning Commission's action and decisions on the Applications are subject to review by the Las Vegas City Council at its upcoming November 16, 2016 Meeting under UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G). It is only after a final decision of the City Council that Plaintiffs would be entitled to seek judicial review in the District Court pursuant to NRS 278.3195(4).

29. The Developer Defendants argued that Plaintiffs do not have the "vested rights" that they claim are being violated in their Second Claim for Relief because the Badlands Golf Course land that was not annexed into Queensridge CIC, as required by the Master Declaration

and NRS 116, is unburdened, unencumbered by, and not subject to the CC&Rs and the restrictions of the Master Declaration.

30. The Developer Defendants argued that the Plaintiffs have failed to plead fraud with particularity as required by NRCP 9(b).

31. The Developer Defendants argued that Plaintiffs have not alleged any viable claims against them and their Amended Complaint should be dismissed for failure to state a claim.

Plaintiffs' Voluntary Dismissal of Certain Defendants

32. On October 4, 2016, Plaintiffs dismissed several Peccole Defendants from this case through a Stipulation and Order Dismissing Without Prejudice Defendants Lauretta P. Bayne, individually, Lisa Miller, individually, Lauretta P. Bayne 1976 Trust, Leann P. Goorjian 1976 Trust, Lisa P. Miller 1976 Trust, William Peccole 1982 Trust, William and Wanda Peccole 1991 Trust, and the William Peccole and Wanda Peccole 1971 Trust was entered.

33. On October 11, 2016, Plaintiffs dismissed the remaining Peccole Defendants through a Stipulation and Order Dismissing Without Prejudice Defendants: Peccole Nevada Corporation; William Peter and Wanda Peccole Family Limited Partnership, Larry Miller and Bruce Bayne. As such, no Peccole-related Defendants remain as Defendants in this case.

Dismissal of the City of Las Vegas

34. The City of Las Vegas filed a Motion to Dismiss on August 30, 2016. Said Motion was heard on October 11, 2016 and was granted on October 19, 2016, dismissing all of Plaintiffs' claims against the City of Las Vegas.

Lack of Standing

35. Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust, have no ownership interest in the Residence and therefor have no standing in this action. As such, all

claims asserted by Plaintiff's Robert and Nancy Peccole, as Trustees of the Peccole Trust are dismissed.

Facts Regarding Developer Defendants' Motion to Dismiss

36. The Court has reviewed and considered the filings by Plaintiffs and Defendants, including the Supplements filed by both sides following the November 1, 2016 Hearing, as well as the oral argument of counsel at the hearing.

37. Plaintiff's Robert N. and Nancy A. Peccole, as individuals, acquired their present ownership interest in the Residence on September 12, 2016 and therefore had full knowledge of the plans to develop the land upon which the Badlands Golf Course is presently operated at the time they acquired the Residence.

38. Plaintiffs have not set forth facts that would substantiate a basis for the three claims set forth in their Complaint against the Developer Defendants: Injunctive Relief/Parcel Map, Vested Rights, and Fraud.

39. The Developer Defendants are the successors in interest to the rights, interests and title in the Badlands Golf Course land formerly held by Peccole 1982 Trust, Dated February 15, 1982; William Peter and Wanda Ruth Peccole Family Limited Partnership; and Nevada Legacy 14 LLC.

40. Plaintiffs' have made some scurrilous allegations without factual basis and without affidavit or any other competent proof. The Court sees no evidence supporting those claims.

41. The Developer Defendants properly followed procedures for approval of a parcel map over Defendants' property pursuant to NRS 278.461(1)(a) because the division involved four or fewer lots. The Developer Defendants parcel map is a legal merger and re-subdividing of land within their own boundaries.

42. The Developer Defendants have complied with all relevant provisions of NRS Chapter 278.

43. NRS 278A.080 provides: "The powers granted under the provisions of this chapter may be exercised by any city or county which enacts an ordinance conforming to the provisions of this chapter."

44. The Declaration of Luann Holmes, City Clerk for the City of Las Vegas, Exhibit L to Defendants' November 2, 2016 Supplemental Exhibits, states at paragraph 5, "[T]he Unified Development Code and City Ordinances for the City of Las Vegas do not contain provisions adopted pursuant to NRS 278A."

45. The Queensridge Master Declaration (Court Exhibit B and attached to Defendants' November 2, 2016 Supplement as Exhibit B), at p. 1, Recital B, states: "Declarant intends, without obligation, to develop the Property and the Annexable Property in one or more phases as a mixed-use common interest community pursuant to Chapter 116 of the Nevada Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas, which may, but is not required to, include "planned communities" and "condominiums," as such quoted terms are used and defined in NRS Chapter 116."

46. The Queensridge community is a Common Interest Community organized under NRS 116. This is not a PUD community.

47. NRS 116.1201(4) states that "The provisions of Chapter 117 and 278A of NRS do not apply to common-interest communities." See Defendants' Supplemental Exhibit Q.

48. In contrast to the City of Las Vegas' choice not to adopt the provisions of NRS 278A, municipal or city councils that choose to adopt the provisions of NRS 278A do so, as required by NRS 278A.080, by affirmatively enacting ordinances that specifically adopt Chapter 278A. *See, e.g.,* Defendants' Supplemental Exhibit N and O, Title 20 Consolidated

Development Code 20.704.040 and 20.676, Douglas County, Nevada and Defendants' Supplemental Exhibit P, Ordinance No. 17.040.030, City of North Las Vegas. The provisions of NRS 278A do not apply to the facts of this case.

49. The City Council has not voted on Defendants' pending Applications and the Court will not stop the City Council from conducting its ordinary business and reaching a decision on the Applications. Plaintiffs may not enjoin the City of Las Vegas or Defendants with regard to their instant Applications, or other Applications they may submit in the future. *See Eagle Thrifty Drugs & Market v. Hunter Lake Parent Teachers Ass'n*, 85 Nev. 162, 165, 451 P.2d 713, 714 (1969).

50. Plaintiffs are improperly trying to impede upon the City's land use review and zoning processes. The Defendants are permitted to seek approval of their Applications, or any Applications submitted in the future, before the City of Las Vegas, and the City of Las Vegas, likewise, is entitled to exercise its legislative function without interference by Plaintiffs.

51. Plaintiffs' claim that the Applications were "illegal" or "violations of the Master Declaration" is without merit. The filing of these Applications by Defendants, or any Applications by Defendants, is not prohibited by the terms of the Master Declaration, because the Applications concern Defendants' own land, and such land that is not annexed into the Queensridge CIC is therefore not subject to the terms of its Master Declaration. Defendants cannot violate the terms of an agreement to which they are not a party and which does not apply to them.

52. Plaintiffs' inferences and allegations regarding whether the Badlands Golf Course land is subject to the Queensridge Master Declaration are not fair and reasonable, and have no support in fact or law.

53. The land which is owned by the Defendants, upon which the Badlands Golf Course is presently operated ("GC Land") that was never annexed into the Queensridge CIC, never became part of the "Property" as defined in the Queensridge Master Declaration and is therefore not subject to the terms, conditions, requirements or restrictions of the Queensridge Master Declaration.

54. Plaintiffs cannot prove a set of facts under which the GC Land was annexed into the "Property" as defined in the Queensridge Master Declaration.

55. Since Plaintiffs have failed to prove that the GC Land was annexed into the "Property" as defined in the Master Declaration, then the GC Land is not subject to the terms and conditions of the Master Declaration.

56. There can be no violation of the Master Declaration by Defendants if the GC Land is not subject to the Master Declaration. Therefore, the Defendants' Applications are not prohibited by, or violative of, the Master Declaration.

57. Plaintiffs' Exhibit 1 to their Supplement filed November 8, 2016 depicts a proposed and conceptual master plan amendment. The maps attached thereto do not appear to depict the 9-hole golf course, but instead identifies that area as proposed single family development units.

58. Plaintiffs' Exhibit 2 to their Supplement filed November 8, 2016, which is also Exhibit J to Defendants' Supplement filed November 2, 2016, approves a request for rezoning to R-PD3, R-PD7 and C-1, which all indicate the intent to develop in the future as residential or commercial. Plaintiffs alleged this was a Resolution of Intent which was "expunged" upon approval of the application. Plaintiffs alleged that Exhibit 3 to their Supplement, the 1991 zoning approval letter, was likewise expunged. However, the Zoning Bill No. Z-20011, Ordinance No. 5353, attached as Exhibit I to Defendants' Motion to Dismiss, demonstrates that

the R-PD7 Zoning was codified and incorporated into the amended Atlas in 2001. Therefore, Plaintiffs' claim that Attorney Jerbic's presentation at the Planning Commission Meeting (Exhibit D to Defendants' Supplement) is "erroneous" is, in fact, incorrect. Attorney Jerbic's presentation is supported by the documentation of public record.

59. Defendants' Supplemental Exhibit I, a March 26, 1986 letter to the City Planning Commission, specifically sought the R-PD zoning for a planned golf course "as it allows the developer flexibility and the City design control." Thus, keeping the golf course zoned for potential future development as residential was an intentional part of the plan.

60. Further, Defendants' Supplemental Exhibit K, two letters from the City of Las Vegas to Frank Pankratz dated December 20, 2014, confirm the R-PD7 zoning on all parcels held by Fore Stars, Ltd.

61. Plaintiffs' Exhibit 4 to their Supplement filed November 8, 2016, a 1986 map depicts two proposed golf courses, one proposed in Canyon Gate and the other proposed around what is currently Badlands. However, the current Badlands Golf Course is not the same as what is depicted on that map. Of note, the area on which the 9 hole golf course currently sits is depicted as single family development.

62. Exhibit A to the Queensridge Master Declaration defines the initial land committed as "Property" and Exhibit B defines the land that is eligible to be annexed, but it only becomes part of the "Property" if a Declaration of Annexation is filed with the County Recorder.

63. The Court finds that Recital A to the Queensridge Master Declaration defines "Property" to "mean and include both of the real property described in Exhibit "A" hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below."

64. The Court finds that Recital A of the Queensridge Master Declaration further states that "In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded..."

65. The Court finds that after reviewing the Supplemental Exhibit, Annexation Binder filed on October 20, 2016 at the Court's request, and the map entered as Exhibit A at the November 1, 2016 Hearing and to Defendants' November 2, 2016 Supplement, that the property owned by Developer Defendants that was never annexed into the Queensridge CIC is therefore not part of the "Property" as defined in the Queensridge Master Declaration.

66. The Court therefore finds that the terms, conditions, and restrictions of the Queensridge Master Declaration do not apply to the GC Land and cannot be enforced against the GC Land.

67. The Court finds that Exhibit C to the Master Declaration is not a depiction exclusively of the "Property" as Plaintiffs allege. It is clear that it depicts both the Property, which is a very small piece, and the Annexable Property, pursuant to the Master Declaration, page 10, Section 1.55, which states that Master Plan is defined as the "Queensridge Master Plan proposed by Declarant for the Property and the Annexable Property which is set forth in Exhibit "C," hereto..." Plaintiffs' Supplement filed November 8, 2016, Exhibit 5, is page 10 of the Master Declaration, and Plaintiffs emphasize that is a master plan proposed by the Declaration "for the property." But reading the provision as a whole, it is clear that it is a "proposed" plan for the Property (as defined by the Master Declaration at Recital A) and "the Annexable Property."

68. Likewise, Exhibit 6 to Plaintiffs' Supplement filed November 8, 2016 defines 'Final Map' as a Recorded map of "any portion" of the Property. It does not depict all of the Property. The Master Declaration at Section 1.55 is clear that its Exhibit C depicts the Property

and the Annexable Property, and Defendants' Supplemental Exhibit A makes clear that not all of the Annexable Property was actually annexed into the Queensridge CIC.

69. Plaintiffs' Supplemental Exhibit 7, which is Exhibit C to the Master Declaration, does not depict "Lot 10" as part of the Property. It depicts Lot 10 as part of the Annexable Property. Plaintiffs' Supplemental Exhibit 8 depicts, as discussed by Defendants at the November 1, 2016 Hearing, that Lot 10 was subdivided into several parcels, one of which became the 9 hole golf course. It was not designated as "not a part of the Property or Annexable Property" because it was Annexable Property. However, again, the public record Declarations of Annexation, as summarized in Defendants' Supplemental Exhibit A, shows that Parcel 21, the 9 holes, was never annexed into the Queensridge CIC.

70. The Master Declaration at Recital B provides that the Property "may, but is not required to, include…a golf course."

71. The Master Declaration at Recital B further provides that "The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or Annexable Property." The Court finds that does not mean that the 9-hole golf course was a part of the Property. It is clear that it was part of the Annexable Property, and was subject to development rights. In addition to the "diamond" on the Exhibit C Map indicating it is "subject to development rights, p. 1, Recital B of the Master Declaration states: "Declarant intends, without obligation, to develop the Property and the Annexable Property…"

72. In any event, the Amended and Restated Master Declaration of October, 2000 included the 9 holes, and provides "The existing 27-hole golf course commonly known as the "Badlands Golf Court" is not a part of the Property or Annexable Property."

73. The Court finds that Mr. Peccole's Deed (Plaintiffs' Supplemental Exhibit 9) and Preliminary Title Report provided by Plaintiffs both indicate that his home was part of the

Queensridge CIC, that it sits on Parcel 19, which was annexed into the Queensridge CIC in March, 2000. Both indicate that his home is subject to the terms and conditions of the Master Declaration, "including any amendments and supplements thereto."

74. The Court finds that, conversely, the Fore Stars, Ltd. Deed of 2005 does not have any such reference to the Queensridge Master Declaration or Queensridge CIC. Likewise none of the other Deeds involving the GC Land, Defendants' Supplemental Exhibits E, F, and G filed November 2, 2016, make any reference to such land being subject to, or restricted by, the Queensridge Master Declaration.

75. Plaintiffs' Supplemental Exhibit 10, likewise, ignores the second sentence of Section 13.2.1, which provides "In addition, Declarant shall have the right to unilaterally amend this Master Declaration to make the following amendments..." The four (4) rights including the right to amend the Master Declaration as necessary to correct exhibits or satisfy requirements of governmental agencies, to amend the Master Plan, to amend the Master Declaration as necessary or appropriate to the exercise Declarant's rights, and to amend the Master declaration as necessary to comply with the provisions of NRS 116. Declarant, indeed, amended the Master Declaration as such just a few months after Plaintiffs' purchased their home.

76. Contrary to Plaintiffs' claim, the Amended and Restated Master Declaration was, in fact, recorded on August 16, 2002, as reflected in Defendants' Second Supplement, Exhibit Q.

77. Regardless, whether or not the 9-hole course is "not a party of the Property or Annexable Property" is irrelevant, if it was never annexed.

78. The Court finds that the Master Declaration and Deeds, as well as the Declarations of Annexation, are recorded documents and public record.

79. This Court has heard Plaintiffs' arguments and is not satisfied, and does not believe, that the GC Land is subject to the Master Declaration of Queensridge.

80. This Court is of the opinion that Plaintiffs' counsel Robert N. Peccole, Esq. may be so personally close to the case that he is missing the key issues central to the causes of action.

81. The Court finds that the Developer Defendants have the right to develop the GC Land.

82. The Court finds that the GC Land owned by Developer Defendants has "hard zoning" of R-PD7. This allows up to 7.49 development units per acre subject to City of Las Vegas requirements.

83. Of Plaintiffs' six averments of Fraud in their Amended Complaint, the only one that could ***possibly*** meet all of the elements required is #1. That is the only averment where Plaintiffs claim that a false representation was made by any of the Defendants with the intention of inducing Plaintiffs to act based upon a specific misrepresentation. None of the remaining five averments involve representations made directly to Plaintiffs. Plaintiffs' first fraud claim fails for two reasons: first, Plaintiffs alleged that the representations were "implied representations." The elements of Fraud require actual representations, not implied representations and second, and more importantly, Plaintiffs have dismissed all of the Defendants listed in averment #1 who they claim made false representations to them.

84. Plaintiffs allegations of fraud against Developer Defendants fail and are insufficient pursuant to NRCP 9(b) because they are not plead with particularity and do not include averments as to time, place, identity of parties involved and the nature of the fraud. Plaintiffs have not plead any facts which allege any contact or communication with the Developer Defendants at the time of purchase of the custom lot. Furthermore, Plaintiffs have voluntarily dismissed the Peccole Defendants who allegedly engaged in said alleged fraud.

85. Assuming the facts alleged by Plaintiffs to be true, Plaintiffs cannot meet the elements of any type of fraud recognized in the State of Nevada, including: negligent

misrepresentation, intentional misrepresentation or fraud in the inducement as their claim is pled against Developer Defendants. This alleged "scheme," does not meet the elements of fraud because Plaintiffs fail to allege that Developer Defendants made a false representation to them; that Developer Defendants knew the representation was false; that Developer Defendants intended to induce Plaintiffs to rely on this knowing, false representation; and that Plaintiffs actually relied on such knowing, false representation. Plaintiffs not only fail to allege that they have ever spoken to any of the Developer Defendants, but Mr. Peccole admitted at the October 11, 2016 Hearing that he had never spoken to Mr. Lowie.

86. Plaintiffs are alleging a conspiracy, but that would be a criminal matter. What they are trying to do is stop an administrative arm of the City of Las Vegas from doing their job.

87. Plaintiffs' general and unsupported allegations of a "scheme" involving Developer Defendants and the now-dismissed Peccole Defendants and Defendant City of Las Vegas do not meet the legal burden of stating a fraud claim with particularity. There is quite simply no competent evidence to even begin to suggest the truth of such scurrilous allegations.

88. Plaintiffs have failed to state a claim for relief against the following Defendants: Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies LLC and those claims should be dismissed. Plaintiffs' only claims against Lowie, DeHart and Pankratz are the fraud claims, but the fraud claim is legally insufficient because it fails to allege that any of these individuals ever made any fraudulent representations to Plaintiffs. Lowie, DeHart and Pankratz are Mangers of EHB Companies LLC. EHB Companies LLC is the sole Manager of Fore Stars Ltd., 180 Land Co LLC, and Seventy Acres LLC. Plaintiffs have failed to properly allege the elements of any causes of action sufficient to impose liability, nor even pierce the corporate veil, against the Managers of any of the above-listed entities.

89. In light of Plaintiffs voluntarily dismissal of the Peccole Defendants, whom are alleged to have actually made the fraudulent representations to Plaintiff Robert Peccole, Plaintiffs' claims against Yohan Lowie, Vickie DeHart, Frank Pankratz, and EHB Companies LLC, whom are not alleged to have ever held a conversation with Plaintiff Robert Peccole, appear to have been brought solely for the purpose of harassment and nuisance.

90. Although ordinarily leave to amend the Complaint should be freely given when justice requires, Plaintiffs have already amended their Complaint once and have failed to state a claim against the Developer Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be permitted to amend their Complaint a second time in relation to their claims against Developer Defendants as the attempt to amend the Complaint would be futile.

91. Developer Defendants introduced, and the Court accepted, the following Exhibits at the Hearing, as well as taking notice of multiple other exhibits which were attached to the various filings (including Plaintiffs' Deeds, Title Reports, Plaintiffs' Purchase Agreement, Addendum to Plaintiffs' Purchase Agreement, Fore Stars, Ltd.'s Deed, the Declarations of Annexation, and others):

1) Exhibit A: Property Annexation Summary Map;
2) Exhibit B: Master Declaration;
3) Exhibit C: Amended Master Declaration;
4) Exhibit D: Video/thumb drive from Planning Commission hearing of City Attorney Brad Jerbic.

92. If any of these Findings of Fact is more appropriately deemed a Conclusion of Law, so shall it be deemed.

CONCLUSIONS OF LAW

93. The Nevada Supreme Court has explained that "a timely notice of appeal divests the district court of jurisdiction to act and vests jurisdiction in this court" and that the point at which jurisdiction is transferred from the district court to the Supreme Court must be clearly

defined. Although, when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before the Supreme Court, the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits. *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-530 (2006).

94. In order for a complaint to be dismissed for failure to state a claim, it must appear beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000)(emphasis added).

95. The Court must draw every fair inference in favor of the non-moving party. *Id.* (emphasis added).

96. Courts are generally to accept the factual allegations of a Complaint as true on a Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of the claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010).

97. Plaintiffs have failed to state a claim upon which relief can be granted, even with every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no set of facts which would entitle them to relief.

98. NRS 52.275 provides that "the contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation."

99. While a Court generally may not consider material beyond the complaint in ruling on a 12(b)(6) motion, "[a] court may take judicial notice of 'matters of public record' without converting a motion to dismiss into a motion for summary judgment," as long as the facts noticed are not "subject to reasonable dispute." *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499

F.3d 1048, 1052 (9th Cir. 2007)(citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001); *see also United States v. Ritchie,* 342 F.3d 903, 908–09 (9th Cir.2003)). Courts may take judicial notice of some public records, including the "records and reports of administrative bodies." *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (citing *Interstate Nat. Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th Cir.1953)). The administrative regulations, zoning letters, CC&R and Master Declarations referenced herein are such documents.

100. Plaintiffs have sought judicial challenge and review of the parcel maps without exhausting their administrative remedies first and this is fatal to their claims regarding the parcel maps. *Benson v. State Engineer*, 131 Nev. ___, 358 P.3d 221, 224 (2015) and *Allstate Insurance Co. v. Thorpe*, 123 Nev. 565, 571, 170 P.3d 989, 993-94 (2007).

101. The City Planning Commission and City Council's work is of a legislative function and Plaintiffs' claims attempting to enjoin the review of Defendant Developers' Applications are not ripe. UDC 19.16.030(H), 19.16.090(K) and 19.16.100(G).

102. Plaintiffs have an adequate remedy in law in the form of judicial review pursuant to UDC 19.16.040(T) and NRS 233B.

103. Zoning ordinances do not override privately-placed restrictions and courts cannot invalidate restrictive covenants because of a zoning change. *Western Land Co. v. Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972).

104. NRS 278A.080 provides: "The powers granted under the provisions of this chapter may be exercised by any city or county which enacts an ordinance conforming to the provisions of this chapter."

105. NRS 116.1201(4) specifically and unambiguously provides, "The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities."

106. NRS 278.320(2) states that "A common-interest community consisting of five or more units shall be deemed to be a subdivision of land within the meaning of this section, but need only comply with NRS 278.326 to 278.460, inclusive and 278.473 to 278.490, inclusive."

107. Private land use agreements are enforced by actions between the parties to the agreement and enforcement of such agreements is to be carried out by the Courts, not zoning boards.

108. Plaintiffs "vested rights" Claim for Relief is not a viable claim because Plaintiffs have failed to show that the GC Land is subject to the Master Declaration and therefore that claim should be dismissed.

109. Plaintiffs have failed to plead fraud with particularity as required by NRCP 9(b). The absence of any plausible claim of fraud against the Defendants was further demonstrated by the fact that throughout the Court's lengthy hearing upon the Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, Plaintiffs did not make a single reference or allegation whatsoever that would suggest in any way that the Plaintiffs had any claim of fraud against any of the Defendants. Plaintiffs did not reference their alleged claim at all, and the Court Finds, at this time, that the Plaintiffs have failed o state any claim upon with relief may be granted against the Defendants. *See NRCP 9(b).*

110. Under Nevada law, a Plaintiff must prove the elements of fraudulent misrepresentation by clear and convincing evidence: (1) A false representation made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation. *Barmettler v. Reno Air, Inc.*, 114 Nev.

441, 447, 956 P.2d 1382, 1386 (1998), citing *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110-11, 825 P.2d 588, 592 (1992); *Lubbe v. Barba*, 91 Nev. 596, 599, 540 P.2d 115, 117 (1975).

111. Nevada law provides: (i) a shield to protect members and managers from liability for the debts and liabilities of the limited liability company. *NRS 86.371*; and (ii) a member of a limited-liability company is not a proper party to proceedings by or against the company. *NRS 86.381*. The Court finds that naming the individual Defendants, Lowie, DeHart and Pankratz, was not made in good faith, nor was there any reasonable factual basis to assert such serious and scurrilous allegations against them.

112. If any of these Conclusions of Law is more appropriately deemed a Findings of Fact, so shall it be deemed.

ORDER AND JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz' Motion to Dismiss Amended Complaint is hereby GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz, Plaintiffs' Amended Complaint is hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that collateral to the instant Findings of Fact, Conclusions of Law, Order and Judgment, the Court will address the Defendants' Motion for Attorneys' Fees and Costs, and Supplement thereto pursuant to NRCP 11, and issue a separate Order and Judgment relating thereto.

DATED this 21 day of November 2016.

DISTRICT COURT JUDGE
A-16-739654-C

Respectfully submitted by:

JIMMERSON LAW FIRM, P.C.

/s/ James J. Jimmerson, Esq.
James J. Jimmerson, Esq.
Nevada Bar No. 000264
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
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Exhibit 27

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CLERK OF THE COURT

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Attorneys for Defendants Fore Stars, Ltd., 180 Land Co., LLC., Seventy Acres, LLC; Yohan Lowie, Vickie DeHart and Frank Pankratz

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. and NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

vs.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 Land Co., LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC., a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; FRANK PANKRATZ, an individual,

Defendants.

CASE NO. A-16-739654-C

DEPT. NO: VIII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT

Date: January 10, 2017
Courtroom 11B

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
Telephone (702) 388-7171 - Facsimile (702) 387-1167

PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, Final Order and Judgment was entered in the above-entitled action on the 31st day of January, 2017, a copy of which is attached hereto.

Dated: January 31st, 2017.

THE JIMMERSON LAW FIRM, P.C.

By: _____ 8387 for

James J. Jimmerson, Esq.
Nevada State Bar No. 000264
415 South 6th Street, Suite 100
Las Vegas, Nevada 89101
Attorneys for Defendants Fore Stars, Ltd., 180 Land Co., LLC., Seventy Acres, LLC; Yohan Lowie, Vickie DeHart and Frank Pankratz

THE JIMMERSON LAW FIRM, P.C.
415 South Sixth Street, Suite 100, Las Vegas, Nevada 89101
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Jimmerson Law Firm, P.C. and that on this 31st day of January, 2017, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT** as indicated below:

__X__ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

__X__ by electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk

To the attorney(s) listed below at the address, email address, and/or facsimile number indicated below:

Robert N. Peccole, Esq. PECCOLE & PECCOLE, LTD. 8689 W. Charleston Blvd., #109 Las Vegas, NV 89117 bob@peccole.vcoxmail.com	Todd Davis, Esq. EHB Companies LLC 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117 tdavis@ehbcompanies.com
Lewis J. Gazda, Esq. GAZDA & TADAYON 2600 S. Rainbow Blvd., #200 Las Vegas, NV 89146 efile@gazdatadayon.com abeltran@gazdatadayon.com kgerwick@gazdatadayon.com lewisjgazda@gmail.com mbdeptula@gazdatadayon.com	Stephen R. Hackett, Esq. SKLAR WILLIAMS, PLLC 410 S. Rampart Blvd., #350 Las Vegas, NV 89145 ekapolnai@klar-law.com shackett@sklar-law.com

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT N. PECCOLE and NANCY A. PECCOLE, individuals, and Trustees of the ROBERT N. AND NANCY A. PECCOLE FAMILY TRUST,

Plaintiffs,

v.

PECCOLE NEVADA, CORPORATION, a Nevada Corporation; WILLIAM PECCOLE 1982 TRUST; WILLIAM PETER and WANDA PECCOLE FAMILY LIMITED PARTNERSHIP, a Nevada Limited Partnership; WILLIAM PECCOLE and WANDA PECCOLE 1971 TRUST; LISA P. MILLER 1976 TRUST; LAURETTA P. BAYNE 1976 TRUST; LEANN P. GOORJIAN 1976 TRUST; WILLIAM PECCOLE and WANDA PECCOLE 1991 TRUST; FORE STARS, LTD., a Nevada Limited Liability Company; 180 LAND CO, LLC, a Nevada Limited Liability Company; SEVENTY ACRES, LLC, a Nevada Limited Liability Company; EHB COMPANIES, LLC, a Nevada Limited Liability Company; THE CITY OF LAS VEGAS; LARRY MILLER, an individual; LISA MILLER, an individual; BRUCE BAYNE, an individual; LAURETTA P. BAYNE, an individual; YOHAN LOWIE, an individual; VICKIE DEHART, an individual; and FRANK PANKRATZ, an individual,

Defendants.

Case No. A-16-739654-C
Dept. No. VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL ORDER AND JUDGMENT

Hearing Date: January 10, 2017
Hearing Time: 8:00 a.m.

