

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 19

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Elizabeth A. Brown
Clerk of Supreme Court

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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 19** 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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1 CASE NO. A-17-758528-J

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3 DEPT. XVI

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 180 LAND COMPANY LLC,)

10 Plaintiff,)

11 vs.)

12 LAS VEGAS CITY OF,)

13 Defendant.)

14 -----)

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REPORTER'S TRANSCRIPT

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OF

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MOTION

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(TELEPHONIC HEARING)

20

21

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

22

DISTRICT COURT JUDGE

23

24

DATED WEDNESDAY, APRIL 21, 2021

25

26

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

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2 (PURSUANT TO ADMINISTRATIVE ORDER 20-10, ALL MATTERS IN
3 DEPARTMENT 16 ARE BEING HEARD VIA TELEPHONIC
4 APPEARANCE)

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* * * * *

1 LAS VEGAS, NEVADA; WEDNESDAY, APRIL 21, 2021

2 9:32 A.M.

3 P R O C E E D I N G S

4 * * * * *

09:32:26 5 THE COURT: All right. It's my understanding
6 everyone is here, and I just want to say good morning
7 to everyone.

8 And let's go ahead and set forth our
9 appearances for the record.

09:32:39 10 MR. LEAVITT: Your Honor, we can go first.
11 It's the plaintiff. It's James J. Leavitt on behalf of
12 the plaintiff, 180 Land. Also from our office sitting
13 in is Autumn Waters.

14 MS. HAM: Good morning, your Honor. Elizabeth
09:32:50 15 Ghanem Ham on behalf of the plaintiff landowners,
16 in-house counsel.

17 MR. OGILVIE: Good morning, your Honor.
18 George Ogilvie on behalf of the City of Las Vegas.

19 MR. SCHWARTZ: Good morning, your Honor.
09:33:06 20 Andrew Schwartz for the City.

21 THE COURT: All right. Does that cover all
22 appearances for the record? I think it does.

23 Secondly, do we want to have this matter
24 reported?

09:33:22 25 MR. OGILVIE: Yes, please. This is George

09:33:24 1 Ogilvie. Yes, please, your Honor.

2 THE COURT: All right. And for the record,
3 Madam Reporter, do you have all the appearances noted?

4 THE COURT REPORTER: I do. Thank you.

09:33:32 5 THE COURT: All right. Once again, good
6 morning. I see we have a couple matters on calendar.

7 And looking as to how they're listed, we have
8 the City of Las Vegas's Rule 56(d) motion on an order
9 shortening time. And we also have a motion filed by

09:33:46 10 the City for reconsideration as it pertains to the
11 discovery responses, et cetera, vis-à-vis the damage
12 calculation and related documents.

13 All right. So where should we go first?

14 MR. OGILVIE: Your Honor, this is George

09:34:03 15 Ogilvie. We can proceed with the Rule 56(d) motion.

16 THE COURT: All right. And that's first on
17 the calendar.

18 And that's fine. Okay. Mr. Ogilvie, you have
19 the floor, sir.

09:34:13 20 MR. OGILVIE: Thank you, your Honor. I'll be
21 very brief.

22 The developer has filed a motion for summary
23 adjudication on its first, third, and fourth claims for
24 relief set forth in its amended complaint.

09:34:31 25 The City has, through its motion, advised the

09:34:36 1 Court that taking action on those -- on this motion on
2 those three causes of action is premature. The Court
3 should deny the motion, the developer's motion for
4 summary adjudication on those three causes of action
09:34:57 5 without prejudice to allow the developer to bring the
6 motion at a time once discovery is complete.

7 Discovery, as the Court understands, is not
8 complete. And, in fact, the other motion that's on --
9 on calendar today demonstrates that the motion is -- or
09:35:21 10 that discovery is not complete.

11 But primarily I want to -- I want to take the
12 Court back a few months and have the Court recall that
13 on multiple occasions the developer has expressed to
14 the Court and counsel some difficulties that it has had
09:35:44 15 with its experts in preparing the expert witness
16 disclosures that -- that I want to say the first time,
17 but I don't believe it was the first scheduling order.

18 But the most recent first time that these
19 expert witness disclosures were due were in August at a
09:36:07 20 status conference. The developer requested an
21 extension of the expert witness disclosure deadline.

22 The City, if the Court will recall, did not
23 object to that. But in each instance, and I believe
24 there have been -- I know there have been two. I
09:36:25 25 believe there have also -- there have been actually

09:36:28 1 three instances in the last eight, ten months that the
2 developer has requested an extension. And each time
3 the City has expressed to the Court that it has no
4 objection to these extensions.

09:36:43 5 And I'm not bringing up the extensions for
6 purposes of being pejorative about the developer's
7 development of its case, but simply to remind the Court
8 that in each instance the City took the position that
9 it didn't have an objection with the proviso that it be
09:37:09 10 given enough time to prepare its case.

11 And in each instance, the Court responded to
12 the City's request that certainly with -- unless -- if
13 the City or any party can demonstrate to the Court that
14 it has been diligent in its discovery in conducting
09:37:33 15 discovery, that the Court would not cut off the -- that
16