Courtroom 11B

This matter coming on for Hearing on the 10th day of January, 2017 *on* Plaintiffs' *Renewed Motion For Preliminary Injunction,* Plaintiffs' *Motion For Leave To Amend Amended Complaint,* Plaintiffs' *Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs,* Plaintiffs' *Motion For Court To Reconsider Order Of Dismissal,* and Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie,

Vickie Dehart and Frank Pankratz's *Oppositions* thereto and *Countermotions for Attorneys' Fees and Costs,* and upon *Plaintiffs' Opposition to Countermotion for Attorney's Fees and Costs* and Defendants' *Countermotion to Strike Plaintiffs' Rogue and Untimely Opposition filed January 5, 2017 and Attorneys' Fees and Costs*, and upon Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart and Frank Pankratz's *Memorandum of Costs and Disbursements*, and no objection or Motion to Retax having been filed by Plaintiffs in response thereto, ROBERT N. PECCOLE, ESQ. of PECCOLE & PECCOLE, LTD. and LEWIS J. GAZDA, ESQ. of GAZDA & TADAYON appearing on behalf of Plaintiffs, and Plaintiff, ROBERT N. PECCOLE being present, and JAMES J. JIMMERSON, ESQ. of THE JIMMERSON LAW FIRM, P.C. appearing on behalf of Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz, and Defendants Yohan Lowie and Vickie DeHart being present, and STEPHEN R. HACKETT, ESQ. of SKLAR WILLIAMS, PLLC and TODD DAVIS, ESQ. of EHB COMPANIES, LLC appearing on behalf of Defendants EHB Companies, LLC and the Court having reviewed and fully considered the papers and pleadings on file herein, and having heard the lengthy arguments of counsel, and having allowed Plaintiffs, over Defendants' objection, to enter Exhibits 1-13 at the hearing, and having reviewed the record, good cause appearing, issues the following Findings of Fact, Conclusions of Law, Final Orders and Judgment:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Preliminary Findings

1. The Court hearing on November 1, 2016 was extensive and lengthy, and this Court does not need a re-argument of those points. At that time, the Court granted both parties great leeway to argue their case and, thereafter, to file any and all additional documents and/or

exhibits that they wished to file, so long as they did so on or before November 15, 2016. Each party took advantage of said opportunity by submitting additional documents for the Court's review and consideration. The Court has reviewed all submissions by each party. Further, at the Court's extended hearing on January 10, 2017, upon Plaintiffs' and Defendants' post-judgment motions and oppositions, the Court further allowed the parties to make whatever arguments necessary to supplement their respective filings and in support of their respective requests;

2. On November 30, 2016, this Court, after a full review of the pleadings, exhibits, affidavits, declarations, and record, entered extensive *Findings of Fact, Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint.* On January 20, 2017, the Court also entered its *Findings Of Fact, Conclusions Of Law, and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies LLC, Yohan Lowie, Vickie Dehart And Frank Pankratz's Motion For Attorneys' Fees And Costs* (the "Fee Order"). Both of these Findings of Fact, Conclusions of Law and Orders are hereby incorporated herein by reference, as if set forth in full, and shall become a part of these Final Orders and Judgment;

3. Following the Notice of Entry of the Court's extensive *Findings of Fact, Conclusions of Law, Order and Judgment Granting Defendants Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres LLC, EHB Companies, LLC, Yohan Lowie, Vickie DeHart and Frank Pankratz's NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Amended Complaint,* Plaintiffs filed four (4) Motions and one (1) Opposition, on an Order Shortening Time set for hearing on this date, Defendants filed their Oppositions and Countermotions for Attorneys' Fees and Costs, Defendants timely filed their *Memorandum of Costs and Disbursements*, and Plaintiffs chose not to file any Motion to Retax. After this briefing, Plaintiffs, at the January 10, 2017 Court hearing,

presented in excess of an hour and a half of oral argument. The Court allowed the new exhibits to be admitted over the objection of Defendants;

4. Following the hearing, the Court has reviewed the papers and pleadings filed by both Plaintiffs and Defendants, along with Exhibits, and the oral argument of Plaintiffs and Defendants, and relevant statutes and caselaw, and based upon the totality of the record, makes the following Findings:

Plaintiffs' Renewed Motion for Preliminary Injunction

5. As a preliminary matter, based on the record and the evidence presented to date by both sides, the Court does not believe the golf course land ("GC Land") is subject to the terms and restrictions of the Master Declaration of Covenants, Conditions, Restrictions and Easements of Queensridge ("Master Declaration" or "CC&Rs"), because it was not annexed into, or made part of, the Queensridge Common Interest Community ("Queensridge CIC") which the Master Declaration governs. The Court has repeatedly made, and stands by, this Finding;

6. The Court does not believe that William and Wanda Peccole, or their entities (Nevada Legacy 14, LLC, the William Peter and Wanda Ruth Peccole Family Limited Partnership, and/or the William Peccole 1982 Trust) intended the GC Land to be a part of the Queensridge CIC, as evidenced by the fact that if that land had been included within that community, then every person in Queensridge would be paying money to be a member of the Badlands Golf Course and paying to maintain it. They were not, and have not. In fact, the Master Declaration at Recital B states that the CIC "may, but is not required to include...a golf course" and Plaintiffs' Purchase documents make clear that residents of Queensridge acquire no golf course rights or membership privileges by their purchase of a house within the Queensridge CIC. *Exhibit C to Defendants' Opposition filed September 2, 2016 at page 1, Recital B, and Exhibit L to Defendants' Opposition filed September 2, 2016 at paragraph 4 of Addendum 1*;

7. By Plaintiffs' own exhibit, the enlargement of the Exhibit C Map to the Master Declaration, it shows that the GC Land is not a part of the CC&Rs. The Exhibit C map showed the initial Property *and* the Annexable Property, as confirmed by Section 1.55 of the Master Declaration;

8. Therefore, the argument about whether or not the Master Declaration applies to the GC Land does not need to be rehashed, despite Plaintiffs' insistence that it do so. The Court has repeatedly found that it does not. That is the Court's prior ruling, and nothing Plaintiffs have brought forward reasonably convinces the Court otherwise. *See* the Court's November 20, 2016 Order, Findings 51-76;

9. Regarding the Renewed Motion for Preliminary Injunction, Plaintiffs' Renewed Motion and Exhibits are not persuasive, and the Court has made clear that it will not stop a governmental agency from doing its job. The Court does not believe that intervention is "clearly necessary" or appropriate for this Court. As the Court understands it, if the owner of the GC Land has made an application, the governmental agency would be derelict in their duty if it did not review it, consider it and do all of its necessary work to follow the legal process and make its recommendations and/or decision. The Court will not stop that process;

10. Based upon the papers, there is no basis to grant Plaintiffs' Renewed Motion for Preliminary Injunction;

11. Plaintiffs' argument that there is a "conspiracy" with the City of Las Vegas "behind closed doors" to get certain things done is inappropriate and without merit;

12. It is entirely proper for Defendants to follow the City rules that require the filing of applications if they want to develop their property, or to discuss a development agreement with the City Attorney, or present a plan to the City of Las Vegas Planning Commission or the Las Vegas City Council. That is what they are supposed to do;

13. Plaintiffs submitted four (4) photos to demonstrate that the proposed new development under the current application would "ruin his views." However, Plaintiffs' purchase documents make clear that no such "views" or location advantages were guaranteed to Plaintiffs, and that Plaintiffs were on notice through their own exhibit that their existing views could be blocked or impaired by development of adjoining property "whether within the Planned Community or outside of the Planned Community" *Exhibit 1 to Plaintiffs' Reply to Defendants' Motion to Dismiss, filed September 9, 2016.*

14. In response to the Court's inquiry regarding what Plaintiffs are trying to enjoin, Plaintiffs indicate they desire to enjoin Defendants from resubmitting the four (4) applications that have been withdrawn, without prejudice, but which can be refiled. The Court finds that refiling is exactly what Defendants are supposed to do if they want those applications considered;

15. Plaintiffs' argument that Defendants cannot file Applications with the City, because it is a violation of the Master Declaration is without merit. That might be true if the GC Land was part of the CC&R's. As repeatedly stated, this Court does not believe, and the evidence does not suggest, that the GC Land is subject to the CC&Rs, period;

16. Defendants' applications were legal and the proper thing to do, and the Court will not stop such filings. Plaintiffs' position is the filing was not allowed under the Master Declaration, and Plaintiffs will not listen to the Court's Findings that the GC Land was not added to the Queensridge CIC by William Peccole or his entities. Plaintiffs' position is vexatious and harassing to the Defendants under the facts of this case;

17. Plaintiffs argue that the new applications that were filed were negotiated and discussed with the City Attorneys' Office without the knowledge of the City Council. But, again, that is not improper. The City Council does not get involved until the applications are

submitted and reviewed by the Planning Staff and City Planning Commission. The Court finds that there is no "conspiracy" there. People are supposed to follow the rules, and the rules say that if you are going to seek a zone change or a variance, you may submit a pre-application for review, have appropriate discussions and negotiations, and then have a public review by the Planning Commission and ultimately the City Council;

18. The fact that a new application was submitted proposing 61 homes, which is different from the original applications submitted for "The Preserve" which were withdrawn without prejudice, is irrelevant;

19. Plaintiffs' argument that Defendants submitted a new application on December 30, 2016 to allegedly defeat Plaintiffs' Renewed Motion for Preliminary Injunction, to bring the case back into the administrative process, is not reasonable, nor accurate. There were already three (3) applications which were pending and which had been held in abeyance, and thus were still within the administrative process. The new application changes nothing as far as Plaintiffs' requests for a preliminary injunction;

20. Plaintiffs' Exhibit 5 demonstrates that notice was provided to the homeowners, which is what Defendants were supposed to do. There was nothing improper in this;

21. Even if *all* the applications had been withdrawn, Plaintiffs could not "directly interfere with, **or in advance restrain**, the discretion of an administrative body's exercise of legislative power." *Eagle Thrifty Drugs & Markets, Inc. v. Hunter Lake Parent Teachers Assn. et al*, 85 Nev. 162, 451 P.2d 713 (1969) at 165, 451 P.2d at 714. Additionally, "This established principle **may not be avoided by the expedient of directing the injunction to the applicant instead of the City Council.**" *Id.* This holding still applies to these facts;

22. Regardless, the possible submission of zoning and land use applications will not violate any rights or restrictions Plaintiffs claim in their Master Declaration, as "A zoning

ordinance cannot override privately-placed restrictions, and a trial court cannot be compelled to invalidate restrictive covenants merely because of a zoning change." *W. Land Co. v. Truskolaski*, 88 Nev. 200, 206, 495 P.2d 624, 627 (1972). Additionally, UDC 19.00.0809(j) provides: "No provision of this Title is intended to interfere with or abrogate or annul any easement, private covenants, deed restriction or other agreement between private parties.... Private covenants or deed restrictions which impose restrictions not covered by this Title, are not implemented nor superseded by this Title."

23. Plaintiffs' argument that Defendants needed permission to file the applications for the 61 homes is, again, without merit, because Plaintiffs incorrectly assume that the CC&Rs apply to the GC Land, when the Court has already found they do not. Plaintiffs unreasonably refuse to accept this ruling;

24. Plaintiffs have no standing under *Gladstone v. Gregory,* 95 Nev. 474, 596 P.2d 491 (1979) to enforce the restrictive covenants of the Master Declaration against Defendants or the GC Land. The Court has already, repeatedly, found that the Master Declaration does not apply to the GC Land, and thus Plaintiffs have no standing to enforce it against the Defendants. Defendants did not, and cannot, violate a rule that does not govern the GC Land. The Plaintiffs refuse to hear or accept these findings of the Court;

25. Contrary to Plaintiffs' statement, the Court is not making an "argument" that Plaintiffs' are required to exhaust their administrative remedies; that is a "decision" on the part of the Court. As the Court stated at the November 1, 2016 hearing, Plaintiffs believe that CC&Rs of the Queensridge CIC cover the GC Land, and Mr. Peccole is so closely involved in it, he refuses to see the Court's decision coming in as fair or following the law. No matter what decisions are made, Mr. Peccole is so closely involved with the issues, he would never accept

any Court's decision, because if it does not follow his interpretation, in Plaintiffs' mind, the Court is wrong. *November 1, 2016 Hearing Transcript, P. 3, L. 13-2;*

26. Defendants have the right to close the golf course and not water it. This action does not impact Plaintiffs' "rights;"

27. A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate and that the moving party has a reasonable likelihood of success on the merits. *Boulder Oaks Cmty. Ass'n v. B & J Andrew Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009); citing NRS 33.010, *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); *Dangberg Holdings v. Douglas Co.*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). A district court has discretion in deciding whether to grant a preliminary injunction. *Id.* The Plaintiffs have failed to make the requisite showing;

28. On September 27, 2016, the parties were before the Court on Plaintiffs' first Motion for Preliminary Injunction and, after reading all papers and pleadings on file, the Court heard extensive oral argument lasting nearly two (2) hours from all parties. The Court ultimately concluded that Plaintiffs failed to meet their burden for a Preliminary Injunction, had failed to demonstrate irreparable injury by the City's consideration of the Applications, and failed to demonstrate a likelihood of success on the merits, amongst other failings;

29. On September 28, 2016—the day after their Motion for Preliminary Injunction directed at the City of Las Vegas was heard—Plaintiffs ignored the Court's words and filed another Motion for Preliminary Injunction which, substantively, made arguments identical to those made in the original Motion which had just been heard the day before, except that Plaintiffs focused more on the "vested rights" claim, namely, that the applications themselves could not have been filed because they are allegedly prohibited by the Master Declaration. On

October 31, 2016, the Court entered an Order denying that Motion, finding that Plaintiffs failed to meet their burden of proof that they have suffered irreparable harm for which compensatory damages are an inadequate remedy and failed to show a reasonable likelihood of success on the merits, since the Master Declaration of the Queensridge CIC did not apply to land which was not annexed into, nor a part of, the Property (as defined in the Master Declaration). The Court also based its denial on the fact that Nevada law does not permit a litigant from seeking to enjoin the Applicant as a means of avoiding well-established prohibitions and/or limitations against interfering with or seeking advanced restraint against an administrative body's exercise of legislative power. See *Eagle Thrifty Drugs & Markets, Inc., v. Hunter Lake Parent Teachers Assoc.*, 85 Nev. 162, 164-165, 451 P.2d 713, 714-715 (1969);

30. On October 5, 2016, Plaintiffs filed a Motion for Rehearing of Plaintiffs' first Motion for Preliminary Injunction, without seeking leave from the Court. The Court denied the Motion on October 19, 2016, finding Plaintiffs could not show irreparable harm, because they possess administrative remedies before the City Planning Commission and City Council pursuant to NRS 278.3195, UDC 19.00.080(N) and NRS 278.0235, which they had failed to exhaust, and because Plaintiffs failed to show a reasonable likelihood of success on the merits at the September 27, 2016 hearing and failed to allege any change of circumstances since that time that would show a reasonable likelihood of success as of October 17, 2016;

31. At the October 11, 2016 hearing on Defendants City of Las Vegas' Motion to Dismiss Amended Complaint, which was ultimately was granted by Order filed October 19, 2016, the Court advised Mr. Peccole, as an individual Plaintiff and counsel for Plaintiffs, that it believed that he was too close to this" and was missing that the Master Declaration would not apply to land which is not part of the Queensridge CIC. *October 11, 2016 Hearing Transcript at 13:11-13;*

32. On October 12, 2016, Plaintiffs filed a Motion for Stay Pending Appeal in relation to the Order Denying their first Motion for Preliminary Injunction against the City of Las Vegas, which sought, again, an injunction. That Motion was denied on October 19, 2016, finding that Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c), Plaintiffs failed to show that the object of their potential writ petition will be defeated if their stay is denied, Plaintiffs failed to show that they would suffer irreparable harm or serious injury if the stay is not issued, and Plaintiffs failed to show a likelihood of success on the merits;

33. On October 21, 2016, Plaintiffs filed a Notice of Appeal on the Order Denying their Motion for Preliminary Injunction against the City of Las Vegas, and on October 24, 2016, Plaintiffs filed a Motion for Stay in the Supreme Court. On November 10, 2016, the Nevada Supreme Court dismissed Plaintiffs' Appeal, and the Motion for Stay was therefore denied as moot;

34. Plaintiffs can assert no harm, let alone "irreparable" harm from the three remaining pending applications, which deal with development of 720 condominiums located a mile from Plaintiffs' home on the Northeast corner of the GC Land;

35. Plaintiffs cannot demonstrate a likelihood of success on the merits. Plaintiffs have argued the "merits" of their claims *ad nausem* and they have not had established any possibility of success;

36. The Court has repeatedly found that the claim that Defendants' applications were "illegal" or "violations of the Master Declaration" is without merit, and such claim is being maintained without reasonable grounds;

37. Plaintiffs' argument within his Renewed Motion is just a rehash of his prior arguments that Lot 10 was "part of" the "Property," (as defined in the Master Declaration) that

the flood drainage easements along the golf course are not included in the "not a part" language, and that he has "vested rights." These arguments have already been addressed repeatedly;

38. In its *Findings of Fact, Conclusions of Law and Order Granting Defendants Motion to Dismiss,* filed November 30, 2016, the Court detailed its analysis of the Master Declaration, the Declarations of Annexation, Lot 10, and the other documents of public record, and made its Findings that the Plaintiffs were not guaranteed any golf course views or access, and that the adjoining GC Land was not governed by the Master Declaration. Those Findings are incorporated herein by reference, as if set forth in full. Specifically Findings No. 51-76 make clear that the GC Land is not a part of and not subject to the Master Declaration of the NRS 116 Queensridge CIC;

39. There is no "new evidence" that changes this basic finding of fact, and Plaintiffs cannot "stop renewal of the 4 applications" or "stop the application" allegedly contemplated for property merely adjacent to Plaintiffs' Lot and which is not within the Queensridge CIC;

40. Since Plaintiffs were on notice of this undeniable fact on September 2, 2016, yet persisted in filing Motion after Motion to try and "enjoin" Defendants, that is exactly why this Court awarded Defendants $82,718.50 relating to the second Motion for Preliminary Injunction, the Motion for Rehearing and the Motion for Stay (Injunction), and why this Court awards additional attorneys' fees and costs for being forced to oppose a Renewed Motion for Preliminary Injunction and these other Motions now;

41. The alleged "new" information cited by Plaintiffs--the withdrawal of four applications without prejudice at the November 16, 2016 City Council meeting--is irrelevant because this Court cannot and will not, in advance, restrain Defendants from submitting applications. Further, the three (3) remaining applications are pending and still in the administrative process;

42. Zoning is a matter properly within the province of the legislature and that the judiciary should not interfere with zoning decisions, especially before they are even final. *See, e.g., McKenzie v. Shelly*, 77 Nev. 237, 362 P.2d 268 (1961) (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 439 P.2d 219 (1968) (judiciary must not interfere with the zoning power unless clearly necessary); *Forman v. Eagle Thrifty Drugs and Markets*, 89 Nev. 533, 516 P.2d 1234 (1973) (statutes guide the zoning process and the means of implementation until amended, repealed, referred or changed through initiative). Court intervention is not "clearly necessary" in this instance;

43. Plaintiffs have admitted to the Supreme Court that their duplicative Motion for Preliminary Injunction filed on September 28, 2016 was without merit and unsupported by the law. In their *Response to Motion to Amend Caption and Joinder and Response to the Motion to Dismiss Appeal of Order Granting the City of Las Vegas Motion to Dismiss Amended Complaint*, filed November 10, 2016, Plaintiff's state:"..[T]he case of *Eagle Thrifty Drugs & Market, Inc. v. Hunter Lake Parent Teachers Association,* 85 Nev. 162 (1969) **would not allow directing of a Preliminary Injunction against any party but the City Council.** Fore Stars, Ltd., 180 Land Co LLC, Seventy Acres, LLC, Yohan Lowie, Vickie DeHart, Frank Pankratz and EHB Companies, LLC **could not be made parties to the Preliminary Injunction because only the City was appropriate under *Eagle Thrifty.*"** (Emphasis added.) Yet Plaintiffs have now filed a "Renewed" Motion for Preliminary Injunction;

44. Procedurally, Plaintiffs' Renewed Motion is improper because "No motions once heard and disposed of may be *renewed* in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of

such motion to the adverse parties." *EDCR 2.24 (Emphasis added.)* This is the second time the Plaintiffs have failed to seek leave of Court before filing such a Motion;

45. After hearing all of the arguments of Plaintiffs and Defendants, Plaintiffs have failed to meet their burden for a preliminary injunction against Defendants, and Plaintiffs have no standing to do so;

Plaintiffs' Motion for Leave to Amend Amended Complaint

46. Plaintiffs have already been permitted to amend their Complaint, and did so on August 4, 2016;

47. Plaintiffs deleted the Declaratory Relief cause of action, but maintained a cause of action for injunctive relief even after Plaintiffs were advised that the same could not be sustained, Plaintiffs withdrew the Breach of Contract cause of action and replaced it with a cause of action entitled "Violations of Plaintiffs' Vested Rights," and Plaintiffs' Fraud cause of action remained, for all intents and purposes, unchanged;

48. Plaintiffs were given the opportunity to present a proposed Amended Complaint and failed to do so. There is no Amended Complaint which supports the new alter ego theory Plaintiffs suggest;

49. After the November 1, 2016 hearing on the Motion to Dismiss, the Court provided an opportunity for Plaintiffs (or Defendants) to file any additional documents or requests, including a request to Amend the Complaint, with a deadline of November 15, 2016. Plaintiffs' Motion to Amend Amended Complaint was not filed within that deadline;

50. EDCR 2.30 requires a copy of a proposed amended pleading to be attached to any motion to amend the pleading. Plaintiffs never attached a proposed amended pleading, in violation of this Rule. This makes it impossible for the Court to measure what claims Plaintiffs

propose, other than those outlined in their briefs, all of which are based on a failed and untrue argument;

51. Plaintiffs continue to attempt to enjoin the City from completing its legislative function, or to in advance, restrain Defendants from submitting applications for consideration. This Court has repeatedly Ordered that it will not do that;

52. The Court considered Plaintiffs' oral request from November 1, 2016 to amend the Amended Complaint, and made a Finding in its November 30, 2016 Order of Dismissal, at paragraph 90, "Although ordinarily leave to amend the Complaint should be freely given when justice requires, Plaintiffs have already amended their Complaint once and have failed to state a claim against the Defendants. For the reasons set forth hereinabove, Plaintiffs shall not be permitted to amend their Complaint a second time in relation to their claims against Defendants as the attempt to amend the Complaint would be futile;"

53. Further amending the Complaint, under the theories proposed by Plaintiffs, remains futile. The Fraud cause of action does not state a claim upon which relief can be granted, as the alleged "fraud" lay in the premise that there was a representation that the golf course would remain a golf course in perpetuity. Again, Plaintiffs' own purchase documents evidence that no such guarantee was made and that Plaintiffs were advised that future development to the adjoining property could occur, and could impair their views or lot advantages. The alleged representation is incompetent *(See NRCP 56(e))*, fails woefully for lack of particularity as required by NRCP 9(b), and appears disingenuous under the facts and law of this case;

54. The Fraud claim also fails because Plaintiffs voluntarily dismissed the Defendants—all his relatives or their entities--who allegedly made the fraudulent representations that the golf course would remain in perpetuity;

55. While it is true that Defendants argued that Plaintiffs did not plead their Fraud allegations with particularity as required by NRCP 9(b), Defendants also vociferously argued in their Motion to Dismiss that Plaintiffs failed to state a Fraud claim upon which relief could be granted because their allegations failed to meet the basic and fundamental elements of Fraud: (1) a false representation of fact; (2) made to the plaintiff; (3) with knowledge or belief that the representation was false or without a sufficient basis; (4) intending to induce reliance; (5) creating justifiable reliance by the plaintiff; (6) resulting in damages. *Blanchard v. Blanchard*, 108 Nev. 908, 911, 839 P.2d 1320, 1322 (1992). The Court concurred;

56. To this day, Plaintiffs failed to identify any actual false or misleading statements made by Defendants to them, and that alone is fatal to their claim. Defendants' zoning and land use applications to the City to proceed with residential development upon the GC Land does not constitute fraudulent conduct by Defendants because third-parties allegedly represented at some (unknown) time roughly 16 years earlier that the golf course would never be replaced with residential development;

57. Plaintiffs do not and cannot claim that they justifiably relied on any supposed misrepresentation by any of the Defendants or that they suffered damages as a result of the Defendants' conduct because such justifiable reliance requires a causal connection between the inducement and the plaintiff's act or failure to act resulting in the plaintiff's detriment;

58. Plaintiffs have not, and cannot claim that any representations on the part of Defendants lead them to enter into their "Purchase Agreement" in April 2000, over 14 years prior to any alleged representations or conduct by any of the Defendants. The Court was left to wonder if any of these failings could be corrected in a second amended complaint, as Plaintiffs failed to proffer a proposed second amended complaint as is required under EDCR 2.30. As such, Plaintiffs' Motion to Amend Complaint was doomed from the outset;

59. All of Plaintiffs' claims are based on the theory that Plaintiffs have "vested rights" over the Defendants and the GC Land. The request for injunctive relief is based on the assertion of alleged "rights" under the Master Declaration;

60. The Court has already found, both of Plaintiffs' legal theories (1) the zoning aspect and exhaustion of administrative remedies, and (2) the alleged breach of the restrictive covenants under a Master Declaration "contract," are maintained without reasonable ground, Defendants are not parties to the "contract" alleged to have been breached, and Court intervention is not "clearly necessary" as an exception to the bar to interfere in an administrative process;

61. The zoning on the GC Land dictates its use and Defendants rights to develop their land;

62. Plaintiffs' reargument of the "Lot 10" claim, which Plaintiffs have argued before, which this Court asked Plaintiffs not to rehash, is without merit. Drainage easements upon the GC Land in favor of the City of Las Vegas do not make the GC Land a part of the Queensridge CIC. The Queensridge CIC would have to be a party to the drainage easements in order to have rights in the easements. Plaintiffs presented no evidence to establish that the Queensridge CIC is a party to any drainage easements upon the GC Land;

63. Plaintiffs do not represent FEMA or the government, who are the authorities having jurisdiction to set the regulations regarding "flood drainage." Plaintiffs do not have any agreements with Defendants regarding flood drainage and nor any jurisdiction nor standing to claim or assert "drainage" rights. Any claims under flood zones or drainage easements would be asserted by the governmental authority having jurisdiction;

64. Notwithstanding any alleged "open space" land use designation, the zoning on the GC Land, as supported by the evidence, is R-PD7. Plaintiffs latest argument suggests the land is

"zoned" as "open space" and that they have some right to prevent any modification of that alleged designation under NRS 278A. But the Master Declaration indicates that Queensridge is a NRS Chapter 116 community, and NRS 116.1201(4) specifically and unambiguously provides, "The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities." The Plaintiffs do not have standing to even make any claim under NRS 278A;

65. There is no evidence of any recordation of any of the GC Land, by deed, lien, or by any other exception to title, that would remotely suggest that the GC Land is within a planned unit development, or is subject to NRS 278A, or that Queensridge is governed by NRS 278A. Rather, Queensridge is governed by NRS 116;

66. NRS 278.349(3)(e) states "The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider: Conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;"

67. The Plaintiffs do not own the land which allegedly contains the drainage pointed out in Exhibits 11 and 12. It is Defendants' responsibility to deal with it with the government. Tivoli Village is an example of where drainage means were changed and drainage challenges were addressed by the developer. Plaintiffs have no standing to enforce the maintenance of a drainage easement to which they are not a party;

68. Plaintiffs' Amended Complaint, itself, recognizes that the Master Declaration does not apply to the land proposed to be developed by the Defendants, as it states on page 2, paragraph 1, that "Larry Miller did not protect the Plaintiffs' or homeowner's vested rights by including a Restrictive Covenant that Badlands must remain a golf course as he and other agents of the developer had represented to homeowners." The Amended Complaint reiterated at page 10, paragraph 42, "The sale was completed in March 2015 and conveniently left out any

restrictions that the golf course must remain a golf course." *Id.* Thus, Plaintiffs proceeded in prosecuting this case and attempting to enjoin development with full knowledge that there were no applicable restrictions, conditions and covenants from the Master Declaration which applied to the GC Land, and there were no restrictive covenants in place relating to the sale which prevented Defendants from doing so;

69. Plaintiffs improperly assert that the Motion to Dismiss relied primarily upon the "ripeness" doctrine and the allegation that the Fraud Cause of Action was not pled with particularity. But this is not true. The Motion to Dismiss was granted because Plaintiffs do not possess the "vested rights" they assert because the GC Land is not part of Queensridge CIC and not subject to its CC&Rs. The Fraud claim failed because Plaintiffs could not state the elements of a Fraud Cause of Action. They never had any conversations with any of the Defendants prior to purchasing their Lot and therefore, no fraud could have been committed by Defendants against Plaintiffs in relation to their home/lot purchase because Defendants never made any knowingly false representations to Plaintiffs upon which Plaintiffs relied to their detriment, nor as stated by Plaintiff to the Court did Defendants ever make any representations to Plaintiffs at all. Plaintiffs' were denied an opportunity to amend their Complaint a second time because doing so would be futile given the fact that they have failed to state claims and cannot state claims for "vested rights" or Fraud;

70. None of Plaintiffs' alleged "changed circumstances"—neither the withdrawal of applications, the abatement of others, or the introduction of new ones, changes the fundamental fact that Plaintiffs have no standing to enforce the Master Declaration against the GC Land, or any other land which was not annexed into the Queensridge CIC. It really is that simple;

71. Likewise, the claim that because applications were withdrawn by Defendants at the City Council Meeting and the rest were held in abeyance, that the *Eagle Thrifty* case no

longer applies and no longer prevents a preliminary injunction to enjoin Defendants from submitting future Applications, fails as a matter of law. Plaintiffs' Motion to Amend remains improper under *Eagle Thrifty* because Plaintiffs are effectively seeking to restrain the City of Las Vegas by requesting an injunction against the Applicant, and they are improperly seeking to restrain the City from hearing future zoning and development applications from Defendants. *Eagle Thrifty* neither allows such advance restraint, nor does it condone such advance restraint by directing a preliminary injunction against the Applicant;

72. Amending the Complaint based on the theories argued by Plaintiffs would be futile, and Plaintiffs continue to fail to state a claim upon which relief can be granted;

73. Leave to amend should be freely granted "when justice so requires," but in this case, justice requires the Motion for Leave to Amend be denied. It would be futile. Additionally, Plaintiffs have noticeably failed to submit any proposed second amended Complaint at any time. *See* EDCR 2.30. The Court is compelled to deny Plaintiffs' Motion to Amend;

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Plaintiffs' Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs

74. Plaintiffs are not entitled to an Evidentiary Hearing on the Motion for Attorneys' Fees and Costs. NRS 18.010(3) states "in awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence."

75. Plaintiffs' seek an Evidentiary Hearing on the "Order for Rule 11 Fees and Costs," but the request for sanctions and additional attorneys' fees pursuant to NRCP 11 was denied by this Court. Plaintiffs do not seek reconsideration of that denial, and no Evidentiary Hearing is warranted;

76. The Motion itself if procedurally defective. It contains only bare citations to statues and rules, and it contains no Affidavit as required by EDCR 2.21 and NRCP 56(e);

77. NRCP 60(b) does not allow for Evidentiary Hearing to give Plaintiffs "opportunity to present evidence as to why they filed a Motion for Preliminary Injunction against Fore Stars and why that was appropriate." It allows the setting aside of a default judgment due to mistakes, inadvertence, excusable neglect, newly discovered evidence or fraud. With respect to the Motion for Attorneys' Fees and Costs and Order granting the same, this is not even alleged;

78. Plaintiffs must establish "adequate cause" for an Evidentiary Hearing. *Rooney v. Rooney,* 109 Nev. 540, 542–43, 853 P.2d 123, 124–25 (1993). Adequate cause "requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds....." "The moving party must present a prima facie case...showing that (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching." *Id.*

79. Plaintiffs have failed to establish adequate cause for an Evidentiary Hearing. Plaintiffs have not even submitted a supporting Affidavit alleging any facts whatsoever;

80. "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76). "Rehearings are not granted as a matter of right, and are not allowed for the purpose of reargument." *Geller v. McCown*, 64 Nev. 102, 108, 178 P.2d 380, 381 (1947) (citation omitted). Points or contentions available before but not raised in the original hearing cannot be maintained or considered on rehearing. See *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996);

81. There is no basis for an Evidentiary Hearing under NRCP 59(a). There were no irregularities in the proceedings of the court, or any order of the court, or abuse of discretion whereby either party was prevented from having a fair trial. There was no misconduct of the court or of the prevailing party. There was no accident or surprise which ordinary prudence could not have guarded against. There was no newly discovered evidence material for the party making the motion which the party could not, with reasonable diligence, have discovered or produced at trial. There were no excessive damages being given under the influence of passion of prejudice, and there were no errors in law occurring at the trial and objected to by the party making the motion. If anything, the fact that Defendants were awarded 56% of their incurred attorneys' fees and costs relating to the preliminary injunction issues, and denied additional sanctions pursuant to NRCP 11, demonstrates this Court's evenhandedness and fairness to the Plaintiffs;

82. Plaintiffs are not automatically entitled to an Evidentiary Hearing on the issue of attorneys' fees and costs, and the decision to forego an evidentiary hearing does not deprive a party of due process rights if the party has notice and an opportunity to be heard. *Lim v. Willick Law Grp.*, No. 61253, 2014 WL 1006728, at *1 (Nev. Mar. 13, 2014). *See, also, Jones v. Jones, 22016 WL 3856487, Case No. 66632 (2016)*;

83. In this case, Plaintiffs had notice and the opportunity to be heard, and already presented to the Court the evidence they would seek to present about why they filed a Motion for a Preliminary Injunction against these Defendants, having argued at the September 27, 2016 Hearing, the October 11, 2016 Hearing, the November 1, 2016 Hearing and the January 10, 2017 hearing that they had "vested rights to enforce "restrictive covenants" against Defendants under the *Gladstone v. Gregory* case. Those arguments fail;

84. The Court also gave Plaintiffs the opportunity to submit any further evidence they wanted, with a deadline of November 15, 2016. The Court considered all evidence timely submitted;

85. Plaintiffs filed on November 8, 2016 Supplemental Exhibits with their argument regarding the "Amended Master Declaration" and on November 18, 2016 "Additional Information" including description of the City Council Meeting. Plaintiffs also filed on November 17, 2016, their Response to the Motion for Attorneys' Fees and Costs;

86. On its face, the facts claimed in Plaintiffs' Motion, unsupported by Affidavit, regarding why he had to file the first Motion for Preliminary Injunction, second Motion for Preliminary Injunction on September 28, 2016, the Motion for Stay Pending Appeal and the Motion for Rehearing, which Motions were the basis of the award of attorneys' fees and costs, are unbelievable. Plaintiffs claim that the City was dismissed as a Defendant and the "only remedy" was to file directly against the Defendants. But Plaintiffs filed their Motion for Preliminary Injunction against Fore Stars the day after the hearing on their first Motion for Preliminary Injunction—even before the decision on their first Motion was issued detailing the denial of the Motion and the analysis of the *Eagle Thrifty* case. The Court had not even *heard*, let alone granted, City's Motion to Dismiss at that time;

87. Plaintiffs' justification that the administrative process came to an end when four applications were withdrawn without prejudice, three were held in abeyance, and "a contemplated additional violation of the CC&R's appeared on the record" is also without merit. Aside from the fact that Plaintiffs are not permitted to restrain, in advance, the filing of applications or the City's consideration of them, factually, as of September 28, 2016, the Planning Commission Meeting had not even occurred yet (let alone the City Council Meeting). The administrative process was still ongoing;

88. The claim that the *Gladstone case* was applicable directly against restrictive covenant violators after the administrative process ended and Defendants were "no longer protected by Eagle Thrifty" is, again, belied by the fact that the CC&R's do not apply to, and cannot be enforced against, land that was not annexed into the Queensridge CIC. *Gladstone* does not apply. Plaintiffs' argument is not convincing;

89. Plaintiffs' arguments regarding how "frivolous" is defined by NRCP 11 is irrelevant because those additional sanctions against Plaintiffs' counsel were denied as moot, in light of the Court awarding Defendants attorneys' fees and costs under NRS 18.010(2)(b) and EDCR 7.60;

90. Defendants' Motion sought an award of $147,216.85 in attorneys' fees and costs, dollar for dollar, incurred in having to defeat Plaintiffs' repeated efforts to obtain a preliminary injunction against Defendants, which multiplied the proceedings unnecessarily. After considering Defendants' Motion and Supplement and Plaintiffs' Response, the Court awarded Defendants $82,718.50. The attorneys' fees and costs awarded related only to those efforts to obtain a preliminary injunction through the end of October, 2016, and did not include or consider the additional attorneys' fees, or the additional costs, which were incurred by Defendants relating to the Motions to Dismiss, or the new filings after October, 2016;

91. NRS 18.010, EDCR 7.60 and NRCP 11 are distinct rules and statues, and the Court can apply any of the rules and statues which are applicable;

92. NRS § 18.010 makes allowance for attorney's fees when the Court finds that the claim of the opposing party was brought without reasonable ground or to harass the prevailing party, and/or in bad faith. *NRS 18.010(2)(b)*. A frivolous claim is one that is, "both baseless and made without a reasonable competent inquiry." *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). Sanctions or attorneys' fees may be awarded where the pleading fails to be well

grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry. *Id.* The decision to award attorney fees against a party for pursuing a claim without reasonable ground is within the district court's sound discretion and will not be overturned absent a manifest abuse of discretion. *Edwards v. Emperor's Garden Restaurant*, 130 P.3d 1280 (Nev. 2006).

93. NRS 18.010 (2) provides that: "The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

94. EDCR 7.60(b) provides, in pertinent part, for the award of fees when a party without just cause: (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted, (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously, and (4) Fails or refuses to comply with these rules;

95. An award of attorney's fees and costs in this case was appropriate, as Plaintiffs' claims were baseless and Plaintiffs' counsel did not make a reasonable and competent inquiry before proceeding with their first Motion for Preliminary Injunction after receipt of the Opposition, and in filing their second Preliminary Injunction Motion, their Motion for Rehearing or their Motion for Stay Pending Appeal, particularly in light of the hearing the day prior.

Plaintiffs' Motions were the epitome of a pleading that "fails to be well grounded in fact and warranted by existing law and where the attorney fails to make a reasonable competent inquiry;"

96. There was absolutely no competent evidence to support the contentions in Plaintiffs' Motions--neither the purported "facts" they asserted, nor the "irreparable harm" that they alleged would occur if their Motions were denied. There was no Affidavit or Declaration filed supporting those alleged facts, and Plaintiffs even changed the facts of this case to suit their needs by transferring title to their property mid-litigation after the Opposition to Motion for Preliminary Injunction had been filed by Defendants. Plaintiffs were blindly asserting "vested rights" which they had no right to assert against Defendants;

97. Plaintiffs certainly did not, and cannot present any set of circumstances under which they would have had a good faith basis in law or fact to assert their Motion for Preliminary Injunction against the non-Applicant Defendants whose names do not appear on the Applications. The non-Applicant Defendants had nothing to do with the Applications, and Plaintiffs maintenance of the Motion against the non-Applicant Defendants, named personally, served no purpose but to harass and annoy and cause them to incur unnecessary fees and costs;

98. On October 21, 2016, Defendants filed their Motion for Attorneys' Fees and Costs, seeking an award of attorneys' fees and costs pursuant to EDCR 7.60 and NRS 18.070, which was set to be heard in Chambers on November 21, 2016. Plaintiffs filed a response on November 17, 2016, which was considered by the Court;

99. Defendants have been forced to incur significant attorneys' fees and costs to respond to the repetitive filings of Plaintiffs. Plaintiffs' Motions are without merit and unnecessarily duplicative, and made a repetitive advancement of arguments that were without merit, even after the Court expressly warned Plaintiffs that they were "too close" to the dispute;

100. Plaintiff, Robert N. Peccole, Esq., by being so personally close to the case, is so blinded by his personal feelings that he is ignoring the key issues central to the causes of action and failing to recognize that continuing to pursue flawed claims for relief, and rehashing the arguments again and again, following the date of the Defendants' September 2, 2016 Opposition, is improper and unnecessarily harms Defendants;

101. In making an award of attorneys' fees and costs, the Court shall consider the quality of the advocate, the character of the work to be done, the work actually performed, and the result. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). Defendants submitted, pursuant to the *Brunzell* case, affidavits regarding attorney's fees and costs they requested. The Court, in its separate Order of January 20, 2017, has analyzed and found, and now reaffirms, that counsel meets the *Brunzell* factors, that the costs incurred were reasonable and actually incurred pursuant to *Cadle Co. v. Woods & Erickson LLP*, 131 Nev. Adv. Op. 15 (Mar. 26, 2015), and outlined the reasonableness and necessity of the attorneys' fees and costs incurred, to which there has been no challenge by Plaintiffs;

102. Plaintiffs were on notice that their position was maintained without reasonable ground after the September 2, 2016 filing of Defendants' Opposition to the first Motion for Preliminary Injunction. The voluminous documentation attached thereto made clear that the Master Declaration does not apply to Defendants' land which was not annexed into the Queensridge CIC. Thus, relating to the preliminary injunction issues, the sums incurred after September 2, 2016 were reasonable and necessary, as Plaintiffs continued to maintain their frivolous position and filed multiple, repetitive documents which required response;

103. Defendants are the prevailing party when it comes to Defendants' Motions for Preliminary Injunction, Motion for Stay Pending Appeal and Motion for Rehearing filed in

September and October, and Plaintiffs' position was maintained without reasonable ground or to harass the prevailing party. *NRS 18.010;*

104. Plaintiffs presented to the court motions which were, or became, frivolous, unnecessary or unwarranted, in bad faith, and which so multiplied the proceedings in a case as to increase costs unreasonably and vexatiously, and failed to follow the rules of the Court. *EDCR 7.60;*

105. Given these facts, there is no basis to hold an Evidentiary Hearing with respect to the Order granting Defendants' attorneys' fees and costs, and the Order should stand;

Plaintiffs' Opposition to Countermotion for Fees and Costs

106. This Opposition to "Countermotion," substantively, does not address the pending Countermotions for attorneys' fees and costs, but rather the Motion for Attorneys' Fees and Costs which was filed October 21, 2016 and granted November 21, 2016;

107. The Opposition to that Motion was required to be filed on or before November 10, 2016. It was not filed until January 7, 2017;

108. Separately, Plaintiffs filed a "response" to the Motion for Attorneys' Fees and Costs, and Supplement thereto, on November 17, 2016. As indicated in the Court's November 21, 2016 Minute Order, as confirmed by and incorporated into the Fee Order filed January 20, 2017, that Response was reviewed and considered;

109. Plaintiffs did not attach any Affidavit as required by EDCR 2.21 to attack the reasonableness or the attorneys' fees and costs incurred, the necessity of the attorneys' fees and costs, or the accuracy of the attorneys' fees and costs incurred;

110. There is sufficient basis to strike this untimely Opposition pursuant to EDCR 2.21 and NRCP 56(e) and the same can be construed as an admission that the Motion was meritorious and should be granted;

111. On the merits, Plaintiffs' "assumptions" that "attorneys' fees and costs are being requested based upon the Motion to Dismiss" and that "sanctions under Rule 11 for filing a Motion for Preliminary Injunction against Fore Stars Defendants" is incorrect. As made clear by the itemized billing statements submitted by Defendants, none of the attorneys' fees and costs requested within that Motion related to the Motion to Dismiss. Further, this is also clear because at the time the Motion for Attorneys' Fees and Costs was filed, the hearings on the City's Motion to Dismiss, or the remaining Defendants' Motion to Dismiss, had not even occurred;

112. Plaintiffs erroneously claim that Defendants cited "no statutes or written contracts that would allow for attorneys' fees and costs." Defendants clearly cited to NRS 18.010 and EDCR 7.60;

113. The argument that if this Court declines to sanction Plaintiffs' counsel pursuant to NRCP 11, they cannot grant attorneys' fees and costs pursuant to NRS 18.010 and EDCR 7.60 is nonsensical. These are district statutes with distinct bases for awarding fees;

114. This Court was gracious to Plaintiffs' counsel in exercising its sound discretion in denying the Rule 11 request, and had solid ground for awarding EDCR 7.60 sanctions and attorneys' fees under NRS 18.010 under the facts;

115. Since Motion for Attorneys' Fees and Costs, and Supplement, was not relating to the Motion to Dismiss, the arguments regarding the frivolousness of the Amended Complaint need not be addressed within this section;

116. The argument that Plaintiffs are entitled to fees because they "are the prevailing party under the Rule 11 Motion" fails. Defendants prevailed on every Motion. That the Court declined to impose additional sanctions against Plaintiffs' counsel does not make Plaintiffs the "prevailing party," as the Motion for Attorneys' Fees and Costs was granted. Moreover, Plaintiffs have not properly sought Rule 11 sanctions against Defendants;

117. There is no statute or rule that allows for the filing of an Opposition after a Motion has been granted. The Opposition was improper and should not have been belatedly filed. It compelled Defendants to further respond, causing Defendants to incur further unnecessary attorneys' fees and costs;

Plaintiffs' Motion for Court to Reconsider Order of Dismissal

118. Plaintiffs seek reconsideration pursuant to NRCP 60(b) based on the alleged "misrepresentation" of the Defendants regarding the Amended Master Declaration at the November 1, 2016 Hearing;

119. No such "misrepresentation" occurred. The record reflects that Mr. Jimmerson was reading correctly from the first page of the Amended Master Declaration, which states it was "effective October, 2000." The Court understood that to be the effective date and not necessarily the date it was signed or recorded. Defendants also provided the Supplemental Exhibit R which evidenced that the Amended Master Declaration was recorded on August 16, 2002, and reiterated it was "effective October, 2000," as Defendants' counsel accurately stated. This exhibit also negated Plaintiffs' earlier contention that the Amended Master Declaration had not been recorded at all. Therefore, not only was there no misrepresentation, there was transparency by the Defendants in open Court;

120. The Amended Master Declaration did not "take out" the 27-hole golf course from the definition of "Property," as Plaintiffs erroneously now allege. More accurately, it excluded the entire 27-hole golf course from the possible Annexable Property. This means that not only was it never annexed, and therefore never made part of the Queensridge CIC, but it was no longer even *eligible* to be annexed in the future, and thus could never become part of the Queensridge CIC;

121. It is significant, however, that there are two (2) recorded documents, the Master Declaration and the Amended Master Declaration, which both make clear in Recital A that the GC Land, since it was not annexed, is not a part of the Queensridge CIC;

122. Whether the Amended Master Declaration, effective October, 2000, was recorded in October, 2000, March, 2001 or August, 2002, does not matter, because, as Defendants pointed out at the hearing, Mr. Peccole's July 2000 Deed indicated it was "subject to the CC&Rs that were recorded at the time and as may be amended in the future" and that the "CC&Rs which he knew were going to be amended and subject to being amended, were amended;"

123. The only effect of the Amended Master Declaration's language that the "entire 27-hole golf course is not a part of the Property or the Annexable Property" instead of just the "18 holes," is that the 9 holes which were never annexed were no longer even annexable. Effectively, William and Wanda Peccole and their entities took that lot off the table and made clear that this lot would not and could not later become part of the Queensridge CIC;

124. None of that means that the 9-holes was a part of the "Property" before—as this Court clearly found, it was not. The 1996 Master Declaration makes clear that the 9-holes was only Annexable Property, and it could only become "Property" by recording a Declaration of Annexation. This never occurred;

125. The real relevance of the fact that the Amended Master Declaration was recorded, in the context of the Motion to Dismiss, is that, pursuant to *Brelint v. Preferred Equities*, 109 Nev. 842, the Court is permitted to take judicial notice of, and take into consideration, recorded documents in granting or denying a motion to dismiss;

126. Plaintiffs ignore the fact that notwithstanding the fact that the Amended Master Declaration, effective October, 2000, was not recorded until August, 2002, Plaintiffs transferred Deed to their lot twice, once in 2013 into their Trust, and again in September, 2016, both times

after the Amended Master Declaration (which they were, under their Deeds, subject to) was recorded and both times with notice of the development rights and zoning rights associated with the adjacent GC Land;

127. Plaintiffs' argument that the Amended Master Declaration is "invalid" because it "did not contain the certification and signatures of the Association President and Secretary" is irrelevant, since the frivolousness of Plaintiffs' position is based on the original Master Declaration and not the amendment. But this Court notes that the Declarations of Annexation which are recorded do not contain such signatures of the Association President and Secretary either. Hypothetically, if that renders such Declarations of Annexation "invalid," then Parcel 19, where Plaintiffs' home sits, was never properly "annexed" into the Queensridge CIC, and thus Plaintiffs would have no standing to assert the terms of the Master Declaration against anyone, even other members of the Queensridge CIC. This last minute argument is without basis in fact or law;

128. A Motion for reconsideration under EDCR 2.24 is only appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). And so motions for reconsideration that present no new evidence or intervening case law are "superfluous," and it is an "abuse of discretion" for a trial court to consider such motions. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (76).

129. Plaintiffs' request that the Order be reconsidered because it does not consider issues subsequent to the City Council Meeting of November 16, 2016 is also without merit. The Motion to Dismiss was heard on November 1, 2016 and the Court allowed the parties until November 15, 2016 to supplement their filings. Although late filed, Plaintiffs did file "Additional Information to Brief," and their "Renewed Motion for Preliminary Injunction," on

November 18, 2016—before issuance of the *Findings of Fact, Conclusions of Law, Order and Judgment* on November 30th --putting the Court on notice of what occurred at the City Council Meeting. However, as found hereinabove, the withdrawal and abeyance of City Council Applications does not matter in relation to the Motion to Dismiss. Plaintiffs did not possess "vested rights" over Defendants' GC Land before the meeting and they do not possess "vested rights" over it now;

130. Plaintiffs' objection to the Findings relating NRS 116, NRS 278, NRS 278A and R-PD7 zoning is also without merit, because those Findings are supported by the Supplements timely filed by Defendants, and those statutes and the zoning issue are all relevant to this case with respect to Defendants' right to develop their land. This was raised and discussed in the Motion to Dismiss and Opposition to the first Motion for Preliminary Injunction, and properly and timely supplemented. Defendants did specifically and timely submit multiple documents, including the Declaration of City Clerk Luann Holmes to attest to the fact that NRS 278A does not apply to this controversy, and thus it is clear that the GC Land is not part of or within a planned unit development. Plaintiffs do not even possess standing to assert a claim under NRS 278A, as they are governed by NRS 116. Further, Defendants' deeds contain no title exception or reference to NRS 278A, as would be required were NRS 278A to apply, which it does not;

131. Recital B of the Master Declaration states that Queensridge is a "common interest community pursuant to Chapter 116 of the Nevada Revised Statutes." Plaintiffs raised issues concerning NRS 278A. While Plaintiffs may not have specifically cited NRS 278A in their Amended Complaint, in paragraph 67, they did claim that "The City of Las Vegas with respect to the Queensridge Master Planned Development required 'open space' and 'flood drainage' upon the acreage designated as golf course (The Badlands Golf Course)." NRS 278A, entitled "Planned Unit Development," contains a framework of law on Planned Unit Developments, as

defined therein, and their 'common open space.' NRS 116.1201(4) states that the provisions of NRS 278A do not apply to NRS 116 common-interest communities like Queensridge. Thus, while Plaintiffs may not have directly mentioned NRS 278A, they did make an allegation invoking its applicability;

132. Zoning on the subject GC Land is appropriately referenced in the November 30, 2016 *Findings of Fact, Conclusions of Law, Order and Judgment*, because Plaintiffs contended that the Badlands Golf Course was open space and drainage, but the Court rejected that argument, finding that the subject GC Land was zoned R-PD7;

133. Plaintiffs now allege that alter-ego claims against the individual Defendants (Lowie, DeHart and Pankratz) should not have been dismissed without giving them a chance to investigate and flush out their allegations through discovery. But no alter ego claims were made, and alter ego is a remedy, not a cause of action. The only Cause of Action in the Amended Complaint that could possibly support individual liability by piercing the corporate veil is the Fraud Cause of Action. The Court has rejected Plaintiffs' Fraud Cause of Action, not solely on the basis that it was not plead with particularity, but, more importantly, on the basis that Plaintiffs failed to state a claim for Fraud because Plaintiffs have never alleged that Lowie, DeHart or Pankratz made any false representations to them prior to their purchase of their lot. The Court further notes that in Plaintiffs' lengthy oral argument before the Court, the Plaintiffs did not even mention its claim for, or a basis for, its fraud claim. The Plaintiffs have offered insufficient basis for the allegations of fraud in the first place, and any attempt to re-plead the same, on this record, is futile;

134. Fraud requires a false representation, or, alternatively an intentional omission when an affirmative duty to represent exists. See *Lubbe v. Barba*, 91 Nev. 596, 541 P.2d 115 (1975). Plaintiffs alleged Fraud against Lowie, DeHart and Pankratz, while admitting they never

spoke with any of the prior to the purchase of their lot and have never spoken to them prior to this litigation. Plaintiffs' Fraud Cause of Action was dismissed because they cannot state facts that would support the elements of Fraud. No amount of additional time will cure this fundamental defect of their Fraud claim;

135. Plaintiffs claim that the GC Land that later became the additional nine holes was "Property" subject to the CC&Rs of the Master Declaration at the time they purchased their lot, because Plaintiffs purchased their lot between execution of the Master Declaration (which contains an exclusion that "The existing 18-hole golf course commonly known as the 'Badlands Golf Course' is not a part of the Property or the Annexable Property") and the Amended and Restated Master Declaration (which provides that "The existing 27-hole golf course commonly known as the 'Badlands Golf Course' is not a part of the Property or the Annexable Property"), is meritless, since it ignores the clear and unequivocal language of Recital A (of both documents) that "In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded..."

136. All three of Plaintiffs' claims for relief in the Amended Complaint are based on the concept of Plaintiffs' alleged vested rights, which do not exist against Defendants;

137. There was no "misrepresentation," and there is no basis to set aside the Order of Dismissal;

138. In order for a complaint to be dismissed for failure to state a claim, it must appear beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (emphasis added);

139. It must draw every fair inference in favor of the non-moving party. *Id.* (emphasis added);

140. Generally, the Court is to accept the factual allegations of a Complaint as true on a Motion to Dismiss, but the allegations must be legally sufficient to constitute the elements of the claim asserted. *Carpenter v. Shalev*, 126 Nev. 698, 367 P.3d 755 (2010);

141. Plaintiffs have failed to state a claim upon which relief can be granted, even with every fair inference in favor of Plaintiffs. It appears beyond a doubt that Plaintiffs can prove no set of facts which would entitle them to relief. The Court has grave concerns about Plaintiffs' motives in suing these Defendants for fraud in the first instance;

Defendants' Memorandum of Costs and Disbursements

142. Defendants' Memorandum of Costs and Disbursements was timely filed and served on December 7, 2016;

143. Pursuant to NRS 18.110, Plaintiffs were entitled to file, within three (3) days of service of the Memorandum of Costs, a Motion to Retax Costs. Such a Motion should have been filed on or before December 15, 2016

144. Plaintiffs failed to file any Motion to Retax Costs, or any objection to the costs whatsoever. Plaintiffs have therefore waived any objection to the Memorandum of Costs, and the same is now final;

145. Defendants have provided evidence to the Court along with their Verified Memorandum of Costs and Disbursements, demonstrating that the costs incurred were reasonable, necessary and actually incurred. *Cadle Co. v. Woods & Erickson LLP*, 131 Nev. Adv. Op. 15 (Mar. 26, 2015);

Defendants' Countermotions for Attorneys' Fees and Costs

146. The Court has allowed Plaintiffs to enter thirteen (13) exhibits, only three (3) of which had been previously produced to opposing counsel, by attaching them to Plaintiffs' "*Additional Information to Renewed Motion for Preliminary Injunction*," filed November 28,

2016. The Exhibits should have been submitted and filed on or before November 15, 2016, in advance of the hearing, and shown to counsel before being marked. The Court has allowed Plaintiffs to make a record and to enter never before disclosed Exhibits at this post-judgment hearing, including one document dated January 6, 2017, over Defendants' objection that there has been no Affidavit or competent evidence to support the genuineness and authenticity of these documents, as well as because of their untimely disclosure. The Court notes that Plaintiffs should have been prepared for their presentation and these Exhibits should have been prepared, marked and disclosed in advance, but Plaintiffs failed to do so. *EDCR 7.60(b)(2);*

147. The efforts of Plaintiffs throughout these proceedings to repeatedly, vexatiously attempt to obtain a Preliminary Injunction against Defendants has indeed resulted in prejudice and substantial harm to Defendants. That harm is not only due to being forced to incur attorneys' fees, but harm to their reputation and to their ability to obtain financing or refinancing, just by the pendency of this litigation;

148. Plaintiffs are so close to this matter that even with counsel's experience, he fails to follow the rules in this litigation. Plaintiffs' accusation that the Court was "sleeping" during his oral argument, when the Court was listening intently to all of Plaintiffs' arguments, is objectionable and insulting to the Court. It was extremely unprofessional conduct by Plaintiff;

149. Plaintiffs' claim of an alleged representation that the golf course would never be changed, if true, was alleged to have occurred sixteen (16) years prior to Defendants acquiring the membership interests in Fore Stars, Ltd. Of the nineteen (19) Defendants, twelve (12) were relatives of Plaintiffs or entities of relatives, all of whom were voluntarily dismissed by Plaintiffs. The original Complaint faulted the Peccole Defendants for not "insisting on a restrictive covenant" on the golf course limiting its use, which would not have been necessary if

the Master Declaration applied. This was a confession of the frivolousness of Plaintiffs' position. *NRS 18.010(2)(b); EDCR 7.60(b)(1)*;

150. Between September 1, 2016 and the date of this hearing, there were approximately ninety (90) filings. This multiplication of the proceedings vexatiously is in violation of EDCR 7.60. *EDCR 7.60(b)(3)*;

151. Three (3) Defendants, Lowie, DeHart and Pankratz, were sued individually for fraud, without one sentence alleging any fraud with particularity against these individuals. The maintenance of this action against these individuals is a violation itself of NRS 18.010, as bad faith and without reasonable ground, based on personal animus;

152. Additionally, EDCR 2.30 requires that any Motion to amend a complaint be accompanied by a proposed amended Complaint. Plaintiffs' failure to do so is a violation of EDCR 2.30. EDCR 7.60(b)(4);

153. Plaintiffs violated EDCR 2.20 and EDCR 2.21 by failing to submit their Motions upon sworn Affidavits or Declarations under penalty of perjury, which cannot be cured at the hearing absent a stipulation. *Id.;*

154. Plaintiffs did not file any post-judgment Motions under NRCP 52 or 59, and two of their Motions, namely the *Motion to Reconsider Order of Dismissal* and the *Motion for Evidentiary Hearing and Stay of Order for Rule 11 Fees and Costs*, were untimely filed after the 10 day time limit contained within those rules, or within EDCR 2.24.

155. Plaintiffs also failed to seek leave of the Court prior to filing its Renewed Motion for Preliminary Injunction or its Motion to Reconsider Order of Dismissal. *Id.;*

156. Plaintiffs' Opposition to Countermotion for Attorneys' Fees and Costs, filed January 5, 2017, was an extremely untimely Opposition to the October 21, 2016 Motion for

Attorneys' Fees and Costs, which was due on or before November 10, 2016. All of these are failures or refusals to comply with the Rules. *EDCR 7.60(b)(4);*

157. While it does not believe Plaintiffs are intentionally doing anything nefarious, they are too close to this matter and they have refused to heed the Court's Orders, Findings and rules and their actions have severely harmed the Defendants;

158. While Plaintiffs claim to have researched the *Eagle Thrifty* case prior to filing the initial Complaint, admitting they were familiar with the requirement to exhaust the administrative remedies, they filed the first Motion for Preliminary Injunction anyway, in which they failed to even cite to the *Eagle Thrifty* case, let alone attempt to exhaust their administrative remedies;

159. Plaintiffs' motivation in filing these baseless "preliminary injunction" motions was to interfere with, and delay, Defendants' development of their land, particularly the land adjoining Plaintiffs' lot. But while the facts, law and evidence are overwhelming that Plaintiffs ultimately could not deny Defendants' development of their land, Plaintiffs have continued to maintain this action and forced Defendants to incur substantial attorneys' fees to respond to the unsupported positions taken by Plaintiffs, and their frivolous attempt to bypass City Ordinances and circumvent the legislative process. These actions continue with the current four (4) Motions and the Opposition;

160. Plaintiffs' Renewed Motion for Preliminary Injunction (a sixth attempt), Plaintiffs' untimely Motion to Amend Amended Complaint (with no proposed amendment attached), Plaintiffs' untimely Motion to Reconsider Order of Dismissal, Plaintiffs' Motion for Evidentiary Hearing and Stay of Rule 11 Fees and Costs (which had been denied) and Plaintiffs' untimely Opposition were patently frivolous, unnecessary, and unsupported, and so multiplied the proceedings in this case so as to increase costs unreasonably and vexatiously;

161. Plaintiffs proceed in making "scurrilous allegations" which have no merit, and to asset "vested rights" which they do not possess against Defendants;

162. Considering the length of time that the Plaintiffs have maintained their action, and the fact that they filed four (4) new Motions after dismissal of this action, and ignored the prior rulings of the Court in doing so, and ignored the rules, and continued to name individual Defendants personally with no basis whatsoever, the Court finds that Plaintiffs are seeking to harm the Defendants, their project and their land, improperly and without justification. Plaintiffs' emotional approach and lack of clear analysis or care in the drafting and submission of their pleadings and Motions warrant the award of reasonable attorney's fees and costs in favor of the Defendants and against the Plaintiffs. *See EDCR 7.60 and NRS 18.010(b)(2)*;

163. Pursuant to *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), Defendants have submitted affidavits regarding attorney's fees and costs they requested, in the sum of $7,500 per Motion. Considering the number of Motions filed by Plaintiffs on an Order Shortening Time, including two not filed or served until December 22, 2016, and an Opposition and Replies to two Motions filed by Plaintiffs on January 5, 2017, which required response in two (2) business days, the requested sum of $7,500 in attorneys' fees per each of the four (4) motions is most reasonable and necessarily incurred. Given the detail within the filings and the timeframe in which they were prepared, the Court finds these sums , totaling $30,000 ($7,500 x 4) to have been reasonably and necessarily incurred;

Plaintiffs' Oral Motion for Stay Pending Appeal.

164. Plaintiffs failed to satisfy the requirements of NRAP 8 and NRCP 62(c). Plaintiffs failed to show that the object of their potential appeal will be defeated if their stay is denied, they failed to show that they would suffer irreparable harm or serious injury if the stay is not issued, and they failed to show a likelihood of success on the merits.

ORDER AND JUDGMENT

NOW, THEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Renewed Motion for Preliminary Injunction* is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' *Motion For Leave To Amend Amended Complaint*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Evidentiary Hearing And Stay Of Order For Rule 11 Fees And Costs*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that *Plaintiffs' Motion For Court To Reconsider Order Of Dismissal*, is hereby denied, with prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' Countermotion to Strike *Plaintiffs' Rogue and Untimely Opposition Filed 1/5/17 (titled Opposition to "Countermotion" but substantively an Opposition to the 10/21/16 Motion for Attorney's Fees And Costs, granted November 21, 2016)*, is hereby granted, and such Opposition is hereby stricken;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' request for $20,818.72 in costs, including the $5,406 already awarded on November 21, 2016, and the balance of $15,412.72 in costs through October 20, 2016, pursuant to their timely *Memorandum of Costs and Disbursements*, is hereby granted and confirmed to Defendants, no Motion to Retax having been filed by Plaintiffs. Said costs are hereby reduced to Judgment, collectible by any lawful means;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Judgment entered in favor of Defendants and against Plaintiffs in the sum of $82,718.50, comprised of $77,312.50

in attorneys' fees and $5,406 in costs relating only to the preliminary injunction issues after the September 2, 2016 filing of Defendants' first Opposition through the end of the October, 2016 billing cycle, is hereby confirmed and collectible by any lawful means;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Countermotion for Attorneys' Fees relating to their responses to Plaintiffs four (4) motions and one (1) opposition, and the time for appearance at this hearing, is hereby GRANTED. Defendants are hereby awarded additional attorneys' fees in the sum of $30,000 relating to those matters pending for this hearing;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, therefore, Defendants are awarded a total sum of $128,131.22 ($20,818.72 in attorneys' fees and costs, including the $5,406 in the November 21, 2016 Minute Order and confirmed by the Fee Order filed January 20, 2017, $77,312.50 in attorneys' fees pursuant to the November 21, 2016 Minute Order, as incorporated within and confirmed by Fee Order filed January 20, 2017, and $30,000 in additional attorneys' fees relating to the instant Motions, Oppositions and Countermotions addressed in this Order), which is reduced to judgment in favor of Defendants and against Plaintiffs, collectible by any lawful means, plus legal interest;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' oral Motion for Stay pending appeal is hereby denied;

DATED this 31 day of January, 2017.

DISTRICT COURT JUDGE
A-16-739654-C

BA

Exhibit 28

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT N. PECCOLE; AND NANCY A. PECCOLE, Appellants, vs. FORE STARS, LTD., A NEVADA LIMITED LIABILITY COMPANY; 180 LAND CO., LLC, A NEVADA LIMITED LIABILITY COMPANY; SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY; EHB COMPANIES, LLC, A NEVADA LIMITED LIABILITY COMPANY; YOHAN LOWIE, AN INDIVIDUAL; VICKIE DEHART, AN INDIVIDUAL; AND FRANK PANKRATZ, AN INDIVIDUAL, Respondents.	No. 72410
ROBERT N. PECCOLE; AND NANCY A. PECCOLE, INDIVIDUALS, Appellants, vs. FORE STARS, LTD., A NEVADA LIMITED LIABILITY COMPANY; 180 LAND CO., LLC, A NEVADA LIMITED LIABILITY COMPANY; SEVENTY ACRES, LLC, A NEVADA LIMITED LIABILITY COMPANY; EHB COMPANIES, LLC, A NEVADA LIMITED LIABILITY COMPANY; YOHAN LOWIE, AN INDIVIDUAL; VICKIE DEHART, AN INDIVIDUAL; AND FRANK PANKRATZ, AN INDIVIDUAL, Respondents.	No. 72455

FILED

OCT 17 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

These consolidated appeals are from district court orders awarding attorney fees and costs and denying NRCP 60(b) relief from a

dismissal order in a real property dispute.[1] Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

This case arises out of a dispute appellants have with respondents, who are planning to develop property on which a golf course is presently located, and which appellants argue is subject to development restrictions under the Master Declaration of Covenants, Conditions, Restrictions and Easements (CC&Rs) for the Queensridge community in Las Vegas where appellants reside. Appellants sued respondents for injunctive relief and damages based on theories of impaired property rights and fraud. The district court dismissed appellants' complaint and then denied appellants' motion for NRCP 60(b) relief. Additionally, the district court awarded respondents a total of $128,131.22 in attorney fees and costs. These appeals followed.

First, appellants argue that the district court abused its discretion in denying NRCP 60(b) relief by relying on an invalid amendment to the CC&Rs in concluding that the golf course property was not subject to the CC&Rs. Because the record supports the district court's determination that the golf course land was not part of the Queensridge community under the original CC&Rs and public maps and records, regardless of the amendment, we conclude the district court did not abuse its discretion in denying appellants' motion for NRCP 60(b) relief. *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (providing that the district court has

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

broad discretion in deciding whether to grant or deny an NRCP 60(b) motion to set aside a judgment, and this court will not disturb that decision absent an abuse of discretion).

Second, appellants contend that the district court violated their procedural due process rights by awarding respondents attorney fees and costs without first holding an evidentiary hearing. We disagree. An evidentiary hearing is not required before an award of attorney fees and costs. *See Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000) (providing that the requirement of "an opportunity to be heard" before sanctions may issue "does not require [the court to hold] an oral or evidentiary hearing on the issue"). Appellants had notice of respondents' motions for attorney fees and costs and took advantage of the opportunity to respond to those requests in writing and orally. *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that due process requires notice and opportunity to be heard). Thus, we conclude the district court did not violate appellants' due process rights by failing to hold an evidentiary hearing before awarding respondents attorney fees and costs.

Lastly, appellants assert that appellant Robert Peccole's preparation, research, and 55-year legal career demonstrate that the attorney fees and costs award as a sanction was improper. NRS 18.010(2)(b) permits the district court to award attorney fees to a prevailing party when the court finds that the claim "was brought or maintained without reasonable ground or to harass the prevailing party." Additionally, EDCR 7.60(b) allows the district court to impose a sanction including attorney fees

and costs when an attorney or party "without just cause. . . [p]resents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted. . . [or] multiplies the proceedings in a case as to increase costs unreasonably and vexatiously."

Appellants filed a complaint alleging the golf course land was subject to the CC&Rs when the CC&Rs and public maps of the property demonstrated that the golf course land was not. Further, after the district court denied appellants' first motion for a preliminary injunction and explained its reasoning, appellants filed a second almost identical motion, a motion for rehearing of the denial of one of those motions, and a renewed motion for preliminary injunction, all of which included the same facts or argument. Additionally, the district court repeatedly warned appellants that they were too close to the issue to see it clearly or accept any of the court's decisions and despite this warning, they continued to file repetitive and meritless motions. The district court limited the award to fees and costs incurred in defending the repetitive motions and issued specific findings regarding each of the factors set forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), and the record supports the amount awarded. *See Miller v. Wilfong*, 121 Nev. 619, 623, 119 P.3d 727, 730 (2005) (requiring the district court to consider the *Brunzell* factors when awarding attorney fees). Further, Robert's extensive experience as an attorney is not a factor under *Brunzell* and because the district court was within its discretion to award attorney fees and costs for the repetitive and frivolous parts of the litigation, it is unclear how Robert's extensive legal career would make the award improper. Thus, we conclude the district court did not abuse its discretion in awarding respondents attorney fees and costs. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330, 130 P.3d 1280,

1288 (2006) (explaining that this court will not overturn a district court's decision to award attorney fees and costs as a sanction absent a manifest abuse of discretion). Accordingly, we

ORDER the judgments of the district court AFFIRMED.

_____, C.J.
Douglas

_____, J.
Gibbons

_____, J.
Stiglich

cc: Hon. Douglas Smith, District Judge
Ara H. Shirinian, Settlement Judge
Peccole & Peccole, Ltd.
The Jimmerson Law Firm, P.C
Sklar Williams LLP
EHB Companies, LLC
Eighth District Court Clerk

Exhibit 31

PLANNING COMMISSION MEETING

JUNE 13, 2017

VERBATIM TRANSCRIPT – AGENDA ITEM 82

ITEM 82 – DIRECTOR'S BUSINESS – NOTE: NOT TO BE HEARD BEFORE 9:00PM - DIR-70539 - DIRECTOR'S BUSINESS - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Development Agreement between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-201-005; 138-31-601-008; 138-31-702-003 and 004; 138-31-801-002 and 003; 138-32-202-001; and 138-32-301-005 and 007), Ward 2 (Beers) [PRJ-70542]. Staff recommends APPROVAL.

Appearance List:

TRINITY HAVEN SCHLOTTMAN, Planning Commission Chair
PETER LOWENSTEIN, Planning Section Manager, City of Las Vegas
TODD L. MOODY, Planning Commissioner
BRAD JERBIC, City Attorney, City of Las Vegas
CHRIS KAEMPFER, Legal Counsel for the Applicant
STEPHANIE ALLEN, Legal Counsel for the Applicant
SHAUNA HUGHES, Legal Counsel for Queensridge Homeowners Association
UNIDENTIFIED SPEAKER
TODD BICE, Legal Counsel for the Queensridge Homeowners
GEORGE GARCIA, GC Garcia, Inc., 1055 Whitney Ranch Drive, Henderson
DOUG RANKIN, GC Garcia, Inc., 1055 Whitney Ranch Drive, Henderson
MICHAEL BUCKLEY, Representative for the Frank and Jill Fertitta Family Trust
FRANK SCHRECK, Queensridge Resident
RON IVERSEN, Board Treasurer, Queensridge Homeowners Association
ANNE SMITH, Queensridge Resident
EVAN THOMAS, Queensridge Resident

CERTIFIED AS A TRUE COPY
LuAnn D. Holmes, City Clerk
City of Las Vegas 7/19/17
83 pgs.

Appearance List continued:

DEBRA KANER, Queensridge Resident
JERRY ENGEL, Queensridge Resident
JOHNNY (last name not provided), Queensridge Resident
LARRY SADOFF, Queensridge Resident
TERRY HOLDEN, Queensridge Resident
HERMAN AHLERS, Queensridge Resident
FRANK PANKRATZ, Applicant/Owner
JAMES JIMMERSON, Legal Counsel for the Applicant
VICKI QUINN, Planning Commissioner
GLENN TROWBRIDGE, Planning Commissioner
SAM CHERRY, Planning Commissioner
MARK FAKLER, GCW Inc., 1555 South Rainbow Boulevard
YOHAN LOWIE, Applicant/Owner
BART ANDERSON, Engineering Project Manager, Public Works, City of Las Vegas
DONNA TOUSSAINT, Planning Commissioner
CEDRIC CREAR, Planning Commissioner
TOM PERRIGO, Director of Planning, City of Las Vegas

(2 hours, 42.5 minutes) [5:06:24 – 7:48:53]
Typed by: Speechpad.com
Proofed by: Arlene Coleman

TOM PERRIGO

The zoning for this property, R-PD7 was in existence prior to the change in the General Plan. The General Plan was a staff-initiated change that I believe came in about 2005. The applicant has a right to that zoning. And there is a requirement that the land use will be amended at some future date in order to make it consistent. But even if that action didn't come forward, it doesn't take away the rights that the applicant has to the zoning. The previous, the application for the project across the street that requires a GPA, or is it a major mod? I forget now.

COMMISSIONER CREAR

Well, there's a major mod. It was the –

TOM PERRIGO

It's major mod because that did substantially change what was planned for that site. Previously, when this application came forward and it was significantly more units, we did feel that it was significantly outside of the, that original plan. This proposal is within the existing density of the zoning and is not completely outside of the unit count for the plan. So, at this time, we felt that the development agreement could be the mechanism to exercise the R-PD zoning.

BRAD JERBIC

If I can jump in too and just say that everything Tom said is absolutely accurate. The R-PD7 preceded the change in the General Plan to PR-OS. There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know.

But either way, there will be an attempt in the future, because we don't do general plan amendments monthly or weekly. We do them quarterly. And at that appropriate time, you will be able to consider a general plan amendment. If you vote for it, great, they're synchronized. If you don't vote for it, it doesn't change a darn thing. The zoning is still hard and in place.

PETER LOWENSTEIN
Mr. Chairman, Item 82 will be heard at City Council on June 21st, 2017.

STEPHANIE ALLEN
Thank you very, very much.

CHRIS KAEMPFER
Thank you very much.

STEPHANIE ALLEN
We appreciate all your time and lots of deliberation.

CHRIS KAEMPFER
And a good morning.

STEPHANIE ALLEN
And thank you very much. Appreciate it.

CHRIS KAEMPFER
Thank you all, and thank the neighbors for coming as well. Thank you.

(END OF DISCUSSION)

/ac

Exhibit 33

CITY COUNCIL MEETING

JUNE 21, 2017

COMBINED VERBATIM TRANSCRIPT – AGENDA ITEMS 82, 130-134

NOTE: This combined verbatim transcript includes Items 82 and 130 through 134, which were heard in the following order: Items 131-134; Item 130; Item 82.

ITEM 82 - NOT TO BE HEARD BEFORE 3:00 P.M. - Bill No. 2017-27 - For possible action - Adopts that certain development agreement entitled "Development Agreement For The Two Fifty," entered into between the City and 180 Land Co, LLC, et al., pertaining to property generally located at the southwest corner of Alta Drive and Rampart Boulevard. Sponsored by: Councilman Bob Beers

ITEM 130 - NOT TO BE HEARD BEFORE 3:00 P.M. - DIR-70539 - DIRECTOR'S BUSINESS - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Development Agreement between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-201-005; 138-31-601-008; 138-31-702-003 and 004; 138-31-801-002 and 003; 138-32-202-001; and 138-32-301-005 and 007), Ward 2 (Beers) [PRJ-70542]. Staff recommends APPROVAL.

ITEM 131 - NOT TO BE HEARD BEFORE 3:00 P.M. - GPA-68385 - ABEYANCE ITEM - GENERAL PLAN AMENDMENT - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a General Plan Amendment FROM: PR-OS (PARKS/RECREATION/OPEN SPACE) TO: L (LOW DENSITY RESIDENTIAL) on 166.99 acres at the southeast corner of Alta Drive and Hualapai Way (APN 138-31-702-002), Ward 2 (Beers) [PRJ-67184]. Staff has NO RECOMMENDATION. The Planning Commission failed to obtain a supermajority vote which is tantamount to DENIAL.

ITEM 132 - NOT TO BE HEARD BEFORE 3:00 P.M. - WVR-68480 - ABEYANCE ITEM - WAIVER RELATED TO GPA-68385 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Waiver TO ALLOW 32-FOOT PRIVATE STREETS WITH A SIDEWALK ON ONE SIDE WHERE 47-FOOT PRIVATE STREETS WITH SIDEWALKS ON BOTH SIDES ARE REQUIRED WITHIN A PROPOSED GATED RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder's Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

ITEM 133 - NOT TO BE HEARD BEFORE 3:00 P.M. - SDR-68481 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW RELATED TO GPA-68385 AND WVR-68480 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Site Development Plan Review FOR A PROPOSED 61-LOT SINGLE FAMILY RESIDENTIAL DEVELOPMENT on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder’s Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

ITEM 134 - NOT TO BE HEARD BEFORE 3:00 P.M. - TMP-68482 - ABEYANCE ITEM - TENTATIVE MAP RELATED TO GPA-68385, WVR-68480 AND SDR-68481 - PARCEL 1 @ THE 180 - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND COMPANY, LLC - For possible action on a request for a Tentative Map FOR A 61-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION on 34.07 acres at the southeast corner of Alta Drive and Hualapai Way (Lot 1 in File 121, Page 100 of Parcel Maps on file at the Clark County Recorder’s Office; formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planned Development - 7 Units per Acre) Zone, Ward 2 (Beers) [PRJ-67184]. The Planning Commission (4-2 vote) and Staff recommend APPROVAL.

Appearance List – Items 131-134:

CAROLYN GOODMAN, Mayor
BRAD JERBIC, City Attorney
BOB COFFIN, Councilman
TODD BICE, Legal Counsel for the Queensridge Homeowners
STEPHANIE ALLEN, Legal Counsel for the Applicant
FRANK SCHRECK, Queensridge resident
CHRIS KAEMPFER, Legal Counsel for the Applicant
TOM PERRIGO, Planning Director
GEORGE C. SCOTT WALLACE
LILIAN MANDEL, Fairway Pointe resident
DAN OMERZA, Queensridge resident
TRESSA STEVENS HADDOCK, Queensridge resident
NGAI PINDELL, William S. Boyd School of Law
DOUG RANKIN, 1055 Whitney Ranch Drive
LOIS TARKANIAN, Councilwoman
GEORGE GARCIA, 1055 Whitney Ranch Drive
MICHAEL BUCKLEY, on behalf of Frank and Jill Fertitta Family Trust
STAVROS ANTHONY, Councilman
SHAUNA HUGHES, on behalf of the Queensridge homeowners
HERMAN AHLERS, Queensridge resident
BOB PECCOLE, on behalf of Appellants in the Nevada Supreme Court
DALE ROESSNER, Queensridge resident
ANNE SMITH, Queensridge resident
KARA KELLEY, Queensridge resident
PAUL LARSEN, Queensridge resident
LARRY SADOFF, Queensridge resident
LUCILLE MONGELLI, Queensridge resident

Appearance List continued – Items 131-134:

RICK KOSS, St. Michelle resident

HOWARD PEARLMAN

SALLY JOHNSON-BIGLER, Queensridge resident

DAVID MASON, Queensridge resident

TERRY MURPHY, on behalf of the Frank and Jill Fertitta Trust

ELAINE WENGER-ROESSNER

TALI LOWIE, Queensridge resident

JAMES JIMMERSON, Legal Counsel for the Applicant

YOHAN LOWIE, Applicant/Owner

RICKI BARLOW, Councilman

BOB BEERS, Councilman

Appearance List – Item 130:

CAROLYN GOODMAN, Mayor

BRAD JERBIC, City Attorney

LOIS TARKANIAN, Councilman

CHRIS KAEMPFER, Legal Counsel for the Applicant

YOHAN LOWIE, Applicant/Owner

BOB COFFIN, Councilman

JAMES JIMMERSON, Legal Counsel for the Applicant

STEVEN D. ROSS, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

Appearance List – Item 82:

CAROLYN GOODMAN, Mayor

BRAD JERBIC, City Attorney

CHRIS KAEMPFER, Legal Counsel for the Applicant

STEVEN D. ROSS, Councilman

STEPHANIE ALLEN, Legal Counsel for the Applicant

In the order noted above:

Items 131-134

(7:29:35 – 10:27:00) [2 hours, 58 minutes, 35 seconds]

Item 130

(10:27:00 – 10:48:47) [21 minutes, 47 seconds]

Item 82

(10:48:47 – 10:51:57) [3 minutes, 10 seconds]

Typed by: Speechpad.com

Proofed by: Arlene Coleman

ITEMS 131-134

MAYOR GOODMAN

Alright, we're on to Agenda Item 130.

BRAD JERBIC

Your Honor, if I could interrupt for a moment.

MAYOR GOODMAN

Okay. Hold on one second until I've got everybody here. Okay. We have to have – excuse me.

COUNCILMAN COFFIN

Well, I can hear it.

MAYOR GOODMAN

You can hear it as you walk in back?

COUNCILMAN COFFIN

Yes, I can hear it.

MAYOR GOODMAN

Okay. Wait. They're still talking. Okay, Mr. Jerbic.

BRAD JERBIC

Thank you. As I indicated earlier, I have a recommendation on 130 and Item 82, which are kind of companion items. But I've been in contact with the developer's attorney, and I believe it would be in the interest of the Council to hear four other items before you hear the Development Agreement for Badlands. There happen to be four other items that are not related to the Development Agreement, they are standalone items: Items 131, 132, 133 and 134, that all relate

to a request for 61 individual home sites on the property known as Badlands. I would ask that you at this time call 131 through 134 and hold that hearing before we discuss Item 130.

MAYOR GOODMAN

And when do we get to 82?

BRAD JERBIC

After you vote on 131 through 134 -

MAYOR GOODMAN

Okay.

BRAD JERBIC

We'll hear –

MAYOR GOODMAN

Okay. So 131 through – okay, 131 through 134.

BRAD JERBIC

That's correct.

MAYOR GOODMAN

Then back to 130, then to 82.

BRAD JERBIC

That's correct. Okay. So I will read –

TODD BICE

We'd like to be heard on this abeyance issue.

BRAD JERBIC

We haven't gotten to that yet, Mr. Bice.

MAYOR GOODMAN

What abeyance issue?

TODD BICE

I think the problem with that is, is that -

MAYOR GOODMAN

You want to go to the microphone? Please.

TODD BICE

My apologies.

MAYOR GOODMAN

And then who are you, please, for the record.

TODD BICE

Todd Bice. My address is 400 South 7th Street. We don't believe that it's accurate to say that these items are unrelated to Item 82 and Item 130, which pertain to the Development Agreement. This is all part and parcel of the same development.

I do agree with the City Attorney that the Development Agreement, quite frankly, has to be held. We dispute that it is even properly on this agenda. But nonetheless, with respect to that item,

these other items are – the City is allowing the developer to submit competing items. These are competing with that, and you don't allow any other developer to do that.

So, with all due respect, not only does that Development Agreement need to be held, which applies to this same property, so do these items. Otherwise, you're allowing competing items to be put on the agenda, or you then turn around and you're allowing this sort of piecemeal development, where well, we'll consider this application, we'll consider that application, we won't consider others. That is, again, inconsistent with everything you do for every other developer. It's just simply not consistent with your conduct on everyone else.

So we ask that if you're, that all these items should be considered together and they should all be held. Just because, as I agree with the City Attorney, the Development Agreement has to be held. So that's our position. I thank you.

STEPHANIE ALLEN

Your Honor, members of the Council, Stephanie Allen here on behalf of the applicant for all of the items listed. The reason we prefer to hear the former items rather than the earlier items is to avoid, basically, a multiple-hour discussion on the abeyance issue. We've had 19 abeyances up ‘til today's date. We've been going at this for two years.

So we'd very much appreciate your consideration on the items that have been on the agenda. They were held intentionally so that the holistic project could catch up to them and you'd have them both on your agenda, with the idea that one of them would be withdrawn. To the extent the Development Agreement is going to be held tonight, we'd very much appreciate your consideration on those items that have been held in abeyance.

MAYOR GOODMAN

Okay. So returning back, as stated.

BRAD JERBIC

Again, I believe the request for the applicant is to have 131 through 134 heard first. Mr. Bice, let me ask you a question. I assume you intend to ask for an abeyance on 131 through 134. And my question to you is: Do you want to make that case right now, or do you want to make it after the developer does their presentation?

TODD BICE

No. I think they need to be held in an abeyance just like the – you can't, with all due respect, I don't believe it's appropriate to separate the Development Agreement aspect out of these applications and say, well, let's consider that after the fact. That's an admission by the developer that he's trying to use one as a bargaining chip for the other to try and offer up inconsistent positions. That's not the purpose of a planning meeting for the City Council. We have simply made the point all along. They've brought this Development Agreement forward. The Development Agreement governs the entire project. It has to be held in abeyance.

This attempt to thread – spot zone isn't the right terminology, but it's the equivalent of piecemealing a project by these individual applications, which are then, in fact, in competition and in conflict with the very application for the Development Agreement, that the developer has proposed and sought an approval of from the Planning Commission. It's just simply not the way in which the City has done business for anyone else, and it's inconsistent with the City Code.

So yes, we ask right now all of these items be held in abeyance until the Development Agreement is considered, because that's ultimately what overrides all of this.

I thank you. Go ahead.

FRANK SCHRECK

Frank Schreck, 9824 Winter Palace. This item has been held three times. It's been held at the request of the City. It's been held at the request of the City and then the request of the developer. It was held four months in a row – April, March, April and May. Or no, I guess April, May and June at the request of the City and a request of the developer. We were all here, but those were

held in abeyance. We've asked to have this held in abeyance, because it conflicts, you know, with the Development Agreement which covers the same land.

So now you're piecemealing it and doing this now. What are you going to approve when you approve a development agreement later? They already have this already approved. It's inconsistent. They shouldn't be on the same agenda, as Todd said, and the three continuances were asked by them and the City, not us.

CHRIS KAEMPFER

First of all, Your Honor, may I respond to those comments and actually those of Mr. Bice? It is not fair to say that considerations like this have never been granted to any other developer in the history of the City of Las Vegas. I have been around for a lot of years, and I can tell you considerations are granted when it's fair and when it's right. The application that is before you now, the first is (sic) the applications 131 through 134. Those are the applications that in due course are said here.

Now, were they delayed at the request of the City a couple of times? Yes. And then the other one, the neighbors suggested to us that they should be delayed, and we said okay. So it was our request working with the neighborhood to delay it. But we are entitled to be heard on an application that staff is recommending approval on, that the Planning Commission recommended approval on and that conforms to every standard of zoning practice in the City of Las Vegas. We're saying if this item is heard and approved, then the holding of the other item and working with that to get that thing resolved would then handle the whole thing. But right now, we would like to proceed with an application that has been noticed properly for this hearing now.

MAYOR GOODMAN

Well, what I'm going to do is I'm going to do as our attorney has suggested. I am going to read Items 131 through 134, because you will understand as we get to the commentary at the end of that, then I will read 130, and then we'll go back to Agenda Item whatever that is, 82.

So 131, GPA-68385, on a request for a General Plan Amendment from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) on 166.99 acres at the southeast corner of Alta and Hualapai Way.
Agenda Item 132, WVR-68480, on a request for a waiver to allow 32-foot private streets with a sidewalk on one side where 47-foot private streets with sidewalks on both sides are required within a proposed gated residential development.
And related Item 133, SDR-68481, on a request for a Site Development Plan Review for a proposed 61-lot single-family residential development.
And related Item 134, TMP-68482, on a request for a tentative map for a 61-lot single-family residential subdivision on 34.07 acres, southeast corner of Alta and Hualapai Way (Lot 1 in File 121 Page 100 of Parcel Maps on file at the Clark County Recorder's Office, formerly a portion of APN 138-31-702-002), R-PD7 (Residential Planed Development - 7 Units per Acre) Zone.
The Applicant/Owner is 180 Land Company, LLC. Staff has no recommendation on Item 131, and the Planning Commission failed to obtain a supermajority vote on Item 131, which is tantamount to denial. The Planning Commission and Staff recommend approval on Items 132 through 134. These are in Ward 2, with Councilman Beers, and are public hearings which I declare open.
So, at this point, to continue on with that, we will go forward on these, or shall I read in 130 at this point and include that?

BRAD JERBIC
No. I believe that you should hear these at this point. Let me say for the record too that I agree with Mr. Bice that these two things are incompatible. The Development Agreement, as contemplated, does not have 61 custom home sites. It's got 65 total for the whole 183 acres of the golf course. This is simply 61 sites at 34 acres.
I think the answer is pretty clear. If this passes, then there will have to be a reconciliation in the future if there is a development agreement. And I think that Mr. Kaempfer will be the first to stipulate that if the Development Agreement contains 65 custom home sites, then they'll rescind

this request if that agreement is eventually approved. But I think that's the way that this is resolved is you can certainly vote up or down on this. Now, and, of course, if you vote no on this right now, you don't have any issue at all. There's no inconsistence with anything.

MAYOR GOODMAN

I have a question of you, because we have been meeting on this for a long, long time with a lot of issues. And when we approved the development on the, let's see, the south – what is it – the southeast corner for the development under the high rises, I personally, with the support of Council, asked you if you would go in and try to negotiate so we were not in piecemeal development and could come through with an agreement where everybody is, you know, I mean, he's a great developer. I've never seen anything he's built that hasn't been absolutely fabulous. But we were at a point that we made the decision to go ahead with that, that corner that is actually it's the northeast corner, not the southeast. It's the northeast corner at Rampart and Alta for that development.

And so my request to you, specifically with the support of the Council was: Can you get in there so we can approve the whole thing and then move from there? So where are we before I even go into this?

BRAD JERBIC

Yeah. I don't want to say too much right now, because you haven't called 130 forward. But when we get to 130, I'm going to make a record that's exactly what we have been doing since you gave that direction in January of this year. Mr. Perrigo and myself have been meeting with Mr. Lowie and his team on a regular basis. We've been meeting with neighborhood groups, neighborhood attorneys on a regular basis, individual neighborhoods that are uniquely affected.

We, I believe, are very, very, very close in my opinion. There may be some disagreement. But I think we are very, very close to a, an agreement. But last night we had a couple of issues, that I will talk about later when we get to 130, that did not resolve. At the same time, there is not a

development agreement in the backup that reflects any of the changes that were approved by the Planning Commission or by Recommending Committee.
Our plan was to put that all together in one big amendment that we'd be presented today -

MAYOR GOODMAN
Right.

BRAD JERBIC
- without the missing pieces yesterday. I'll go into more detail later as to why I think it's not complete right now and I think it should be held in abeyance.

MAYOR GOODMAN
But in all fairness – and I'm no attorney, thank God – to go through and vote on these items before you can answer the question that I asked about. I mean that's not, to me that's not in good faith. It is where are we with the whole –

BRAD JERBIC
Right now –

MAYOR GOODMAN
What we asked you to do, which I know you've been working 24/7 forever on this and it is absolutely, you know, we see it a working relationship that can be developed where everybody, nobody gets 100 percent, but everybody's got their 85 percent. And so, to me, the whole has to work before you start – unless you're telling me go through each one of these, take the vote, have the public hearing, go through it piecemeal – is that what you're telling us to do?

BRAD JERBIC
I'm telling you that the developer has requested that. He has had this individual, standalone project up before this Council and the Planning Commission for a very long time. And it would have gone away if there had been a development agreement considered today and approved today. But because I am recommending that you don't even consider it today, it clearly won't be approved today. If it's approved in the future, it'll go away. But he wants to get moving on what he has a right to ask for right now in his opinion. He believes he has a right to ask for the standalone, as you call it, piecemeal part of Queensridge.
And that is exactly what it is. I wish I could tell you that we had a development agreement and you didn't have to consider this a piece at a time. But we don't right now, in my opinion, and I believe it should be held in abeyance so we can continue to pursue that. But in the meantime, he wants to go forward with this piece in spite of that.

MAYOR GOODMAN
Okay. I mean, that's the prerogative. My further question to you, because it's got to be very clear to me, maybe they're further ahead and get it, but I don't yet. If in fact we – how close do you feel the parties are to resolving issues that may not be resolved?

BRAD JERBIC
If I could, Your Honor, we really need to call 130 if we're going to go any further on this, because I'm really talking on items that are not right now up for consideration.

MAYOR GOODMAN
Okay. All right. Here we go.

BRAD JERBIC
I will get into that. I will answer that.

MAYOR GOODMAN

Well, let's go do it. Off we go. So the applicant present or representative, we know that. So please go ahead.

CHRIS KAEMPFER

Okay. And Your Honor, let me address why this isn't what it might seem to be.

MAYOR GOODMAN

Okay.

CHRIS KAEMPFER

We have –

MAYOR GOODMAN

I'm going to make sure today – we've had a long meeting with something that was extremely long and involved, and I asked everybody absolutely no applauding, no screaming, no yay, no nothing. And we worked through it, and it was just, it was a wonderful, wonderful work through. We're going to get there. We are going to get there. But please be courteous, everybody to everybody else, and let's not have any comments, no laughter, no applause, no kumbaya. So go ahead, please, Mr. Kaempfer.

CHRIS KAEMPFER

Okay. Let me finish what I, not from you, but from the crowd, what I was about to say.

MAYOR GOODMAN

Okay.

CHRIS KAEMPFER

We have a developer here who has spent literally hundreds of thousands of dollars a month on this project. He has a lender who is saying: You don't have any real entitlements to show me except one 435, out of all this acreage 17 acres. You better start showing me some kind of entitlement, or we're going to have some issues, and you're not going to be able to spend the money you're spending watering the golf course and doing those kinds of things because we have to have something.

This is a plan that will allow us to move forward with the development agreement, give you, give all of us 30, 60 days, whatever it is, to wrap it up. And upon that Development Agreement being finalized, this, this zoning here will be consumed by it and will be superseded by the Development Agreement. But without this, you cannot expect him to continue to pour those kinds of dollars in. He's fighting litigation. He's fighting everything that he has to, and he's putting everything he can, financially and his heart, into trying to make this thing work.

So, this application conforms to everything, in terms of solid zoning practices and principles. But if I could just take – and I know this is more of a general comment and I'm going to let Stephanie get into the particulars. The reason why we're here is not a fault, and the reason why you hear that acrimony and the laugher –

MAYOR GOODMAN

No, no, don't even go there. Just stay on this.

CHRIS KAEMPFER

But it's not their fault.

MAYOR GOODMAN

Okay.

CHRIS KAEMPFER

That's the point I'm making.

MAYOR GOODMAN

Okay.

CHRIS KAEMPFER

Two years ago, the HOA hired an attorney who stood in front of an HOA meeting and said this property could not be developed. And people looked at him and said: Are you saying that if the golf course closes, they can't develop it? And the attorney the HOA hired said, no, they cannot. And when he was walking out, I'll never forget it. It's burned in my mind. Some homeowner said: So they can't develop at all? And he said, quote: Not a single home.

And when I asked him – does the City support that position? I got lawyer speak. And I'm a lawyer, and I know what it is. And he said: I do not believe that the City disagrees with that position.

And from that meeting, that is the foundation upon which this opposition has been based. And again, I don't blame people for thinking about that. But I live there too. And so what I did, I got a hold of the City Attorney, I got a hold of the Planning Director, and I said: Can this be developed? And they both said yes.

And then I looked at the zoning, and it's R-PD7. And I looked at the CC&Rs, and it says the golf course is not a part of Queensridge and is not intended to be part of Queensridge and can never be a part of Queensridge. And then I saw the documents that people signed saying the golf course can be built on and views aren't protected. They could put commercial and residential. All of this was designed with one purpose in mind, and that is to preserve this for development in the eventuality that the golf course were (sic) to go away.

Now, that is the real Queensridge that Mr. Lowie and his group acquired, and that's what we're dealing with. And not only does the City Attorney and the Planning Director, and for what it's

worth, me and others who have looked at it, there's other land use lawyers who have looked at it and come to the same conclusion, but two separate courts have held its developable.

Now, the whole idea of this ultimately is to get something that works for everybody. But without something to show, without something that he can show a lender, his lender, that there's something positive, that this Council believes that this property can and should be developed, he is going to have problems that may not be surmounted. And so, I am, we are respectfully asking that as we go through, you take a look at this plan and ask yourself if this does not – forget about where it is and forget about – if this were coming in as a separate project, ask yourself: Would you not support something at a density of 1.7 units per acre in this particular area?

And so, I'm going to let Stephanie take it from here. But trust me, this is one of those things that when we all sit down, we're all going to hopefully, and thanks very much to Brad Jerbic. He has worked tirelessly and the Planning Director as well, but especially Brad in this case to try to bring people together.

MAYOR GOODMAN

Yes, he has.

CHRIS KAEMPFER

And he's right. Maybe we're there. Maybe we're almost there. But we need what the law allows us to have so we can move forward. Go ahead Stephanie.

MAYOR GOODMAN

And if I may ask on that and this, we'll go through the process, so we'll have comments from the public too and Mr. Perrigo. In speaking to just agenda, number 131, that is – and again, it's GPA-68385, on a request for a General Plan Amendment from PR-OS (Parks/Recreation/Open Space) to L (Low Density Residential) on the 166.99 acres at the southeast corner of Alta and Hualapai.

STEPHANIE ALLEN

Your Honor and members of the Council, Stephanie Allen, 1980 Festival Plaza. All of Agenda Items 131 through Agenda Item 134 are all related items that we would like to be heard together if we could.

MAYOR GOODMAN

Okay. All right. So we'll go from that. Okay.

STEPHANIE ALLEN

Okay. So, with that said, we thank you for your consideration today. I echo Chris' sentiments that we very much appreciate Mr. Jerbic's work as well as all of your staff on this and the neighbors that are here tonight. I know I haven't been in all of those meetings. Mr. Jerbic has been. I was in one last night.

And I will say, for the record, there is a possibility of getting this done, I think, in my opinion. And I think if this, if we can move forward, instead of constantly being delayed, and have something to show to the lenders, to this developer, then we've got some good faith going forward that we'll work on the Development Agreement and the holistic plan. And I think we can get there, so we appreciate you considering this first.

So, with that said, if I could have you look at the overhead. There are four applications before you. One is the GPA amendment, and the GPA amendment goes beyond the 34 acres that are before you today. The GPA amendment covers all of the green area here, except for the piece in Section A. And the request is to go from what the City currently has designated as PR-OS to Low. There's a dispute as to the PR-OS designation.

We've done a lot of research and haven't been able to find any indication of how PR-OS was placed on this property. It looks as though at some point, because it was a golf course, the City made that correction to PR-OS. But it was without any notice or hearing on behalf of the property owner. So PR-OS is in dispute, but the request, needless to say, the request is to go to Low on this portion of the property, which is consistent and actually less than what the

Queensridge property is, which I believe is Medium Low. So it's even lower than what Queensridge is.

There is no zone change before you. The property is zoned R-PD7. So currently, this is the 34 acres we're talking about. Currently, you can develop up to 7.49 units to the acre under the existing zoning on the property. We are not suggesting that and never would, because frankly it's not consistent with the Queensridge homes out there.

What we're proposing, as Chris mentioned, is 1.79 units per acre. And the way this has been laid out is to be compatible and consistent with the homes that are already existing in Queensridge. Keep in mind, this will have different street networks. So the entrance would be on Hualapai. So this would be a new street network, with a new HOA, and it will be below the existing home elevation. So it would be below grade and more in the goalie, for lack of a better word.

But you'll see here, let me just show you, for example, there are 17 homes along this existing Queensridge property line. We are proposing 15 homes. So you've got less density adjacent to the lots that exist in Queensridge. Similarly, up here, you've got 20, I guess about 21 homes adjacent to just about 20 homes up here to the north. So we've taken the lot sizes that exist in Queensridge and we've put compatible, comparable zoning adjacent to it and come to a density of 1.79 units to the acre.

As Chris mentioned, if this were any other project and we were coming in on a standalone infill project, and you had us come in with a density of 1.79 units to the acre adjacent to higher density or the exact same density, this Council would approve it in a heartbeat.

The other two applications relate to – there's a waiver for the street sections to allow private street improvements. So this is the proposed street section, which would have a 32-foot street with roll curbs and then an easement area on either side for landscaping. In Queensridge, in San Michelle, there's only one sidewalk in the street, so it's got the additional two sidewalks.

So it, I guess, exceeds some of the existing Queensridge neighborhoods in that regard, and it's been approved in other private communities, just like on the D.R. Horton application that was on your agenda not too long ago. So that's the requested waiver application.

And then the tentative map is consistent with the site development plan review to allow these 61 lots on 34 acres with a density of 1.79 units to the acre.

Again, should this Council be willing to approve this, we will give you our word that we'll continue to work with the neighbors, the neighbors that are here, that we met with as late as night, to see if we can get to a development agreement, and should that development agreement be approved for the whole property, it would supersede this. But in the meantime, we'd very much appreciate your approval of this so that we can take it to the lenders and say the two years that have gone by have been worth it. We've got something to show you, and at least we can move forward.

So we appreciate your consideration, and we're happy to answer any questions.

MAYOR GOODMAN

Any questions at this point? Let's see, Mr. Perrigo, you want to make comments?

TOM PERRIGO

Thank you, Madame Mayor. This is the same report that was given to Planning Commission so many months ago. The proposed 61-lot residential development would have a net density of 1.79 dwelling units per acre. The proposed low density general plan designation, which allows up to 5.49 units per acre, allows for less intense development than the surrounding established residential areas, which allows up to 8.49 units per acre. The densities and average lot size of the proposed development are comparable to the adjacent residential lots. Staff, therefore, recommends approval of the General Plan Amendment to low density residential.

The applicant is requesting interior streets that do not meet Title 19 standards. However, the proposed private interior streets will provide roadways, sidewalks, and landscaping in a configuration similar to and compatible with that of the surrounding development. The 32-foot wide streets will allow for emergency access and limited on-street parking, while the adjacent sidewalk and landscaping will provide safe pedestrian movement and enhance the aesthetics within the subdivision. Staff therefore recommends approval of the requested waiver.

The development standards proposed by the applicant fall into two categories – those containing 20,000 square feet or less and those containing greater than 20,000 square feet. Standards for lots 20,000 square feet or less are generally consistent with R-D zoned properties, and lots greater than 20,000 square feet are generally consistent with R-E zoned properties. If applied, these standards would allow for development that is compatible with that of the surrounding gated neighborhoods.

In addition, the proposed plan includes usable open space that, usable open space areas that exceed the requirement of Title 19. Staff, therefore, recommends approval of the site development plan review and tentative map.

MAYOR GOODMAN

Thank you very much. All right. Is there anyone from the public who wishes to be heard on this item? Please come forward. State your name for the record. Yes, please.

GEORGE C. SCOTT WALLACE

Your Honor, Councilwoman –

MAYOR GOODMAN

Oh yes, I see there are enough people. Let's keep each one's comment to a minute, unless it is a representative of a particular group that we've already heard from. So please.

GEORGE C. SCOTT WALLACE

Your Honor, Councilwoman, Councilmen, my name is George C. Scott Wallace. I'm a retired professional engineer. I live at, in Las Vegas since 1960; it's been my home. I reside now at 9005 Greensboro Lane.

I am speaking in favor of the application. My background, very briefly, is I came to Las Vegas in 1960. I started an engineering design company in 1969. Our company, which I sold in the year

2000, provided engineering services to many land developers, including Del Webb, where I met Frank Pankratz. And through Frank, I met Yohan Lowie.

In my business, I used to come very frequently before your Council and the Planning Commission to resent, to represent many clients with regard to their request for approvals. By the way, these clients included Bill Peccole, developer of the Badlands Golf Course. In my entire professional career, no one, no one did a better quality project than Yohan.

MAYOR GOODMAN

Okay. I'm going to have to –

GEORGE C. SCOTT WALLACE

The One Queen –

MAYOR GOODMAN

I'm sorry, Mr. Wallace, as much as we have such high regard for you and everything that you have done with your company and everything here, we're going to have to stick on the minutes, because we are going to be here for a long, long time. But I think you got your approval and your appreciation for Mr. Lowie clearly stated.

GEORGE C. SCOTT WALLACE

Quality builder/developer. Thank you.

MAYOR GOODMAN

So if you would. Thank you. Yes, ma'am.

LILIAN MANDEL

Oh, hello. My name is Lillian Mandel, and I've been in Las Vegas 27 years, and 17 years I've been at Fairway Pointe, which is adjacent to the Badlands. And when we bought in that situation, we were told that was Badlands and was open up to the public.

And then when it was sold, I all of a sudden was worried, and then I heard it was Mr. Lowie. And because of all the projects he's done in this city, I was thrilled, because I'm right up against the fifth hole. And mainly, one of the main things was the Tivoli Village. It was sitting on a wash, a big hole that said nobody could build anything. He was capable of doing it.

So I approve his ability of building things that are beautiful. I don't have a problem with it, and I'm glad that it's not a builder who's going to build big homes back there. So I would love for them to deal with logic instead of anger. That's all I have to say.

MAYOR GOODMAN

Thank you. Thank you very much, and thank you for staying on the time.

LILIAN MANDEL

You're welcome.

DAN OMERZA

Mayor Goodman and ladies and gentlemen, my name is Dan Omerza, and I live in Queensridge. I don't live on the golf course. I met with Mr. Lowie's representatives when he first proposed the project. I went to his office, and it was very grand. And since that time, he's changed his position many, many times, which makes everyone in the Queensridge development very nervous. Okay. I think that since we just had a very big election and some folks will no longer be here on this Council in a few short weeks, I think it would be disingenuous to vote on anything right now until the people who have put the people in this, in your Council, are here to vote with our representatives as we picked them. I think it would be very sad if we pushed things forward at this point. Thank you.

MAYOR GOODMAN

Thank you, Mr. Omerza. I appreciate it.

DAN OMERZA

Thank you. Yes, ma'am.

TRESSA STEVENS HADDOCK

Good evening. Tressa Stevens Haddock; I'm the lady that keeps coming back outside the gates where the construction is. And I just want to know on what you're voting on this evening? Where's the construction, because, again, that's my concern. I moved there for health reasons, and I'm the person that there's only one road where construction, and no one said tonight. Did they change the location of where construction is, or is it still going to be Clubhouse, which is right where my house is located? That's my question.

MAYOR GOODMAN

Thank you.

FRANK SCHRECK

Mayor, members of the City Council, Frank Schreck, 9824 Winter Palace. We have a bunch of professionals to address some of the issues that have been raised, so we'd like to have the time to be able to do that. We'll try to make it as brief as possible, but this is obviously a serious matter for our community. We voiced our concern already that this is inconsistent with the general, the Development Agreement and it shouldn't even be heard tonight.

One thing I do want to start off saying, there are not two courts that have said that the developer has a right to develop. They got one decision that had findings of fact and conclusion of law from Doug Smith's court that had nothing at all to do that was of the issues that were in front of him. The other court, that we're involved in, has denied our 278A. We've appealed that. And the

mapping issue, they've upheld that. So that's going forward. So there's only one court, and it didn't even have in front of it really the issues that they're doing there.

But what I want to say is, to ntroduce to you is Ngai Pindell, who is a professor of law at the university, at the Boyd Law School, who is going to speak to several of these issues as a matter of law.

MAYOR GOODMAN

I'm gonna let him have five minutes if he wants it with his presentation. Yeah.

NGAI PINDELL

Thank you very much. I'm Ngai Pindell, Professor of Law at the William S. Boyd School of Law. So I've written a lot about how effective planning produces good land use results, and that was my interest in this issue. It seems to be a case where good planning has occurred, and now we're in this dispute and there's some danger that good planning might be subverted.

I've submitted a report on the Master Development Plan Phase II, which is here, to the homeowners. And I'd like to introduce that into record and then just make three or four highlighted points about the report.

So, first, I think we don't want to lose sight of the fact that there's a Master Development Plan here. So the property, earlier we talked about the property being developable or not. Indeed, the golf course property is developable – I can't say that word – but there's a process that can be followed. When I look at the different Planning staff reports from earlier applications in this process – and there have been many applications – the Planning staff indicated that a major modification of the Master Development Plan, Phase II, was appropriate and then a General Plan Amendment, all of which in conformance with a General Plan.

And so I think that is a sensible approach and a good land use approach to do. It gives all of the stakeholders a chance to be heard, other arguments to be properly considered, and is consistent with good land use practice.

The other part that I wanted to say was that there's an argument about the underlying zoning. And this is where I want to bring you back to the Master Development Plan. Indeed it was a Master Development Plan, where the developer asked for a number of different land uses. There was residential, single-family residential, commercial, open space, golf course and the multi-family. The residential was on 401 acres. The developer asked for those uses. The City approved those uses, and those uses have been reflected in the Master Development Agreement and in the City's General Plan for well over 25 years.

So to change those uses now is possible, but I think it should rightly go through a process of a modification to that Master Development Agreement, followed by the General Plan Amendment, again for conformance with the General Plan.

I know this is a long and contentious case, so I wanted to keep my comments brief, but I hope you'll consider those land use planning principles.

MAYOR GOODMAN

Thank you very much. I appreciate it.

FRANK SCHRECK

As Professor Pindell indicated, there is a tremendous amount of work that was put into the staff's reports for the applications that were submitted early, the 720 and then the 250 acres that had a development agreement. Those had huge staff reports. And in those staff reports, they said over and over and over again what the process is to develop the Queensridge golf course. This is not us speaking. This is your Planning Department speaking. And I can give you tons of quotes from it.

But this is a quote from the July 2016 Staff Report, which is, what, less than ya ear ago? Nothing has changed. The golf course is there. The Master Plan is there. The General Plan is there. Everything is there.

Here's what it says. Is it on there? Can you, do I zoom down, or do you zoom down? This is – from their Staff Report, Planning Commission meeting of July 12th, 2016. The existing

designation to the southwest of the subject property is R-PD7, Residential Planned Development, 7 units per acre. We all agree on that.

However, without prior approval of a modification to the Peccole Ranch Master Plan on this area, residential units would not be allowed. Then the top paragraph says the Peccole Master Ranch Plan must be modified to change the land use designation from golf course drainage to multi-family, and in this case single-family, prior to approval of the proposed General Plan Amendment.

So that as Professor Pindell said, there is a procedure to develop the golf course. The staff has recognized it. They talked about it over and over again. There is no pre-existing right to develop on that golf course.

What the developer has to do and what the developer did in those early applications — applied for a major modification, that was the application they filed in February, a major modification of the Peccole Ranch Master Plan to change the golf course, which was designated for all this time as drainage golf course to multi-family and single-family. And then the next step they said you have to do is the, because there's no residential in the drainage and golf course under the City's approval of that Master Plan.

And then the second step you have to do is you have to change what they've asked for here. You have to change the General Plan, because it's Park/Recreation/Open Space, which has no residential. So to make it consistent with what the Peccole Ranch Master Plan is, once the major modification is done there, you amend the General Plan to provide the density cat, zoning categories that provide the density that's requested.

You have to have both of those steps. Your staff said that over and over and over again. I can read them ad nauseam from those big reports.

When we get to this one, all of a sudden the requirement for a major modification is gone, mysteriously gone. It has to be there. You can't even do the General Plan Amendment, because it's not going to be consistent with the Master Plan of the Peccole Ranch. The Peccole Ranch, that has to be modified first through an amendment, and then you do the General Plan after that.

There's (sic) two steps to it.

So it isn't that people have said that it can never be residential on it, but there is a process that has to be followed. It's not being followed here. There's no major modification.

MAYOR GOODMAN

Okay. Thank you. Next please.

DOUG RANKIN

Good evening, Mayor.

MAYOR GOODMAN

Hi.

DOUG RANKIN

Doug Rankin, 1055 Whitney Ranch Court. I'm here to answer the question that appears to be eluding everyone, which is: How did these open space areas on R-PD become green?

Well, there was a process. The City of Las Vegas has had a Master Plan since 1959 and has amended their Master Plan and replaced it multiple times. 1985, the City's Master Plan looked like this. And this is the Peccole Ranch area. It's kind of a blob map. It shows this is suburban with commercial.

This is what is called a small area plan. The small area plans incorporated the large plan, per the 1985 Master Plan. They had small area plans, a concept short range plan, and residential plan districts, R-PDs. And those, that made up the plan. So that plan was replaced in 1990 by the City Council, with the Peccole Ranch Master Plan Phase I and Phase II, '89 in Phase I, 1990 in Phase II.

The Master Plan was agendaed as a Master Plan; the Master Development Plan Amendment related to Z-1790, the zoning case of the R-PD7 and the other zonings, the R-3 and the C-1 approved by Council. As part of that approval, it set the amount of space they were going to do. How many acres of this? How many acres of single-family? How many acres of open space?

Accompanying that was the zoning; the zoning set the total unit cap for this location, which I'll come to in a little bit. It was even conditioned to have a maximum of 4,247 dwelling units. That's the most units you can have by condition of approval by the City Council on the zoning.
So, we have the small area plan from 1990. After that, the City of Las Vegas adopts a new Master Plan in 1992. This is the land use plan from that. Once again, we see for the first time, the green. How did it get there?

COUNCILMAN COFFIN

Are you going fast because you've got a time limit?

DOUG RANKIN

That's why I'm going fast, yeah.

COUNCILWOMAN TARKANIAN

Don't go fast.

DOUG RANKIN

Would you like me to slow down?

MAYOR GOODMAN

Do you have a question, Councilman?

COUNCILMAN COFFIN

Yeah. Well, I was asking you procedurally. He's in a rush, but I don't know if it's because of our time limit. And I'm just wondering –

MAYOR GOODMAN

I had asked general public, I was giving them a minute.

COUNCILMAN COFFIN

Because these are really kind of expert testimonies, and we'll have it from both sides.

DOUG RANKIN

I'll go a little slower.

COUNCILMAN COFFIN

I hate to have it rushed right by me.

MAYOR GOODMAN

But I think – oh, I thought we were keeping up with it pretty well. Maybe have a little more iced tea or something.

DOUG RANKIN

And I'll have a little less caffeine. I'll take a breath.

COUNCILMAN COFFIN

I need something illegal, I think.

MAYOR GOODMAN

He's in 1992, for heaven's sakes.

DOUG RANKIN

Right.

MAYOR GOODMAN

We've been through this before.

DOUG RANKIN

Well, actually, you haven't heard this part before.

MAYOR GOODMAN

So I'd like you to keep going. Okay.

DOUG RANKIN

Mayor, you haven't heard this part before, because in 1992, the City adopts a new Master Plan. Norm Standerfer becomes the Planning Director, and we move away from the blob maps. As part of that, the Master Plan adopted the Land Use Plan, where the green color comes in. It was done with 3,000 Las Vegas residents participating, a committee approved by the Council of 35 people. As part of that process, the existing land use conditions were considered. And I quote: Accurate assessment of existing land use is an essential step in developing the recommended future land use patterns in the General Plan. A major task accomplished in the General Plan update was the documentation of existing land use conditions throughout the City."

Staff went and looked, and they said what was approved everywhere to do this. Before we had a blob map, not by parcel. New plan, by parcel. They went and looked and saw that here it was commercial. So they made it red. Here, they saw they had approved open space on these master plan communities. This is approved open space. The appropriate land use they adopted was Park/Recreation/Open Space. Legally, for a Council, thousands of hours of work went into this new Master Plan. That Master Plan continued.

This is where the first time the City considers general plan amendments with this new Master Plan. Here's an example of one from Peccole Ranch, GPA-54-94, where they moved some of it around, noting here that on this, they have their P for Park/Recreation/Open Space. This is from the Peccoles. They submitted this plan. They were moving some of their densities around.

Staff even notes that Staff has no objection to the required, to the request given the change in alignment of Alta Drive and the golf course. Some changes to the Master Development Plan are

to be expected. Also the changes in the designation does not increase the total number of uses permitted for the project. And they recommended approval of this GPA.

Staff tracked it through something called the Red Book. Most planners in the Planning Department are familiar with the Green Book. Before computers and GIS technology, there was a green book for zonings so they could map them as they changed on parcels, keep track of them, and there was a red book for General Plan.

This is the Red Book page, from 1995, showing that this is Park/Open Space, Medium Low. This is the golf course area, and these are the development areas of Medium Low, Service Commercial, because this changed eventually to R-PD7 zoning, and Low Density Residential at one point. I have another picture of the east end of the golf course, once again, from the Red Book. So they were tracking it all along.

Then as you're about to do, adopt a brand new Master Plan, the 2045 I believe, staff is going to go through this same process: look at the existing conditions, document them, consider them for future uses. In 2001, the City redoes their Master Plan again. They adopt the capstone document, the 2020 Master Plan; it takes them a while to do the land use element, five years, four or five years, 2005, they go through and adopt, with all the general plan amendments and rezonings that were part of the record from 1992 to 2005 that hadn't been fixed on the plan out of the Red Book documented, updated the Plan, brought it to City Council for approval. The green continued from '92 to today.

This is the 2005 Plan. This is the 2015 Plan, just recently updated. Your Land Use Plan was just recently updated by this Council. It was approved. It was heard as a public hearing reaffirming the Park/Recreation/Open Space. It didn't come out of the thin air. Thousands of hours of work went into it.

COUNCILWOMAN TARKANIAN

Excuse me. Can you tell me what year that was again?

DOUG RANKIN

What's that? Sorry, I'm getting a little dry mouth, so I apologize. Okay. As a matter of fact, the Plan even documents that Peccole Ranch is an important master developed community, and it calls it out in the southwest sector. The following Master Development Plan areas are located within the southwest. We have Canyon Gate, The Lakes – I showed you pictures of those – and Peccole Ranch, preserving what was approved in 1990.

I'm running out of time. I had some more things about what they approved, which was the densities at this location. They approved approximately 4,000 units and change. At this time, there are 820, 17 units not developed or entitled. The Master Plan that's being proposed at 5.49 units per acre will exceed that density. I realize the request today is for a tentative map. Yes?

TOM PERRIGO

Freshen your whistle again.

DOUG RANKIN

Thank you so much, Tom. I appreciate it. Thank you. Currently, if you approve the 5.49 dwelling units per acre — and the applicant says they only want 1.7 units per acre. You could actually approve a lower density general plan here to meet that. You could go all the way down to 2 units to the acre, but they've asked for 5.49 on 166 acres. If you approve all of those, you will exceed your unit cap that was approved by Z-1790 by 99 units. That concludes my presentation. I appreciate your time.

MAYOR GOODMAN

Thank you very much.

DOUG RANKIN

For the Clerk's Office.

MAYOR GOODMAN

Yes.

COUNCILMAN COFFIN

Your Honor?

MAYOR GOODMAN

Yes, please, Councilman?

COUNCILMAN COFFIN

The stakes are too high on this to have people running at full speed trying to show us stuff that some of us might assume that we all know by heart, but maybe we haven't lived it. I know the Councilman for the ward has, the City Attorney has, and maybe you have, Mayor. But it's still as if it's new, because this doesn't come up every day. So I would appreciate if witnesses are given time that they need to present. All the sides should have that courtesy. And I can stay here as long as they do. Thank you.

MAYOR GOODMAN

Thank you.

GEORGE GARCIA

Thank you. Mayor, members of the City Council, George Garcia, 1055 Whitney Ranch Drive, Suite 210. Pleasure to be before you. Continuing on some of the points that the Professor made and that Doug has made, but I also want to go back to the comments that the applicant made. The comments of the applicant were that the neighbors had every reason to be upset because they were essentially confused and had been misled, I guess to put in my own words.

But I think maybe the reverse is really true. You have to ask was the developer or the applicant the one who was really confused and misled? Because at the end of the day, as Doug has said, it

is Parks, Recreation and Open Space. And as he showed you, there's no development density allowed in that golf course open space area. And I'll show you again.

So if you buy the land with no contingency and you thought that that was the correct answer was you have the right to build 7 units per acre – and we've heard that said that there's a right to build based on 7 units per acre – we don't believe that's the case. And we think if anybody's confused, maybe the developer is the one who's confused, and they have every right to be indignant and upset. And I think that's the real source of the confusion.

The other point that was made by the applicant at the outset was we have done everything the right way whenever possible. Well, I'll start with just one example of doing things the wrong thing and doing it the wrong way. One of those, and we could not find anywhere in the documents associated with this particular request, what's called a development impact notice and assessment or DINA, for short.

If we go to the overhead, part of that requirement is it says for a project of significant impact, a project of significant impact is defined as one that's a tentative map, final map, or planned unit development of 500 units or more. Well, we're clearly in a condition with 166 lot, plus acres. Given the density of 5.49 all the way up to 7.49, the density will well exceed the possibility of 500 units. And they can say, well, it's only 61 at this time. Well, that's fine. But if you read the Code, a zoning map or local land use plan that could result in development meeting or exceeding any of the above criteria requires a DINA. We have not seen evidence, and I would ask where that DINA is and if it can be produced.

Absent also in this, you see the General Plan Amendment, the absence of piece that was mentioned before by the professor and indicated by Mr. Schreck in his, in prior staff reports as well. Another thing that we see is missing – and I'd ask where it is – is a major modification.

As you can see on this map here, it shows in the southwest sector map, that Mr. Rankin was referring to the list, this is actually the pictorial representation of those plans, planned areas, the special area plans within the overall City's General Plan. And this one in tan here, sort of brownish color, is the Peccole Ranch Plan, which is identified here as part of the Peccole Ranch, and then, of course, you have many others as well.

But the point of that is that you say, okay, then what does that tell you? It says the development of property within a planned development district may proceed only in strict accordance with the approved master development plan and development standards. And if you're going to deviate from that, it goes on to further say that you have required to do a master development plan. And that's found in your – this is straight out of your Uniform Development Code. And this is from your General Plan. So we would ask where's the major mod?

This is going back – and I think, again, Mr. Schreck talked about this – this comes out of the staff reports. Basically, it's an excerpt. This one in particular is from July 12th Planning Commission meeting. It says the proposed plan requires a major modification of the Peccole Ranch Master Plan. This was at that time regarding specifically Phase II.

Another one over here, major modification of the Peccole Ranch Master Plan, General Plan Amendment and rezoning must be approved in order to allow the types of development proposed. Again, and there's more, but all of it points to the fact that where is the major modification that's essential to achieve what the applicant would seek to achieve. So we don't think it's properly before you.

So let's go back to a point we've talked about just briefly before, but I think it's worth reiterating. So what would the developer or a resident in, not Queensridge, but within the Peccole Ranch Master Plan area, because this is not about just Queensridge as we know it, as it was developed, because the golf course, while it may not be part of Queensridge, is part of the Peccole Ranch Master Plan. So while it may not be bound by the private sales and deals, it's bound by the strictures put on it by the City in its approvals, as Mr. Rankin has pointed out and others.

I will go back to that Peccole Ranch Master Plan, because what it says, it starts, it goes back to golf course drainage area, the acreage, and, of course, Doug was showing where it was amended, but it shows no density, zero density and no units. That's why this City ultimately defines it to be PR-OS, no density, no units allowed. So while that potentially could have been more, it was capped with the number of units, 4,247 maximum density, and it specifies the number of acres.

So that chart pretty much says to anybody who wants to buy in this community, Peccole Ranch Master Plan, what should they reasonably expect. Then they, so they would come to the City to look for those documents, and this is what they would find.

They also then would look at the purchase documents that they have obtained, that were part of a requirement. One of the things that's required if you're going to be doing any of these things is you have to have CC&Rs. Well, we don't see any CC&Rs yet today either, but we'd ask where those are. But for Queensridge, one of the areas – and this is typical of all of them – did contain design guidelines that were very extensive, very complete. But what you'll see again, what would a buyer reasonably expect? No right to the golf course, no control over the golf course, no right to use it.

And state statutes are very clear that it's not about the use. It can also be about the enjoyment. And what is that enjoyment? The enjoyment is of the, what is identified here with the homes that were being built along the golf course had every right to expect golf course open space and very specifically views of that golf course open space. That was the reasonable expectation that they had. We think they had every right to rely on it. And we think state statute, NRS 278A – and I know the City Attorney doesn't think that that applies because they, you didn't adopt it – we think it applies regardless, the State being, and I think as the Mayor knows very well, the superior body. So we think that applies.

And why that's so important is because 278A says that residents in a completed master plan community, which this is, or PUD, as the State refers to it as one of the ways to refer to it, gives great deference and protection to those residents in a completed plan to rely on the types of things the Peccole Ranch Master Plan and these documents entailed.

And absent, basically, the owner's consent in that completed plan, this application that today is before you shouldn't even be before you, because they haven't consented. Hence, I think the mayor's direction for we need an agreement of all the parties before this comes back.

So with that, Mayor, we'd be happy to answer any questions, and it concluded my presentation. Thank you.

BRAD JERBIC

I actually have a question, if I could, Mr. Garcia. Could you go back two foam boards earlier?

GEORGE GARCIA

Which one?

BRAD JERBIC

I believe it's a staff report, and at the beginning it has a GPA and it has some other things at the top. That's the one. Can you read the top of it where it says GPA dash? I'm having a hard time reading that. It's a GPA dash.

GEORGE GARCIA

Yes. It refers to GPA, in this case, 62387.

BRAD JERBIC

62387. And then the SDR says what?

GEORGE GARCIA

The SDR is 62393.

BRAD JERBIC

62393. Are you aware that Item 131 is a completely different GPA? It's Item 68385. That's a staff report on a completely different General Plan Amendment request, and that the SDR in 133 is SDR-48481, and that's a report on a completely different SDR request?

GEORGE GARCIA

Fully aware. And my point isn't that this is specific to this request. This is not saying this is what staff said in this particular case. It's what it said in prior cases. As Mr. Schreck was pointing out,

we have numerous references over the history of all of the last almost two years, where staff has indicated very clearly you need the general plan and the major mod along with the other elements of this. So that's the point. This is not to say this is this case. It's to say, using the references to those other cases, that there should be not only a general plan but a major mod as well. And again, we see evidence, no evidence of a major mod, no evidence of the DINA, and would ask where both those are.

And for that, and basically to make it clear, perhaps maybe I would include for the record, Mayor, that everything basically over the entire history of the Peccole Ranch Master Plan and most recently over the last approximate two years, every application, that has been, whether it's been approved, denied, withdrawn, abeyed, all that entire record and history should be included for the record, so if and when this ever goes before a court, they'll be able to look at all that information over the entire - history of all of this so they can make a clear decision. Thank you.

BRAD JERBIC

Which is why I want to make a couple more observations here. I want to make it abundantly clear there's no legal issue, in my mind, that would involve the City Attorney Office in this pure land use request. There are a number of legal issues that are being raised that I may have to argue in court someday. So whether you vote for this or not is not any of my business. That's a planning issue entirely.

But I do want to put on the record that I believe that report contained a request for a major mod and other things, because it was tied to a development agreement. It wasn't tied to this individual request for 61 individual lots.

We have looked at the Peccole Ranch Master Plan. Page 18 has a number of maximum residential units, maximum multi-family units, maximum that. If you're going to exceed those numbers by some exorbitant amount, we get into a discussion about a major modification, which is why that's in that document. That Development Agreement was withdrawn.

I've been negotiating an updated, better, I hope, Development Agreement. That isn't here yet. That's why I'm recommending continuance. But I don't want you to think that those requests that

accompany that Development Agreement in 2016 have any bearing, in my opinion, on these four requests today. And I just want to make that part of the record.

MAYOR GOODMAN

Thank you. Thank you, Mr. Jerbic. Okay, next?

MICHAEL BUCKLEY

Good afternoon, Mayor and members of City Council, Michael Buckley representing the Frank and Jill Fertitta Family Trust.

A couple things I want to just point out. First of all, the Planning Commission did not approve this matter. It failed because it required a supermajority. So this was actually a denial by the Planning Commission of the General Plan Amendment.

Secondly, there's been a lot of references to the fact that the golf course is not part of the Queensridge and that there's reference to the CC&Rs, there's reference to Mr. Peccole's plan. And I'd like you to direct you to the overhead where I've blown up some documents. These are design guidelines, and these are actually recorded; this was recorded in 1996, and it governs the custom lots in Queensridge. I don't show you the beginning of it, but this is an 84-page document that at the beginning, it references the fact that it is adopted in accordance with the master CC&Rs. And it is the building design guidelines that any home in Queensridge has to follow.

Just to point out that what is being built, what is this community, I mean I think we gloss over the fact that Queensridge is a golf course community. So the description of the custom lots states that it is an enclave of one-third to one-acre lots completely surrounded by the golf course, and the larger lots, an exclusive enclave offering custom home sites of one and a half plus acres. This enclave is completely surrounded by the golf course.

On page C-2 of this document, this is the exhibit to the design guidelines; it describes the golf course. And again, this is adopted pursuant to the CC&Rs. There's another document. This applies to the custom lots. There's a similar one for luxury lots, move-up lots and executive lots.

Those are part of the record. I submitted those at the Planning Commission on the Development Agreement on this.

But let me just read you what the recorded design guidelines state. The Badlands 18-hole championship golf course with a planned addition of nine holes, which is a daily fee course designed by Johnny Miller, meanders through the arroyos and neighborhoods of the village. Significant view corridors are provided at key locations throughout Queensridge to enhance the open character of the community.

In reference to the parks, and you may remember that in the Peccole Ranch Phase II Master Pla, it specifically states that the golf course open space is in lieu of any public parks in the development. But here there's reference to a view park providing passive open space overlooking the golf course.

And what I think is particularly interesting is that the City participated in this, because the document on page C-4, "Responsibility of Review," basically states that the City will require a review approval letter from the DRC prior to reviewing any documents or issuing any permits for work performed on the custom lots within Queensridge. So the City actually helped create this value that they are now, the City is now planning to take away.

And I think that's what I want to say. Thank you.

MAYOR GOODMAN

Thank you. Yes, please.

COUNCILMAN ANTHONY

Mr. Buckley?

MAYOR GOODMAN

Hold on one second please. Mr. Buckley, come back, please.

COUNCILMAN ANTHONY

What were those documents that you were referring to? I didn't get that part.

MICHAEL BUCKLEY

Yes. One is, and I'll put these to the record, because they were at the Planning Commission on the Development Agreement matter. One is the Supplemental Declaration for the Adoption of Section C of the Queensridge Master Plan Community Standards, recorded in Book 970117, Document 1434 official records.

The other is a Supplemental Declaration for the Adoption of Section B of the Queensridge Master Plan Community Standards, recorded in Book 960924, Document 92 official records.

And I guess I would point out that it's my understanding that this developer has actually developed custom lots in Queensridge. So it has to be fully aware of these building design guidelines.

COUNCILMAN ANTHONY

So those are Queensridge documents?

MICHAEL BUCKLEY

They're Queensridge documents.

COUNCILMAN ANTHONY

They're not City -.

MICHAEL BUCKLEY

They're adopted pursuant to the Master CC&Rs.

COUNCILMAN ANTHONY

Okay. Were they based on City approval? Or it's just –

MICHAEL BUCKLEY

Well, I think, what I have been listening to here is this is a master plan community, and this is part of the master plan is that these would be built according to the Queensridge, the philosophy of Queensridge.

COUNCILMAN ANTHONY

Okay. All right. Thank you.

FRANK SCHRECK

Mayor, just very briefly, I need to correct the record. Mr. Jerbic said that major modifications somehow only applies to development agreements in this matter that we've been discussing. They do. They're mandatory if you have the development agreement. But that's not all they apply to.

The first application for development filed by this developer was for 720 units. That was filed in I think it was November of 2015. And there was a staff report on that request for 720 units on that 17.49 acres. To the staff report, in dealing with that, says without equivocation this site, the site is part of the Peccole Ranch Master Plan. The appropriate avenue for considering any amendment to the Peccole Ranch Master Plan is through the major modification process as outlined in Title 19.10.040. As this request has not been submitted, staff recommends that the General Plan Amendment, rezoning, and site plan development plan review request be held in abeyance and no recommendation on these items at this time.

So what the Planning Department did is said you can't go forward to the Planning Commission with that first application without having a major modification. It had nothing to do with a development agreement.

And here's the second page in that. It is the determination of the Department of Planning that any proposed development not in conformance with the approved Peccole Ranch Master Plan would be required to pursue a major modification of the plan prior to or concurrently with any new entitlements.

So it was required by the staff for the 720 application, which was the first one, and it wasn't allowed even to go to the Planning Commission without having that application for a major modification. So it isn't just with general. It's not just with development agreements. It's with any development within the Peccole Ranch, you have to have a major modification if you can put any kind of residential, and you have to then have a general plan amendment to be consistent with that major modification.

BRAD JERBIC

If I could, Your Honor, again as we go through this piece by piece, I want to make sure the record is abundantly clear. I would agree theoretically with Mr. Schreck; there could be standalone projects that absolutely require a major mod, even if they're not part of a development agreement. That's true. But let me ask a question of the Planning Director. Do you believe a major modification is required for this application, and if so, why and if not, why not?

TOM PERRIGO

Staff spent quite a bit of time looking at this, and we do not believe a major modification is required as part of this application.

First and foremost, the Master Plan adopted by City Council specifically calls out those master plan areas that are required to be changed through a major modification. This Peccole Ranch is not one of those. Yes, some of the exhibits you've been shown discuss Peccole Ranch and a whole bunch of other areas as being master plan areas, but it also specifically calls out only those that require a major modification. So that's first. Peccole Ranch is not one of them.

Second, there have been, and some of the exhibits you've seen have shown where parcels have been changed from commercial to multi-family, from multi-family to residential and so on. There have been six actions on this property that were done without a major modification for that very reason that it's not required. Those actions were done through a general plan amendment and a rezoning. What's before you now, that you're considering, is a general plan amendment, and just like those other previous actions, they did not require a major modification.

FRANK SCHRECK

Just briefly in response, the part of the General Plan that he's referring to are special area plans where Peccole Ranch nor The Lakes nor any other master plan communities are listed. The other part of the City General Plan of 2020 has, and you already saw George Garcia listed the master plan communities that have been approved, and your ordinance specifically says, as he showed you, in a master development plan community, if you're going to make a change, you have to have a major modification, no equivocation. That's what your law says, and that's what you should follow.

MAYOR GOODMAN

Please. Let's continue and no more repetitions. I think you've had your time. Thank you.

SHAUNA HUGHES

Mayor, members of the Council, Shauna Hughes, 1210 South Valley View, Suite 208. I'm here representing the Queensridge Homeowners Association. This has all been very interesting so far, but I'd like to say that I think we can cut to the chase and get to the bottom line a lot more quickly.

MAYOR GOODMAN

Thank you.

SHAUNA HUGHES

This application is a sham. Let me explain what I mean. The last time I was here and the Mayor ordered Frank Pankratz and I to meet and negotiate and make some changes so that we could come back with a global settlement and a global development agreement, we started those meetings. After the second or third one, I don't remember which, I'd have to go back to my calendar, which I don't have with me, this application gets filed. I said: What is that? How is that negotiating in good faith?

I was told, and I quote – not by Frank, I'd like to make that clear – I was told by another staff member that's what's called a shot over the bow. I said: Excuse me? And I was told: We don't want this either, but we need the neighborhood to know that we will proceed in this direction if we don't go back to the development that we originally proposed and the one that we originally wanted.

So this is nothing more than a sham to scare the neighbors into agreeing to something that they don't want to agree with, which did not happen. I should have stopped the meetings at that point. I should have recognized this for what it was then, and I actually did, but I never will be the last person to walk away from a negotiating situation ever, and so we kept meeting.

And I thought, okay, this is threatening, and it's intended to be threatening, but the Mayor and the Council are not going to let them get away with this. The Mayor and the Council made it very clear they want a unified agreement, a unified development proposal. They're not going to let them come in and piecemeal it 20 and 30 acres at a time. And yet, here I find myself in exactly that situation.

So if you're a neighbor in this neighborhood, this is what you're now looking at. You're gonna have 20 and 30 acres shoved down your throat of exactly what you've got here now, because if you approve this, how are you going to say no to the next 20 that's adjacent? You can't. So this is nothing more than a strategic, deliberately strategic maneuver on their part to crush the opposition to their original plan, which is what they always wanted to go back to.

And I think it's a really, really big problem, and I want to call this for what it is. There are a lot of technical things wrong with this application in front of you, but the biggest thing wrong is that you are being asked to participate in what amounts to, in my opinion, a blackmail effort against the people who have been living in that neighborhood, negotiating in good faith. Your City Attorney and Mr. Perrigo have been killing themselves trying to get concessions from this developer, trying to move something along.

We're close. We're not here, obviously. That's the next item to be continued, because it's not done. But in the meantime, what do you think the message is to every homeowner who, for the 800th time, has come out to come to a meeting? The message is it's not really a level playing field,

because we'll get squashed with these 20, 30-acre applications at a time. And that's exactly what is happening here.

And I honestly can't quite figure out and get my head wrapped around how we managed to get into this position, how this was allowed, how you put competing applications on the same agenda. Told one's gonna be continued, but you do the other one. None of this makes a bit of sense. And I just don't want any of you to naively not understand that this is a deliberate, tactical error to scare these neighbors into shutting up and agreeing to something.

MAYOR GOODMAN

Okay. I think, I don't know about everybody that's here, but Mr. Jerbic, how do we move this along? Because I think all of us are in a position to make some decision on something. We've heard these comments. Something new may be coming.

But really, from my perspective as Mayor, I had asked for something. Shauna just alluded to it, and I want to move this along so we can get the decision to work together, which is what I asked you to work and Frank and Shauna, to get together so we can come to some type of reasonable way for this project to move forward, but not on a piecemeal level. I said that from the onset.

After we approved that one project that's down there on the northeast corner that we want this moving forward, and there needs to be some type of consensus.

So, at this point, rather than hearing more comments, I mean, we can be here until 2:00 in the morning and everybody wants another say, the bottom line is we need to make decisions on specific instructions as to what we can do so we can vote. And I want to ask you, at this point, were you – and listening to Shauna, you and Tom worked very hard to try to mediate and pull things, not I wouldn't even say that, facilitate, negotiate impartially to try to get the sides to make this something that's doable.

And under what we have understood all along, these are separate pieces, the golf course and public spaces from the residential, and that's what we have been assured is the fact. And so when can we get to resolution on it? How do we proceed with these items? To me, it was in a very

different venue that we're going to hear more and more on the specifics before we get to the whole.

BRAD JERBIC

Let me just jump in real quick.

MAYOR GOODMAN

So tell us what to do.

BRAD JERBIC

This is a public hearing, and there is a legal requirement that people be heard at the public hearing. And to cut it off without having people be heard will create a legal issue, and I don't recommend that. So I recommend that everybody who wants to speak have an opportunity to speak.

MAYOR GOODMAN

With or without a time limit?

BRAD JERBIC

That's the second part is you can set any time limit you want. If you want to restrict the time limit, that's totally within your discretion. But restricting people from talking is not. We need to let everybody talk.

MAYOR GOODMAN

Okay. So I understand that, and that's exactly what we're going to do. We're going to hear from everybody. And most of you we've heard from before, and maybe there's something new you're adding, which we would hope that might make some difference, and we will hear from you.

So what I'm going to say and our principals to the issue of any different length, is there any recommended difference for an attorney representing a group or the principal speaking or anything else, in your recommendation, so everybody has a chance to speak?

BRAD JERBIC

It's typically been your tradition that if there's a group spokesman, you've allotted them more time. If it's an individual spokesman, you've allotted them less. That's within your discretion.

MAYOR GOODMAN

Okay. So what we will do is limit everybody, unless you are a principal representing a group and have not appeared and you have something new to add, we will then let you have, we'll give somebody new who's not a principal two minutes. Anybody that's a principal that is representing or responding to gets their five minutes.

How will you know? Pardon, they will tell us who they are and if, in fact, they are a principal, an attorney for a particular group, or if, in fact, whatever their relationship is. And if they've spoken to us before, it would help when they tell you their name.

So please come on up, sir. In fact, I will tell you if I can figure it out.

HERMAN AHLERS

Mayor Goodman and Council people, I'm Herman Ahlers.

MAYOR GOODMAN

We're going to do two minutes and five minutes. But if you don't use your two or your five, that's fine too. But you're two minutes.

HERMAN AHLERS

I'm Herman Ahlers. I live at 9731 Orient Express Court. I've been there for 18 years.

MAYOR GOODMAN

Yeah. And because you're so tall, can you get closer to the mic? I'm sorry. Our microphones are very short. Thank you.

HERMAN AHLERS

I'd just like to make two comments in regard. I guess what we're talking about this 61-lot subdivision. Is that what's on the agenda?

MAYOR GOODMAN

That's part of it, but I would say down here that's Agenda Item 134.

HERMAN AHLERS

Can you put this picture up of the existing-

MAYOR GOODMAN

Yeah, there you have it. It's there.

HERMAN AHLERS

Okay. This is actually where this subdivision is trying to get put in.

MAYOR GOODMAN

Correct. We know that.

HERMAN AHLERS

But I have a subdivision inside a subdivision that borders on all corners is very, very difficult to be attractive. Number one, the elevations in this particular golf course area is somewhere around 14 feet below the elevation of all the rest of the homes. Secondly, the amount of variances that this developer, some of them have already been granted smaller streets, less sidewalk, less

setback, no open space, no hard amenities, or no hard improvements. So it's really a tough situation to have it inside of a tight subdivision.

The other point is the entrance. The entrance on Hualapai is a total disaster. We've had two people that were killed at that corner of Hualapai and Alta. Now, if they want to build an entrance, that entrance should be similar to the entrance that we have coming in to Queensridge North. That is guarded. It is 24/7. It is state of the art. If they're going to put an entrance in, they've got to put an entrance that would secure all of us.

MAYOR GOODMAN

Thank you.

HERMAN AHLERS

Okay?

MAYOR GOODMAN

Thank you. Yes, please. Thank you.

BOB PECCOLE

Bob Peccole, I live at 9740 Verlaine. I am a principal. I represent appellants in the Nevada Supreme Court.

The first thing I'd like to bring to your attention has to do with the Development Agreement. The Development Agreement is wrong right on its face. Now, the reason I say that, and I'm going to try to make it very clear so you'll understand why I'm saying it. First of all, there were two deeds once Fore Stars got the golf course. The first deed was a quitclaim deed from Fore Stars to 180 Land Company, LLC. The second deed was from 180 Land Company to Seventy Acres, LCC. Okay?

Now, when you look at the Property Settlement Agreement or, excuse me, the Development Agreement, you will see on page 46, which is the signature page, it only allows for the signature of 180 Land Company, LLC. That's one.

Now, we already know that Seventy has 70 acres. Okay, let's now try to clear that up. What happened is there was a loan based upon this property, and the first loan had to do with Thomas Spiegel. He was involved in a lending of $15.8 million that went to Mr. Yohan Lowie.

And what happened then? Well, the legal description of that particular trust deed was lot five, which was all of the golf course, the 18 holes. Subsequently, that note was transferred over to Western Alliance Bank. Western Alliance Bank ended up with a new trust deed.

Now, this is important to understand. This trust deed was written and given by Seventy Acres, LLC, who is not a party to this Development Agreement. And why are they not a party? Because they own 70 acres of the total of 250.92 that this Property Settlement Agreement covers. You've got to understand 70 acres is out of this agreement, because of this other company, this Seventy Acres, LCC. They own it, but it's under trust deed to the bank. Well, what effect does that have? Well, we'll see right here. It says that this trust deed covers a promissory note for $15.8 million. That's the promissory note. It was transferred over.

So then what happens? Well, you have to really take a look at the different things in these trust deeds. This particular trust deed takes away everything that they could actually do anything with. They gave up all their rights under this trust deed for the $15.8 million loan. So that leaves you now with a situation where Seventy Acres, LCC could never be a party to this Property Settlement Agreement because they've already signed away all their rights under the trust deed to the bank.

I think Mr. Jerbic knows that, and I think that's why when they put in the application for this Development Agreement, they put it in for the full 290 acres. But that could never be, because the 70 acres is already removed. So it's a false document. And if you're going to sit here and listen to everybody throw around these development agreements and their understandings, well, they're working on a false premise.

And I would just say that if you ever look at the actual Property Development Agreement, you know, Mr. Lowie never intended to build or develop, and he's snowing you guys. He's making fools out of you, because what he has in mind is he needs the entitlements. Those entitlements are worth millions and millions of dollars without him ever turning a shovel of dirt.

MAYOR GOODMAN

Thank you.

BOB PECCOLE

And what's really surprising is – I'd just like you to know this. This is an important part. What has happened is he bought this property in 19, it would have been 1994. In fact, he bought it just – okay, let me just look here for a minute. Okay, he bought it in December of 2015. Actually, there's some discrepancy, because it might have been 2014. But here's what he says in a lawsuit where he filed it against me and my wife for $30 million of damages.

I want you to hear this. On December 1st, 2015, Plaintiff Seventy Acres, LLC entered into an agreement for purchase and sale of property with a luxury apartment builder to acquire 16 to 18 acres of land for $30,240,000. He's already sold it, and this was in '85. He didn't even have it a year and he had no entitlements. He'd already sold it. So that was the 70 acres that was in the Seventy Land, LLC.

This is crazy. It shows you exactly what he's up to. He's not trying to develop anything. He doesn't have to. If you give him the entitlements, like he's asking you to do now, not only are you fools, you're making fools out of all of us.

MAYOR GOODMAN

Next, please.

DALE ROESSNER

Hello, Mayor and members of the Council. My name is Dale Roessner, 9811 Orient Express Court. I have two maps, I don't know if we can put them up on the screen and if you can see them or not. Can you see them okay?

MAYOR GOODMAN

Yeah. Push them up a little bit.

DALE ROESSNER

The 131 represents a General Plan Amendment for the 166 acres. And then we talk about the 61 homes that would really be on lot one, which is this red up in the corner. And Mr. Kaempfer came up and, you know, he's pleading, you know, for another bite of the apple saying, you know, I need to get some zoning. I've got to show something to my lenders. And quite frankly, you gave him a huge bite of the apple a while ago when he got all that zoning for the 435 acres or units. And also, Mayor Goodman, I remember you saying you really didn't want to see this being piecemealed. And what really concerns me about these maps is they're going for an amendment on 166 acres when they really, you know, are kind of dialing it back and in some respects saying, well, we just want this for the 31.

But if this 131 passes, really, you know, Pandora's box has been opened, you know, for the whole 166 acres, and I feel like that's a big, unintended consequence.

And I'm really – we've already had enough unintended consequences with the vagueness of the Peccole documents and what we were represented and where we're at today. And I just please ask you to hold this in abeyance. And I know Brad's been working hard. I've talked to him. I know, I think everybody's working in good faith. And I just wish that you would stick to your original position, which was let's get this whole thing done once and for all and not do a piecemeal, please.

MAYOR GOODMAN

I thank you so much for that comment, and if there weren't 7,000 more people waiting to speak, we could get to a point that we could address what you say. So I appreciate it.

ANNE SMITH

Good evening, Mayor and Council. I'm Anne Smith, and I'm from 653 Ravel Court, and I'm representing all of Ravel Court right now.

MAYOR GOODMAN

And as far as I understand, but I'm not sure, I know there's an issue there, and that's one of the reasons we're hopeful the conversation will continue if tonight ever ends. So I don't think you have to tell us anything. I know that there were issues, there are certain issues to which the full Council is not even privy, doesn't have the information yet, and so yours is there. I don't think you have to say anything. I think the developer is trying to work and figure it out as well. And so we just want to move this all forward. So you can give her her full two minutes, please.

ANNE SMITH

Okay. I'm not going to rehash anything. What we wanted to do was acknowledge you personally for having Brad Jerbic get involved in this to start with, and whether he was organizing or mediating our discussions with the developer over the past month. So he's given us the voice in the process that we've been asking for, for 18 months, and he's gone above and beyond. We have to say that.

MAYOR GOODMAN

And you've moved mountains. I cannot tell you everything and the generosity too of the developer working and bending and the community and the residents working on it. Victory is very close.

ANNE SMITH

So that's what we wanted to say is that we've gone back and forth and we've had some progress. And even last night, we met with Brad and Stephanie, and even though we didn't get an agreement, we feel that compromise is possible. However, we need more time and direction from you to keep going.

But we are concerned. The reason I'm talking is because we're concerned about what's, the sequence of the applications tonight, because it just appears that if those are going to be approved, then the impetus to come to a mutual agreement on the Development Agreement is in jeopardy. So we plead with you not to do that so that a development agreement can be worked out, where we all have protection, whether it's us or whether it's the new Two Fifty or whatever it is. You know, we've always been willing to work this out. And I know you know some of that, but I want it on the record. And we will say the same to our new Councilman as well. So we're willing to work on that. Thank you.

MAYOR GOODMAN

Thank you.

KARA KELLEY

Good evening, Mayor and members of the Council. My name is Kara Kelley. I've been a Queensridge homeowner for almost 17 years, and I live on Camden Hills. I'm here in support of the staff recommendation for the developer. I'm hoping that the Development Agreement will cover, the eventual agreement will cover all of the unresolved issues, but wanted you to know that on behalf of my family, we are in support of their proposal as it stands. Thank you very much.

PAUL LARSEN

Thank you, Mayor, Council members. As you know, I'm a land use attorney. I'm not representing anybody here today.

MAYOR GOODMAN

No. We don't know your name. We know you're a land use attorney.

PAUL LARSEN

My name is Paul Larson. I'm a Queensridge resident. I've only heard three gentlemen speak tonight who I agree with, from a procedural basis, regarding Items 131 through 134, and that would be your City Attorney, your City Planning Manager, and Mr. Kaempfer. Everybody else, I think, is simply creating a record for some kind of litigation down the road without addressing exactly what's before you. What's before you is, if I can point out the concerns that the residents have: the residents want the golf course to not be public; they want to keep undesirable elements out of that space that is now fallow.

So we'd like to see it developed into something. We'd like to see it developed into something green. We'd like to see it developed into something consistent with the density of the surrounding neighborhood, and we'd like to see it designed consistent with the surrounding neighborhood. The application before you hit all four of those major concerns that we have. So that's it.

MAYOR GOODMAN

Thank you. Two.

LARRY SADOFF

Good evening. My name is Larry Sadoff, and I live at 9101 Alta Drive. And I'll try to brief and things that have not been brought up.

Three things very quickly: Number one, I think it's presumptuous of anybody here to say they speak for the residents. The residents are a mosaic of different groups, and no one speaks for the residents here. So when people say we spoke to the residents, that simply is not true, and no one is speaking for me.

Number two, and I think is important. I'm going to talk about the whole plan, Mayor, because you asked to have one concise plan everybody gets together. I sat here in many Planning

Commission meetings and many City Council meetings, and I heard Mr. Kaempfer last time get up here and say, okay, we're going down from 720 units to 435, because we're listening to the residents, and we're going down to a zoning of 24.5. I sat there and, to be very frank, I said to the person next to me that's a bait and switch. Those units will come up someplace else.

Although it's not in this group here, you're seeing a request for 2,000 units in a very small area, low rises and high rises with a density of 35 to 37 units per acre, which is much more than anything else. I've asked the Director a couple of times: Are there any other places outside of Downtown where you have that density? I cannot get an answer to that.

I've listened with respect to you folks today as you went through some of the other permit applications considering the fabric of the community. I'm for responsible development. But when you have these 2,000 units, and then Calida is coming up with another 350 units across the street there, you are changing the fabric of the community. You need to consider the fabric of the community and do what's responsible development. And to me, to put 2,300 units in an infill here, in a suburban area makes it an urban area, and I'm not against urban areas, but this is a suburban area.

And the last point I'd like to make, I sat until 2 o’clock in the morning on a Planning Commission meeting last week. And it was very, very fascinating there, because basically there was point after point after point that came up. Even people who supported the development said: What about this? And the people at the podium said: Oh, we'll get that in there. We'll get that in there.

It's interesting that's the only item on the agenda that's heard at this meeting. Every other item was heard in the 19 July meeting. Why is this being pushed through right now? Why don't we have a comprehensive plan and get together and heard? Thank you very much. I appreciate it.

MAYOR GOODMAN

Thank you very much.

LUCILLE MONGELLI

Hello, I'm speaking for a number of residents at One Queensridge Place. Good evening. My name is Lucille Mongelli, and I live at 9103 Alta Drive, Unit 1202. I'm addressing the City Council today as I'm requesting that any voting for the Badlands development in its current proposal be held off until the next Council meeting in July when the newly elected Council members can have the opportunity to review the Badlands development proposal and consider their vote which will affect the area for the next 30 years.

I live in Las Vegas, and I have attended several of the meetings held in this room where there have been multiple changes to what the builder is proposing. Each proposal has been modified, and the current proposal and what is being proposed this evening is the worst of all. A hotel, assisted living complex, houses, towers, condominiums, rental units – the gamut is being presented and none of it is good for the community, nor for the homeowners of the freestanding homes in Queensridge, on the golf course, nor in the Towers where I reside.

The whole concept has been entertained for over 18 months with no regard for the impact this over-the-top development will have on schools, water consumption, traffic, hospital overload and greenspace. There are miles of desert land in the town that could be developed, and this development does not need to be behind the homes where small children and elderly people reside.

For months, there has (sic) been postponements of meetings due to Council members' schedules as well as the mayor's. And why does a vote need to take place now? Is there something to the rumors of Badlandsgate? This developer has been given extensions and special treatment which no other developer has ever been given. There have been private meetings in homes with the developer where there has been no public record. There have been threats made to homeowners that if they don't agree with the development, there will be consequences.

That in itself speaks volumes as to what is going on here. The developer created a Supreme Court building recently, and could it be that there are special interests involved here to reward him?

MAYOR GOODMAN

Thank you very much. Appreciate it. Thank you.

LUCILLE MONGELLI

Clearly this –

MAYOR GOODMAN

Thank you, ma'am.

LUCILLE MONGELLI

I'm not done.

MAYOR GOODMAN

Well, you're done, because it's two minutes, and that's what we're doing, and we gave the principals more.

LUCILLE MONGELLI

Okay. You have to understand something. I'd like to finish –

MAYOR GOODMAN

No, no, no.

LUCILLE MONGELLI

I'd like to finish.

MAYOR GOODMAN

You made accusations. I'm sorry, ma'am. You've made accusations.

LUCILLE MONGELLI

I'd like to finish. Maybe because you don't like what I have to say, but I'd like to finish.

MAYOR GOODMAN

No, I don't like your rudeness.

LUCILLE MONGELLI

I flew in from New York with a father sick in a hospital.

MAYOR GOODMAN

No, I just – I'm sorry.

LUCILLE MONGELLI

And Mr. Coffin said that we should be allowed to speak.

MAYOR GOODMAN

You are.

LUCILLE MONGELLI

Mr. Jerbic said we are allowed to speak.

MAYOR GOODMAN

You are, and we said two minutes per resident or anyone else.

LUCILLE MONGELLI

Thank you.

MAYOR GOODMAN

And five minutes for the principals. Thank you very much.

RICK KOSS

Hi, my name is Rick Koss and I'm scared. No. I promise to be about a minute and a half.

MAYOR GOODMAN

Thank you.

RICK KOSS

Just a two quick points. Probably the only representation of what the residents think, I hate to say this, is the election, which was probably the only – this was the key issue in Ward 2. If there was any other issue, I'm not sure what it was. So if anything spoke to how the residents think, that would only be the proper representation, nothing else that any one person would say. That was what the best public forum was.

The other is I hear about these meetings. I live in St. Michelle. This specific 61 units, I have yet to sit in a meeting. I have several of my neighbors. I have yet to be in a meeting yet to talk about what's going to be in my backyard. So this particular project I have yet to have a conversation on. So to say I participated is an error, and I have a number of my neighbors there. Thank you.

MAYOR GOODMAN

Thank you. Thank you very much.

HOWARD PEARLMAN

My name is Howard Pearlman, 450 Fremont Street, Las Vegas. How many minutes do architects get? I just came up here to say that very simply, speaking as an architect, probably the best architect in this city is not an architect. The best architect in the city is right here, this guy right here.

MAYOR GOODMAN

He is very good.

HOWARD PEARLMAN

And I say that and I'm an architect. And my mom thinks I'm the best, but I know who the best is. It's this guy right behind me.

Queensridge Towers, Tivoli Village, the Supreme Court building. And I know him personally. And I know the passion that he has not only for every single detail of every stone of every project that he does, but I know him as a passionate and compassionate man. And I've worked on projects with him. And when it comes to how his project affects neighbors, he is extremely diligent in making sure that he doesn't adversely affect anybody. He is a caring, good man.

And if I can give the City Council just one little piece of advice that I've had on my chest for about 40 years, it's this. If you want to have a great city, listen to your planners. You've got an excellent planning staff. If the planning staff is for this, listen to them and let the planners work it out.

I've been to a lot of these meetings, and I've heard a lot of neighbors say that: You know, this is the worst thing that could ever happened to me. And then it's built, and I see them in a grocery store five years later, 10 years later. Thank you, Mr. Pearlman. It was beautiful. I'm so sorry I opposed you.

Listen to your planners. Thank you very much, Mayor. Thank you, Council.

MAYOR GOODMAN

Thank you very much.

SALLY JOHNSON-BIGLER

My name is Sally Johnson-Bigler. I live at 9101 Alta Drive. There's been a lot said about how wonderful all of the work is that Mr. Yohan Lowie has done. I live in the Towers. We have persistent leaks. We have spas that don't work. We have things that need to be torn out constantly.

We are in the middle of a huge lawsuit, a $200 million lawsuit, which we were just given thirty some million dollars, and it's not over yet. So his building is not all that great. You just need to keep in mind that these are the facts that his construction has a lot of problems. I live there. Also, who's going to hold his word to the fire? We asked that Mr. Beers recuse himself. He's not going to be on this Council any longer, so the rest of you will be left with the rest of this. Also, all of these folks that are here, I would wonder how many of them could stand and say that they are his sycophants or shills that are here, possibly family members, employees being paid to be here. Are they homeowners? Are they genuinely affected by this, or are they just here as a favor or on the payroll?

We are taking time out of our lives because this directly affects us. We are not here as favors or being paid. We are here because these are our homes. This is where we live. This is our investment. These are our friends and families that live in these areas. That's all I want to say. Thank you.

MAYOR GOODMAN

Thank you.

DAVID MASON

Hi, I'm David Mason, 1137 South Rancho, Las Vegas 89102. I'm going to give you my personal experience. I've heard numerous times and it finally got to me tonight, similar to her conversation about what a wonderful builder Yohan is. I think he's a wonderful designer. I do not believe he's a wonderful builder.

I was on the first Board that took over from – I've lived in Queensridge since '07 when it opened. I was on the first Board, the President of the Board, and I contended with tremendous problems from the construction. I want to correct a little bit of what she said, and it's not a $200 million lawsuit. It was a $100 million lawsuit based on a bond that was put up by Mr. Yohan Lowie and the contractor. I heard for months and years before I got on the Board that it was the contractor that created these problems, it was the contractor, contractor.

When I got on the Board and I personally went into units, saw the problems, and through my investigation somewhere between 70 and a hundred million worth of that work was done by Yohan. And they just lost. That lawsuit is ended. They just lost a $30 million lawsuit for, give or take a half a million, for construction defects. And that's him and the contractor.

They can say they didn't do the work. But I can tell you personally decks, all kinds of areas that created leaks. I spent $3.5 million of our money for temporary repairs – temporary repairs. Now, this is a personal – I'm just telling you my personal experience. When I moved in there and paid $750 a square foot for my home, the representations to me were the golf course next store, this beautiful Renaissance building that's going to be built across the street. We're going to finish Tivoli, and it will have homes in it. And this is the environment you're moving into.

That environment now is apartments across the street, not a beautiful Renaissance building. The Tivoli, through a negotiation between him and his partner, I don't know the details of it, but the bank that he was partnered with took over that development. Now the golf course is going to be gone if we continue down this path.

So the next time I hear he's a wonderful developer, it's going to even bother me more. He's a great designer, in my opinion. He's not a great developer. And I don't believe personally that he's going to do all of this development. Thank you.

TERRY MURPHY

Good evening. Terry Murphy, 1930 Village Center Circle. I just have one very important point to make. The application before you – well, first I'll answer a question that Councilwoman Tarkanian asked of Mr. Rankin earlier. When was the last master plan approval done? It was in 2015.

And the point I want to make is that you have an application for a general plan amendment on 166 acres for 5.49 units per acre. My math, which isn't great, but I used a calculator, tells me that is 911 homes. So this Council would be approving nearly half of what would have been done in a development agreement with no development agreement, no roads, no flood control, no nothing, just a general plan amendment for 911 homes. And that's the only point I want to make.

Sorry to take your time. I know you guys have had a very long day.

MAYOR GOODMAN

Thank you.

TERRY MURPHY

But that's a very important point to understand.

MAYOR GOODMAN

Thank you.

ELAINE WENGER-ROESSNER

Good evening. My name is Elaine Wenger-Roessner. Just for the record, I would like to report that the Queensridge Owner's Association Board did meet twice in April with the developer and several of his team. At the first meeting, I requested a comprehensive written plan for the redevelopment of the Badlands Golf Course.

And since the Board is not empowered to negotiate and/or agree to a potential proposal on behalf of the entire community, I requested that it be written so the Board could actually function as a conduit for information to the Queensridge residents. The Board could then facilitate or assist in neighborhood feedback. I believed we were really beginning to make progress. I personally was very excited about that.

And Mayor Goodman, I took great comfort in your clearly stated directive that the developer present a comprehensive development plan. I know that a lot of people are working on that. In fact, I think I recall you used the term, the phrase "global plan." And I now respectfully request you to deny the applications before you, because I feel like they would be piecemeal, and I'm really afraid it would undermine all the progress that has been made. Thank you.

MAYOR GOODMAN

Thank you.

TALI LOWIE

Hi. My name is Tali Lowie. I live at 9409 Kings Gate Court. I live with my parents, Merav and Yohan Lowie, obviously. I would like to speak on behalf of the future generation. If you can see all the people who are against this plan, they're all kind of older, and people who are more for it –

MAYOR GOODMAN

Now watch it. We've had no insults except one. And don't go there.

TALI LOWIE

I didn't mean to insult. I was just trying – oh my God, I'm so sorry.

MAYOR GOODMAN

I'm kidding you. No, I'm kidding you. You're fine.

TALI LOWIE

I'm super nervous as you noticed.

MAYOR GOODMAN

No, no, no. You're fine. I got it. It's a joke.

TALI LOWIE

But if you look on our side, or the people that are supporting, they're younger and -

MAYOR GOODMAN

You know, some of you aren't so young over there. So consider yourself lucky.

TALI LOWIE

Yeah. No, of course not. But I mean like there's me, and then there's like someone I know.

MAYOR GOODMAN

I see a couple of young ones.

TALI LOWIE

Sure. And I know that I think there is one woman that said that 30 years into the future, or something like that, it's going to matter, and she's right. It's going to be so important, but it's going to be my generation that carries on that. We're going to be the ones that come and live. And I know for me, like I'm moving to a different country, and I'm drafting into the military.

But when I grow up, I want to come back, and I want to live in the neighborhood that I've lived for the last 17 years. And I want to be able to live in a new home and a new developed home, and I don't see a reason against it. I don't think that there is an issue to building new homes. I think making our community grow larger and to be bigger is such a great idea. Like we're moving on. This is the future. We should accept change. We should be happy that there's going to be more people that want to live in our community.

And there are a few people that said that the development isn't good. And I mean I think you can go look at the Queensridge Towers and at Tivoli and the Supreme Court that just opened up, and you can see that it's not only good, it's amazing. And I'm not speaking because it's my father and because it's his, like company that he works in, but it's truly amazing. Like it's beautiful. And they don't even try a little. They go beyond, like above and beyond. Above and beyond. And so why wouldn't you want people to go above and beyond to keep going above and beyond? That's all I have to say. Thank you.

MAYOR GOODMAN

Thank you. Your dad doesn't have to say a word. Good job. Okay. Anyone else? These are five each. Now, Mr. Jimmerson, as much as I admire you, I'm going to hold you to five.

JAMES JIMMERSON

Okay.

MAYOR GOODMAN

Now that's hard, I know. But you're going to have to do it.

JAMES JIMMERSON

Your Honor, listen, I'm going to shrink my remarks.

MAYOR GOODMAN

Shrink them?

JAMES JIMMERSON

Shrink them. Reduce them.

MAYOR GOODMAN

Thank you.

JAMES JIMMERSON

But I will say that you allowed one of the opposed to speak –

MAYOR GOODMAN

No, no, you're fine with it. But if you need more, you're right.

JAMES JIMMERSON

And they spoke 44 minutes.

MAYOR GOODMAN

Right. But can you keep it –

JAMES JIMMERSON

I will.

MAYOR GOODMAN

Okay. Thank you.

JAMES JIMMERSON

Thank you, Ms. Mayor and members of the Council. My name is James Jimmerson. I live at 9101 Alta Drive. I live in the Queensridge Towers, and I have the privilege of representing these applicants here today.

I'd like to first call your attention to what is being heard presently. What is being heard presently is Items 131, 132, 133, 134, but particularly 2, 3 and 4, which is the 61-lot application, which asks you to remove the –

MAYOR GOODMAN

Can you get closer to the mic?

JAMES JIMMERSON

They ask you to remove a land use designation that was erroneously placed upon this property in 2005, as attested to by Mr. Jerbic in his discussions with you and also in the Planning Commission meeting of last Tuesday, which I think is really more of a formality because it's not properly placed there. A waiver to allow a street to be the same size of a street that is presently existing in the neighbor Queensridge Towers. The Verlaine Street is the same width as we're being asked here, which is pretty simple.

And the 61 lots, which is, as you know, a less density than even what is existed in the building there next door to it and that will have amenities that are equal to or greater than what is there presently now and which is within the entitlements that already exist on my clients, which you know is R-PD7, up to 7.49 dwelling units per acre with a land use designation of ML, Medium Low, and by agreement to Low as part of this project only, but historically had been Medium Low.

That's what's before you. There is no – when you listen to all the fine men and women who have spoken against the project tonight, they are not addressing this project. They are not addressing the propriety of your approval, your exercise of sound discretion to grant and approve this 61 lots on 34.7 acres, or 07 acres. They are more talking about the issue that you have announced will be probably abeyed, by formal action tonight, to a July 19th hearing or perhaps thereafter.

But on the merits of this project, this project has been pending now more for many, many months. It's been before you. And it doesn't benefit the Commission to have certain of the homeowners use terms like blackmail and these are a bunch of sycophants. By the way, regarding sycophants, could I have the ladies and gentlemen who supported the project please stand up, please. You may be a bunch of sycophants according to one person, but we're appreciative of the support, and I thank you very much.

It is important, though, for me to correct the record as best I can in the short time period that I'm allowed. First, in 1990, a conceptual Master Plan was approved by this Council and its predecessor. But that plan was abandoned by 1996. The abandonment was a result of litigation that broke out between the original proponents of the plan in 1990, Triple Five and the Peccole Family. It was replaced by the Queensridge common use community. And that's one of the corrections we want to make.

When Mr. Schreck speaks and he talks about the Queensridge golf course, I'm not familiar with that entity, because I know that there was never a golf course that was ever owned by the Queensridge interest community, nor has one dollar or one penny ever been spent by any residents living there, including myself, towards the benefit or control or maintenance of that golf course community.

Furthermore, there's no pending appeal on the court's ruling, finding as the City had found, that NRS 278A does not apply, contrary to Mr. Schreck's remarks. There is a direct judgment on the facts of this case that you heard from Judge Smith and from Judge Allf.

If I could just read documents that I will place in the record here today. Finding number 50, it is you all, the court says. It is you all who this should be applied. You will make the decisions. Number 50, the plaintiffs are improperly trying to impede upon the City's land use review and zoning processes. The defendants are permitted to seek approval, referring to ourselves, to seek approval of their applications or any applications submitted in the future before the City of Las Vegas, and the City of Las Vegas likewise is entitled to exercise its legislative function without interference from the plaintiffs, who are some of the homeowners.

Continuing at 51, and I'll conclude with that. Plaintiffs claim that the applications were illegal or violations of master declarations or without merit. Those arguments are without merit. The filing of these applications by defendants or any application by defendants is not prohibited by the terms of the master declaration, because the applications concerned defendants' own land and their right to build, and such land that is not annexed into the Queensridge common use community is therefore not subject to the terms of the CC&Rs.

So I would say with regard to gentlemen like Mr. Buckley or Mr. Rankin or Mr. Garcia, simply read the court decisions, because the points that they try to argue here are re-litigations of that which has already been argued and which was adjudicated against them and in favor of the developer. So one of the things that you know is that we do have the development rights before you. You've been so advised by your City Attorney, who's done a remarkable job in trying to put the parties and parts together, as well as the court decisions that we've lodged with you in prior hearings. I would simply say that we all want to work with every homeowner that we can.

I made a pretty significant and some serious talk with regard to the Planning Commission last week about you need to try to satisfy as many people as you can, but you have to recognize that when you have this kind of emotion, it's not going to be always possible to satisfy everyone. But as it relates to the 61 units, which is before you tonight for this discussion, there is no serious objection to that. There is no argument with regard to the fact that it meets within the density

requirements. It meets within the zoning requirements. It meets within the land use designation from 1990 and 2001.

I want to also call to your attention – and I know this is a legal point, but you should know this – you passed a city ordinance in 2001 that confirmed the land rights designation and the zoning to this property being R-PD7 and ML. And that was without any reference by any of the 20 people here that mentioned. There's not one reference. All the lawyers stayed away from that. And if you look at the ordinance, you'll see it is without any conditions whatsoever. So when you start with that, then the question becomes: What would be appropriate on this location? And you hear these emotional terms like we don't want piecemeal development.

Well, the answer is that whenever you have a adjoining land property, it is parcel by parcel. It's not always at one. And these parcels are owned by three different companies. Nonetheless, the entity here is asking for your discretion and your exercises in voting in favor of approving these 61 lots, and then they will go forward and continue to work on a larger project. But on the merits of this small project, they certainly are entitled to it, and there's no serious legal or factual impediment to that. All the comments with regard to the larger project and not to the smaller one that's been pending now for several months.

And there is a duty, under your Code and under the Nevada Revised Statute 278, that you must rule on this. You must give our clients the day in court, as you are, as we all are working so hard and so late into the evening and have done so last week as well. And for that, we are very appreciative. But when you go through the statues, particularly 278.0233, there's an obligation for you to rule and to rule this evening, and there's no legal or factual basis to object to that.

And I did want to also make one correction again to Mr. Garcia, who may not have read the statutes, but under NRS 278.339 sub 3(e), when there is a dispute or conflict between land use designation and zoning, zoning trumps. And that occurred here, because historically, as you've been told by both sides, zoning occurred in 1990. And the first effort to have the introduction of a concept called land use designation came years afterwards, and clearly zoning trumps the balance.

And let me tell you that when you listen to the essence of many of the speakers here who oppose this project, you can't help but come away with the feeling that there's nothing that the developer is going to be able to do to assuage every single one of them. And so what we've tried to do is try to take each and every one of their thoughts into consideration. We respect them. We live amongst then. We work with them. We walk our dogs together. We know them and try to work with them. And this project, this small project of 61 lots on 34 acres, with the entry off of Hualapai, with a magnificent entry is going to be a credit to this community and is a beginning for which this developer has both constitutional and statutory rights as well as just a matter of common sense and good facts.

Why is it that Mr. Perrigo, why is it that Mr. Lowenstein, why is it that your City Attorney all speak in favor of this project? Because it's meritorious, both looking at the facts of it as well as the legal precedents that apply. The response to the position by the homeowners have been argued and have been rejected by the court after a good deal of hard work by everyone considered and through a fair result.

I'd like to turn the balance of my time over to Mr. Lowie. You might want to speak to what was developed, Yohan. You may want to speak to this. Go ahead, sir.

Thank you so much. It's always a pleasure to appear in front of you. Thank you for your time, Madame Mayor.

Just for the record, we've given your City Clerk the case precedents and case orders that I've referenced in my opening remarks as well as the current proceedings before you and some remarks by City Attorney Brad Jerbic with regard to the right to develop. So I place that before the City Clerk. Thank you, Mayor.

STEPHANIE ALLEN

Just briefly, Your Honor, members of the Council, I'd just like to address a few comments that were made. Most of the comments tonight, as Paul Larson said very briefly and succinctly, have dealt with the overall global project, and really what's before you tonight is not that.

Although with that said, I would like to just show you briefly on the overhead. There's been a lot of comments about changes that have been made. This has been a long process with this Development Agreement.

This is a comparison chart of the major changes that have been made. And so I know we're not on the Development Agreement, but I think it's worth it to take one minute to show you all of the concessions that this particular developer has done over the last two years.

YOHAN LOWIE

We'll go over the changes.

STEPHANIE ALLEN

We started at 3,020 units, and we're down to 2,104. We had 250 – these were at the request of the City or neighbors, not Yohan's request or EHB's request. These were all at the request of the City or the neighbors.

The development area unit counts, we had assisted living originally proposed at 250, 200.

Development Area 4 we had 60 homes. Then we went to 75 homes. Now we're back to 65 homes, which you'll see on a future agenda should you abey the next item.

Overall, the acreage, minimum acreage size started at a minimum of one acre. Then we went to a half-acre. We're now at a minimum of two-acre lots. So we've had some huge concessions that have gone on between now and the last time we saw you.

Number of towers, we had three towers originally. We're down to two towers. Heights of the towers were reduced from 250 feet to 150 feet.

BRAD JERBIC

Stephanie, I'm sorry to interrupt you, but I have to legally. We are not agendaed on 130 right now to talk about the Development Agreement. And so I think we'll be in violation of the Open Meeting Law if we continue with that. I hate to interrupt you.

STEPHANIE ALLEN

Okay. No, no. So just real quick, so I'd like to just, I guess, summarize it. Everyone has talked about the Development Agreement tonight. Every single person that testified, their testimony dealt with the Development Agreement, not with this application. The application that's before you is like every other application that was on your zoning agenda today, except the zoning is already in place. The R-PD is in place.

NRS 278.349 right here says that tentative maps must be approved within 45 days. This particular Applicant signed a waiver, when he submitted this application back in December, to allow additional time. So we've had months and months and months of this pending tentative map, trying to work in good faith to come up with an overall global project. We're just not there. We'd ask that you now consider the application that's before you. We're well beyond the 45 days.

Also in this statute, it says that you must, you shall consider conformity with the zoning ordinance and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedent. So, right now, the GPA was submitted with this application at the request of your Staff, because they asked that you do that, to match the GPA with the zoning. The zoning is in place. It's R-PD7. So what we have before you, that takes precedent. We're not asking for anything. We're asking for basically a site development plan review and a tentative map that conforms with the zoning and is actually compatible and less dense than the Queensridge homes that are already in there.

So it's a simple application. We'd very much appreciate a vote tonight so that we can move on. We've told you tonight that we will work in good faith. We will continue discussions with the neighborhood, although it's discouraging to have the same people here every time, after all of the concessions we've made, continuing to say the same things and continuing to ask this thing be delayed. So for purposes of this application, we'd like an up or down vote, please, tonight, so that we can move on. Thank you.

YOHAN LOWIE

Good evening, Your Honor, Council members. Yohan Lowie, 9409 Kings Gate Court. And I want to respond the first time all the allegations that were put in here, but I want to talk about this 61 lots in particular.

You remember the beginning. We started about two and a half years ago. We came to the City saying this piece of property, I'm going to get it. I just want to know if this piece of property is developable or not, because if it's not developable and the City has any contract for restriction, I'd like to know it so we can go work with Peccole of how, you know, this, what's going to happen here. And the conclusion of your Staff, after months of working, is that this piece of property is zoned R-PD7. They couldn't believe it's zoned R-PD7, and it's compliant with all the requirements for development.

Never we heard from the City Peccole Ranch Master Plan. We didn't know it's Peccole Ranch Master Plan. And I will tell you there's no Peccole Ranch Master Plan, but I don't want to take your time. I'm not representing there's no. I can tell you it's not recorded. It's not recorded on the piece of property that we purchased, 250 some odd acres. It's simply not recorded.

So we got a letter saying it's R-PD7. We went and paid for the property, closed it. And before we closed it, we came to you and to some homeowners for that matter, came to homeowners saying: Guys, here is the situation, including Clyde Turner, sat with them and said: Here's the situation. Here's what we got. Here's our idea. We're going to put heavy density. Get some money. Sell a piece of the property, get the money, put it into behind the houses, and turn it into a park with about 60 homes originally.

I have the plans. I can show you the original plan. Nothing changed except the original five homes now. Okay.

Then the first meeting we had with the neighbors, they sent me to talk to the neighbors, and I did so. And it became a mess. Mr. Schreck stepped in. You can't develop anything on this golf course. This golf course is not going away. And I say, well, it's a done deal. The operator have (sic) quit. He quit. It's not in my control. They're not continuing to operate this golf course.

Continue from there, the next meeting after we submit an application, you remember Mr. Bice standing here and pointing and saying I will have an ex-city employee standing here and telling you there was a collusion between this developer and some of the staff here.

You know, I've attended that the position of this ex-employee, Mr. Doug Rankin, and I can tell you what he said. Here's what he said. Nineteen times straight Mr. Jimmerson asked him: Did this person that signed on this parcel map have colluded with Mr. Lowie or with EHB? No, no, no collusion. Nice guy.

Did he colluded? No collusion.

Is anybody on the Staff of the City colluded, question number 20 or so? Okay. No, no collusion.

So what is it? He said I don't know. They filed application in good faith.

How about City employees? They work in good faith. Yes, these are good people that work in good faith, zero collusion.

I'll tell you where there is collusion. Collusion there is between the ex-employee and plaintiff here to try to plant PCD into the preceding, offering PCD so they can bring a 278A claim and go behind the back and say, oh, it should have been 278A. It looks like it. It works like it. It must be it.

What they don't tell you, that a master plan, Z-1790, and if you can see the overheads, I will be able to show it very clearly. Designate the piece of property in front of you today as an R-PD7 with the developer rights, right to it. And I tell you further, after 15 meetings, today 16 meetings, and 19 abeyances, today if you abey another item, it's 20.

I'll show you what the Bible for this piece of property is. This is record of every single piece of property in Queensridge. Every homeowner in Queensridge, including me with all the properties we own in Queensridge, all the properties we bought in Queensridge, all the property we sold in Queensridge subject to this massive CC&R. I'd like to tell you what the CC&Rs says.

The first chapter of the CC&Rs, right in the recital, it says the following. And that's in relate directly to this piece of property, this application in front of you today. In the recital, it says that the declarant without obligation to develop the property and the annexable property in one or more phases is planned, mixed use common interest community pursuant to Chapter 116. Okay.

And then I will read from the bottom. The property may, but not required, to include single-family residential subdivision, attached multi-family dwellings, condominiums, hotel, timeshare development, shopping centers, commercial and office development, a golf course, parks, recreation area, open space, walkway, pathway, roadways, driveways, and related facilities. The maximum number of units, which the declarant reserved the rights to create within the master plan community, is 3,000.

The existing 18-hole golf course, commonly known as Badlands Golf Course, is not a part of the property or the annexable property.

To prevent the arguments that all these people came in front of you today made, they put it in there. And they amended this in 2001 to say 27-hole golf course is not a part of the property nor the annexable property. So nobody can say I've been here and I bought in there, and I thought it would be a golf course.

But you know, Peccoles are not stupid. Bill Peccole was a genius. You know furthermore what he did? And you have this on the record. I just want to make sure that you understand that every single disclosure, not in small print, were given to buyers in Queensridge to know exactly what they're buying. They're buying within a master plan community called Queensridge, not Peccole Ranch. How do you know? The Master Plan, under the designation, is a master plan community of Queensridge, which is under NRS 116, which has Exhibit C. It shows the Master Plan and what it is.

If you can see the overhead, this is the master plan community of Queensridge is within the boundaries, Lot 11, Lot number 12B, 12A, 9, 8, number 4, and you can see that number 10, the entire number 10 or this piece of property in front of you today is within developable property. The golf course not a part.

What it shows on the other areas is a diamond. On the side you can see it says subject to development rights.

MAYOR GOODMAN

Okay. Mr. Lowie, I'm going to ask you to condense as much as you can, because otherwise giving you more time would be inequitable to others. So let's go ahead and if you would –.

YOHAN LOWIE

Well, I think, Your Honor –

MAYOR GOODMAN

And I understand. I understand.

YOHAN LOWIE

The key opposition spent here, you know, at least 18 minutes speaking here.

MAYOR GOODMAN

Right.

YOHAN LOWIE

I don't think I got even five. Okay.

In the contract, it states in the contract that there is no views guaranteed, and the future development will include the property, the nearby property. Okay. So, with that, I will tell you this. I feel you that your feeling is to hold this item until Development Agreement will be reached.

MAYOR GOODMAN

Thank you. No more.

YOHAN LOWIE

If –

MAYOR GOODMAN

No, that's it. I just, no, because you've been up, and we've had two or three times with Mr. Schreck. It's not right.

GEORGE GARCIA

If I could Mayor, this is important, because what this –

MAYOR GOODMAN

It's all important.

YOHAN LOWIE

Please, just tell me you can wait, and you can talk, speak afterward. Don't cut my words.

MAYOR GOODMAN

Okay.

YOHAN LOWIE

Please don't cut my words. Let me finish.

MAYOR GOODMAN

Please finish up.

YOHAN LOWIE

If you decide that you want to hold this item for Development Agreement, I would like to consult with my attorneys right now and withdraw the application for Development Agreement. I have no interest anymore to negotiate, to negotiate to no end to no avail. This opposition, this organized opposition here has been told every single one what to say and why they have to say it in order to delay this thing to a new Council. Okay.

I don't mind. There's a new Councilman that ran on a platform of condemning of property. We are going to resort to our zoning only. And if in the future there will be a development agreement because an agreement will be reached, that's fine. We have done everything humanly possible to try to reach an agreement with these homeowners. What they're asking for is a football field of a park behind every single home, not one but five of them, 580 x 300 feet.

We can't, obviously, lose all our land to parks and recs and somebody else will have to maintain it. We can't do it. And I think the negotiation have ended in a position that they can't go forward from that point.

So we're asking to continue with the 61. We have rights only for that. That's half the density that Queensridge is. Queensridge is 3.48, and this density is 1.78. It's less than half the density. It's compliant with everything. It's compliant with all the requirements.

MAYOR GOODMAN

Thank you.

YOHAN LOWIE

You know, I just want to say one thing to you for the Development Agreement. So it's very important that you hear this, because you've been there. The negotiation with Tivoli was given 20 feet for each home in the back. Okay. We negotiated for months with them, (inaudible) represent us at the time. They were ecstatic to get from us 20 feet. We landscaped it for them.

You know, those houses, they sit on the same wash, on the same, exact waterway that the opposition sits on. They've got 20 feet, and they were ecstatic. Why do these people have to be treated differently? Why do they have to get 300 feet? Why do they have to get 6, 10 times more, for what reason? How about 15 times more? They think they can get whatever they want to because we are asking to do one single thing.

The application in front of you today is to develop our property on the current zoning. The application that you may be denying or abeying for Development Agreement is the mechanism of which the City, your planners came up with to combine three separate entities that have two

distinct zonings. Two of the entities have an R-PD7. One has a PD zoning, the same as the tower, the remnants of the tower, and combining them into one single entity as a massive developer in order to shift densities from one location to the other to build this project.

If you today abey or decide not to approve, to deny this application for Development Agreement, you're basically telling us you do not want to shift zoning. So the only thing we have left is to use the zoning that the property is zoned for today. The Development Agreement only allows for zoning to shift. And with that, we got a boatload of restrictions and conditions for the next 30 years, governed and demanded by the City.

We only want to develop our property. The harm that you're causing us every time that you're delaying this thing for the last two years for that matter, okay, is hundreds of thousands of dollars every month. Once we almost lost the property, and we were able to refinance it. The financing coming up again in a couple months. Okay. We have to move on with this property or else there will be serious consequences.

Everybody is happy in the back. They want the consequences. But they don't understand they are the biggest loser at the end of the day. In a word, there will be nothing there other than the desert and nothing but fights. So, please, just allow this to move forward. I'm giving you my word as I always do, and I always kept my word when I gave it to you or to anybody else here on this Council, that when you approve this application in front of you, in the next 60 days that you, we will agree to the advance, and in the next 60 days we'll sit again with the homeowners and negotiate to the best of our ability. And if we can come to an agreement, this will supersede this application.

You heard before from others here they're saying, oh you already gave them the 435. Not a week that went by, and I get into my office, the City Attorney, which I just cannot believe how he worked, how hard he worked to try to get the deal between us and the neighbors. He said hold, do not build this, because I want you to reduce the heights, and I want you to reduce it for One Queensridge. Make more concessions to Queensridge.

On top of that, I want you to give them parking. So I can't design the project. I can't move forward with this project waiting for Development Agreement. And we'll hold this project for 60

more days. So that could be included into Development Agreement. But we have to get zoning on our property and move forward.

It is, has been, this today is 19. If you would delay it, it's 20 abeyances that every single one of them, except one, that we asked for on favor of Shauna Hughes and the homeowners, were asked by the City, by saying you have to abey it. We're asking you to abey it. And the costs, they just keep on piling up. Just can't do it. It's simple.

MAYOR GOODMAN

Thank you.

YOHAN LOWIE

And by the way, for the shot across the bow that Shauna Hughes have just told you here, that, you know, this is a shot across the bow, I will challenge you we will submit all the tapes to the record. And I challenge you to find that statement that anybody made on our team. Not one person in our team made a comment like that, this is a shot across the bow.

And Frank Pankratz can tell you that, and I can submit the tapes to the record. You won't find anything. What you will find, come on, Frank, you know we can't negotiate in good faith because really we have to wait for all the litigation to expire.

You can listen to her. You can see if we are right, or if what she's telling you is right. You'll be the judge. I'm asking you to approve this application, to move it forward.

MAYOR GOODMAN

Thank you.

YOHAN LOWIE

Thank you.

MAYOR GOODMAN

You had something you wanted to submit?

GEORGE GARCIA

A very simple procedural matter, just to clarify that what I understood was basically the indication that this item had to move forward because the clock was expiring on the map. There's a mandatory, within the statutes, there's a mandatory time frame for a map to be approved or denied. That was what stated by the Applicant's representatives.

I just wanted to indicate that there's a document that's provided and filed by the Applicant, specifically as part of the Department of Planning's application process. And this is signed by Vickie DeHart. It says: In so doing, the subdivider acknowledges that this election of the City's acceptance of a tentative map application as complete shall be deemed to constitute the mutual consent of the City and the subdivider to extend the time limit set forth in NRS.

So you don't have a binding clock on you. They've already waived that right. I'll submit that to the record.

MAYOR GOODMAN

Okay.

YOHAN LOWIE

If you did finish, put that on the clock. This is what the homeowners are entitled to. This is what's on everybody's deed. I don't have to put it on the magnifier. You can see it. It says "Future Development." The piece of property that we are trying to develop right now shows in everybody's document in this book, on page 1.3, future development, shows the entire golf course's development. This is what's recorded on title, and that's what given to every single homeowner who's buying a house in Queensridge. Thank you.

MAYOR GOODMAN

Thank you.

COUNCILMAN COFFIN

Your Honor?

MAYOR GOODMAN

Councilman?

COUNCILMAN COFFIN

I had a feeling that, because I could not hear Garcia very well, the microphone could not pick you up. Your remarks are not in the record.

GEORGE GARCIA

Let me, then if I can get that document back.

COUNCILMAN COFFIN

And I think you've got to do something.

GEORGE GARCIA

Thank you. The red light's on, but apparently if it wasn't, I'd be happy to repeat that. So the point that I believe was made and I heard the Applicant's representative saying that there was some urgency because the clock had run out or was running out because of the time. There's a statutory time frame for them to approve maps, for tentative maps. I just want to clarify that there is no such time frame in this particular instance. The Applicant has waived that right. Specifically, there was a document that was signed with the application that says in so doing, the subdivider acknowledges that this election and the city's acceptance of a tentative map

application as complete shall be deemed to constitute mutual consent of the City and the subdivider to extend the time limit set forth in NRS.
So that's signed by Vickie DeHart. They basically signed a waiver saying there is no time frame running. So you have, you are free to take whatever actions as necessary or appropriate.

MAYOR GOODMAN
Thank you. And I'm going to close public comment now and –

STEPHANIE ALLEN
Well, I was just, Your Honor, I was just going to say I had just that we had signed that waiver. So we weren't disputing that.

MAYOR GOODMAN
Okay. Thank you very much. Okay. At this point, shall we move through the agenda one by one? Is that what is appropriate? Or is there comment from Council as we go forward?

BRAD JERBIC
I think it's up to you to take individual comments from Council and then a motion, and go through the motions one by one.

MAYOR GOODMAN
Okay. Any comments that the Council would care to make at this point before I turn it over? I guess I turn, yes, Councilman Barlow?

COUNCILMAN BARLOW
Yes. There was a comment that was brought forward, that I want clarification on and ask a question. And that has to do with the 61 units being proposed. Or is it 65? It's 61?

STEPHANIE ALLEN

Sixty-one.

COUNCILMAN BARLOW

Sixty-one units being proposed. The question that I have is for Tom. Under the GPA, the way I understand it, we can hold the Applicant to the 61 under the GPA, the 61 units, by condition?

TOM PERRIGO

Your Honor, through you, Councilman, you have the discretion, as a Council, to approve or deny an application, or in the case of a general plan amendment approve it for a lesser density or approve it for a smaller area. So I think when you're saying to hold it to the 61, I think you're talking about reducing the acreage to be consistent with the tentative map and the site plan. Is that what you mean by holding?

COUNCILMAN BARLOW

Yes.

TOM PERRIGO

Okay. Yes, you do have that discretion.

COUNCILMAN BARLOW

Okay. Thank you.

MAYOR GOODMAN

Councilman Coffin?

COUNCILMAN COFFIN

Thank you. I just have a question about legal counsel's advice. As I understand it, we have been advised to abey this item. That was a long time ago in this course of events here. But I can understand why, because it's deeper than I thought. It's, to the people who live it every day, it must be frustrating. Also, they feel they're on the threshold of something very bad, because the election was held and seats are going to change. But I'm going to follow the councilman's, I mean the counsel's advice and suggest we abey. But I don't know how long you would choose to do that, Mayor. I have no idea what the appropriate amount of time is.

MAYOR GOODMAN

Okay. Well, let me, I'm glad you asked that question, because –

COUNCILMAN BARLOW

Well, mayor.

MAYOR GOODMAN

Yes?

COUNCILMAN BARLOW

I didn't hear it that way. And so, for a point of clarification, I heard that we can vote this item up or down. It was Item 130 that the legal counsel was requesting that item to be abeyed. And so I don't want to put words in his mouth, but that was the way I interpreted it. So Brad, if you will, please provide that clarification, that would be helpful.

BRAD JERBIC

I don't know why this is (inaudible). That's correct. I did not recommend an abeyance on 131 through 134. In fact, I think I made a pretty clear record. This is a pure planning item, and that's

between you and the Applicant. With respect to 130 and 82, I do have a recommendation that those be held on abeyance, and I'll make the record as to the reasons why when that comes up.

MAYOR GOODMAN

Okay. Councilman Coffin, you want to turn off your microphone with these new, okay. As we go ahead, first of all, I want to thank everybody that's been involved in the dialogue trying to move this forward. I know it's resolvable, and I know how close we've become. And I am absolutely convinced it can be worked through. There is a timeline. It costs money, and I just – it's beyond anything. I did say at last the meeting that we had passed that corner property. And I know you understood it, Yohan Lowie. And out of total respect, I did say that I did not want to move forward piecemeal, that I would go ahead with that corner and give full support, even though it was not particularly welcomed at that time, and you did bend so much. And I know you're a developer, and developers are not in it to donate property. And you have been donating and putting back, but it has to pencil out. And it's costing you money every single day it delays.

YOHAN LOWIE

Your Honor?

MAYOR GOODMAN

And so, to be honest to you, I am only talking for me. I certainly agree with the fact that we've been working for two years, because we see the value of what you can do, and we know what's destined for the property. If you had walked away from it, who would come in and develop it?

YOHAN LOWIE

They don't want me as the developer, Your Honor. They want somebody else.

MAYOR GOODMAN

No, no, no. We're not there. I just want you to understand where I'm coming from, because I asked for something. We have had two people so involved, working so many hours with you and with the residents trying to get to a point where you can move the whole property. And what I said at that meeting, which I have to stand by, I have to stand by the Master Development Plan, knowing full well that this is exactly what I was talking about. I think your plan up there in the northwest part of the property seems very fine, but it's exactly that.

And again, on top of it all, I do agree – this is me alone – but I do agree while these two people that are sitting here have been participatory and heard everything every time, that it is only right that we have new Council, and they are not going to even be seated until the 19th, when they're sworn in, because we have no meeting between now and the 19th of July. That's the next Council meeting.

And we cannot have them vote at that meeting, because they will have had no opportunity. They're not sworn in. So they have to have opportunity, hopefully, with our Counsel and with our Planning Director, to be brought up to speed because, at this point, they've only had the public comment.

YOHAN LOWIE

Your Honor, it's a classic case of the surgery is success, has been successful, but the patient died because it's a little too late. So it's a little too late. If you would like me to abey, to withdraw the application for the –

MAYOR GOODMAN

No, I do not. We are so close.

YOHAN LOWIE

We are not close. We are far away because we are going to –

MAYOR GOODMAN

Wait. Wait. Wait.

YOHAN LOWIE

We are not going to be in control of the property, Your Honor.

MAYOR GOODMAN

Okay.

YOHAN LOWIE

For the, 60 days from today, 60 days from today, okay, we may be not in control of the property. So if you want to vote today, I'm asking you – I'm forcing a vote today. I'm asking you to vote today.

MAYOR GOODMAN

Okay. We will.

YOHAN LOWIE

Even if I have to withdraw the application.

MAYOR GOODMAN

Okay.

YOHAN LOWIE

Okay.

MAYOR GOODMAN

We'll move forward with that. I just, I want you to understand I made a comment. I have to, I'm sorry, I have to prerogative of the Chair, Yohan.

YOHAN LOWIE

Yeah.

MAYOR GOODMAN

I've admired your work always. You know that. But I made a comment that I would go for that property on the northeast corner knowing how well you bend on it and how fabulous it was, and I said I cannot move forward. In good conscience, I will not, I will not vote. I am one vote out of this number, and you may have them.

YOHAN LOWIE

Please take your vote. We'll appreciate anything you do right now. I just want to tell you if we have to withdraw the application for the Development Agreement, we will. This is three companies, separate companies that you're trying to force us to bring them together. I have no choice, I have to sell them off in pieces. So you're never going to see development agreement as I told you before. It just took another year, a year.

MAYOR GOODMAN

I know.

YOHAN LOWIE

Because they are not cooperating and not negotiating. They're only delaying.

MAYOR GOODMAN

Okay.

YOHAN LOWIE

And this delay will cause us to bifurcate the property. So the next time we'll come here, we're not going to be controlling 250 acres or 235 acres or whatever it is.

MAYOR GOODMAN

Okay. We are so close. At least that's what I am told by our Counsel.

YOHAN LOWIE

I understand. I have my own problems. Every developer has problems, hundreds of thousands of dollars a month to maintain a piece of property.

MAYOR GOODMAN

Okay. Let me go ahead and move these then.

YOHAN LOWIE

We don't have a problem. We're willing to bifurcate. So we will bifurcate the property.

MAYOR GOODMAN

Okay. We'll go ahead and we'll move on each one. I'm going to read each item. Or do I turn these? Now, wait one second. I did read them into the record. So, at this point, Councilman Beers, we're going to start with you on Agenda Item 131. Do you have a motion?

COUNCILMAN BEERS

Yes, Your Honor, I do. Although, I have to say I think for the first time in five years, it doesn't really matter how I move, nor does it matter how you vote. One of the guys made a comment earlier about the worst thing that could possibly have happened, and this is it, because this is the default existing entitlement.

Our choice all along has been this, represented by the 61 units on the 30x acres, or the alternative scenario, which is non-uniform density, creating additional – well, we all know the plan, creating the additional density down by the existing Queensridge Tower and unprecedented, exceptional low density on two-thirds of the land.

So I think actually the fastest way for the property owner to exercise their property rights would probably be for us to deny this, because then they can go to court and a court will immediately reverse us, because this is so far inside the existing lines. And, you know, consistently all along I've had two priorities. The first is protecting taxpayers, and the second is protecting land values at Queensridge. And unfortunately, we're getting to the worst case scenario.

So I would move to pass. Motion is to pass number 131.

COUNCILMAN COFFIN

If I may comment?

MAYOR GOODMAN

Yes, please.

COUNCILMAN COFFIN

Your Honor, I suppose it's on the motion. Well, for a long time, and I still have not given up my optimism that there could be an agreement on the entire parcel, all 250 acres, whatever it is. They say we're a long way away. Maybe we are.

I met with Mr. Lowie and his management team twice last year, late last year. I think it was December, maybe January, and presented what I thought was a good idea to just, as a concept, consider in order to make the neighbors feel a lot more welcoming to this new thing.

And they chose not to do that. But I feel like, yeah, I still feel like we can do something. They've got some rights, but the neighbors have a lot of rights too. And while they've been conceding, everybody's been conceding. So there's been some, but they're still a long way away, as Mr. Lowie says.

So I can't vote for this. I'm worried about the fact now we've approved one thing on one end, but we approved something on the other end with a positive vote here and then we're stuck with something in the middle.

It looks to me that that's kind of how it goes. It's piecemeal, even though you didn't want to do it. If we approve this, it starts, it's piecemeal. And that then takes away – everybody gives a little more, leverage disappears, and there's less and less chance for negotiation.

So I have to oppose this, because it's a piecemeal approach, and I still hold out hopes for a holistic approach to this whole thing. They know my feelings on this. So, you know, we made that public six months ago. In any event, thank you very much.

COUNCILMAN BARLOW

Mayor?

MAYOR GOODMAN

Yes.

COUNCILMAN BARLOW

Question on the motion.

MAYOR GOODMAN

I'm sorry?

COUNCILMAN BARLOW

I said question on the motion.

MAYOR GOODMAN

Okay.

COUNCILMAN BARLOW

Someone brought forward a suggestion that I thought maybe quite a few of us may have missed. You may have; you may have not. But I caught on to it. And that was by moving forward on this item, that the Development Agreement would supersede anything that we do on this motion. I believe Mr. Yohan, did you state that?

BRAD JERBIC

I can clarify that. I think that there's been an indication by Mr. Lowie and his attorneys, and I have said the same thing, that if this does pass, it is inconsistent with what we have negotiated thus far. In order for it to be consistent, they would have to give this up as part of the Development Agreement negotiation. So the Development Agreement, as currently drafted, again not finished, but currently drafted, allows for 65 custom homes on 183 golf course.

COUNCILMAN BARLOW

Sixty-five or sixty-one?

BRAD JERBIC

Pardon?

COUNCILMAN BARLOW

Sixty-five or sixty-one?

BRAD JERBIC

Sixty-five is what's in the Development Agreement. Sixty-one is what's in this application.

COUNCILMAN BARLOW

Okay.

BRAD JERBIC

The 61 in this application is in a very limited corner. It's much denser than what would be, in fact it's as dense as what would be on the entire course virtually if we had a development agreement. So it is inconsistent, absolutely inconsistent with that Development Agreement that's still not finished. If that Development Agreement does get finished and it gets up before for the Council, one of the things that they will have to do, and they're telling you now they will agree to, is give up the 61 if they win today. Is that right?

COUNCILMAN BARLOW

And so, to my understanding, they're on an acre now, and from what I understand further, is that the Development Agreement could be potentially two-acre parcels instead of one?

BRAD JERBIC

It is a sub potentially. It is absolutely the –

COUNCILMAN BARLOW

So, in essence, the neighbors will be in a better position?

BRAD JERBIC

Well, we believe, in my negotiations with the neighbors that have participated in negotiations, they have told me they requested two-acre parcels, and that was a concession that we won during that negotiation. So the entire golf course, the 183 acres, except for one small piece on the southeast side, which are minimum half-acre parcels and about 15 homes there, the remaining 50 homes of the 65 would be spread out over the rest of the golf course on two-acre minimum parcels.

COUNCILMAN BARLOW

Okay. So, to me, the win/win would be to approve what's before us now. And I believe that's a part of the motion right now, if I heard the Councilman correctly, and for them to come back after the Development Agreement is approved and have the Development Agreement supersede what we have before us here today.

CHRIS KAEMPFER

Your Honor?

COUNCILMAN BARLOW

Mr. Kaempfer.

MAYOR GOODMAN

Your button is off.

CHRIS KAEMPFER

We are stating absolutely on the record that an approval today will be superseded by the Development Agreement. It gets us – I was not making things up. It gets us something today. Now, alternatively, if you want to go to the next item and approve the Development Agreement subject to continuing to work on a couple of things and realizing that those things we're continuing to work on are in an area where a site development review has to come forward anyway, we can do that. We just need some approval today.

Our suggestion was we approved something that is so squarely in accordance with zoning practice and zoning law, that we approved that subject to us continuing to negotiate in good faith, and once that Development Agreement is executed, this zoning is gone.

COUNCILMAN BARLOW

Well, I don't see how we can approve the Development Agreement today when, in fact, there's yet more work to be done. But I do like the idea of the fact that we are working towards that Development Agreement. And from my understanding, it's almost there? So –

CHRIS KAEMPFER

Here's, is where we are. The Development Agreement, and I wish I had something I could show you, but the, and I think this is a very important consideration.

COUNCILMAN BARLOW

Okay.

CHRIS KAEMPFER

Especially for those who happen to be having a home for sale. The thing that is killing –

BRAD JERBIC

Chris, if I can stop you right there. I understand the question. But we are really wandering way into Item 130 and the Development Agreement. I think the Council's question is – I think there's got to be a simpler answer than a big long presentation that wanders way off the topic that we're agendaed for.

I think that if the question is, do you think we're close or not, I think yes or no and I'll explain later when we get to 130.

CHRIS KAEMPFER

Well, can I, all right. That's a very, very fair point. If you could go to the overhead please and I'll just show where the issues are.

COUNCILMAN BARLOW

That will be helpful. Thank you.

CHRIS KAEMPFER

All right. There are no real issues all the way through here. Everybody here gets two acres, a minimum two-acre lots. Everybody, except for my neighbors and me down here, and we get half-acre lots.

Now, the areas that we're still working with are here and here, two areas. And this is what I was trying to point out in the development area that has to be approved with a site development review. But I won't get there. But that is what everybody has.

Now, one of the issues that has been hurting our community is when you try to sell your home, they say: What's going to be on the golf course? Can you imagine, can you imagine if you're selling your home and you say, well, behind me is a two-acre lot, and it's part of Development Agreement that's already approved.

So all of us, in our minds, have to think that that's where we have to be. But it's here and it's here, and you have Yohan Lowie's word and he's worked here. You'll have mind and you'll have Stephanie's that we will continue to work in good faith and get it done. But we need something today. We need something in order to convince our lender that this is real and it's just not another step in losing money and putting money into this project..

COUNCILMAN BARLOW

Okay. I understand. Thank you.

Mayor, my comment on the motion is the fact that I'm going to, if I heard the Councilman correctly, that the motion is for approval on 131, so I'm going to support that. However, I'm going to step out on a limb and also take the recommendation of my City Attorney when we come to 130. So my motion will be for approval on 131. Thank you. I mean my position on 131 for the motion of approval is to follow the Councilman's position.

MAYOR GOODMAN

Okay. There is a motion made to approve Agenda Item 131.

COUNCILWOMAN TARKANIAN

Can I say something, Mayor?

MAYOR GOODMAN

Please.

COUNCILWOMAN TARKANIAN

I would like to say something. And that is yesterday evening, maybe it was 6:30 or so, I spoke with the lawyer, one of your lawyers, for the developers. And at that time I said to him I'm as close as I've ever been to vote for this because I don't like the piecemeal stuff. I don't think it works.

And I want to tell you I don't think Yohan is an ogre. I think he's a brilliant designer. I wish to heck I could have that design of the gate where I live. And he has done a tremendous amount in meeting the requests of people who live in that area. I don't know if I've ever seen anybody who's done as much as far as, you know, filling in gullies and giving you football field lengths behind you and stuff like that.

But there were a couple questions, maybe three or four that I wanted to check out. And so I intended to have my staff do that today. I couldn't, because I was exhausted from the short-term mental preparation and I had no time for it. And so I came today, and I'm told at about 7:45 a.m. today that this item, that we were going to be abeyed. It was going to be abeyed. And so I told my staff. I didn't have them go do, look up this information that I needed, because I don't live in the northwest. They live a different style out there, and I feel I need to study it some.

And so I couldn't tell my staff go out and get it, when I'm being told it's going to be abeyed. I did not know you were really on the agenda for sure until I saw after 5:00 tonight all of the lawyers started coming in and I'm wondering, what the heck? It's being abeyed.

So this bothers me because, and I'm not blaming anybody, but I didn't get my questions answered. I didn't get my question answered. I didn't have time to look into things as much as I would like to look into things.

I don't blame anybody. I don't think Yohan is terrible. I love all you guys. I've worked with you before. You've always been up and honest with me.

But I do want to say this. I have felt, I think the Mayor felt the same way, we should not split this up at the time. We split it up, and I felt we're going to have some problems. I voted against that, and we have had problems.

And the other concern I wanted to check into was I was going to find out information what other new buildings are going in there. You know, people quickly show me on a map, but I don't know that area the way I know my ward. And so they're showing me quickly on the map, oh, they're going to do this here and they're going to do that there. What is that going to do to the whole thing and whole complexion?

So, just to let me finish, I do think the people that live there ought to be grateful for what's been given. I've never seen that much given before. But I can't vote for approval of this because I haven't had time to look into it. Not your fault. I'm not blaming anybody, but doggone it, I need to look into these things because I'm not as familiar with them.

And also, I want to tell you, Doug Rankin did not use the word "collusion." Not one time did he use the word "collusion." I've never heard him use the word "collusion." I've worked with him 10 years. And when Doug comes up here, and he's got all this information. In 10 years that I've worked with him, I've never found him to give me incorrect information. In fact, when he left here, I and my staff were aghast, because he has the historical knowledge that nobody else at that time had.

So I just wanted to tell you how I feel. I'm not knocking anybody with the developer. I just need more time.

CHRIS KAEMPFER

By the way, Your Honor, I think it's important to say Mr. Lowie did not suggest that –

YOHAN LOWIE

Doug Rankin.

CHRIS KAEMPFER

Doug Rankin said that.

YOHAN LOWIE

To the contrary.

CHRIS KAEMPFER

That's not.

YOHAN LOWIE

I apologize. To the contrary, I said the opposite. I said Mr. Bice said that an ex-city employee would come here and testify there was a collusion between this developer and Staff. And in Mr. Rankin's deposition, he said no collusion, absolutely no collusion was done in good faith. Okay. Thank you very much.

COUNCILWOMAN TARKANIAN

I take that back. But I don't take back the praise I gave him, because I've worked with him often. No really, I mean, but I take back that you said that. I just thought you made a mistake, because some of us do.

CHRIS KAEMPFER

These guys are pretty tremendous themselves in their own right.

COUNCILWOMAN TARKANIAN

Yeah, and they are tremendous.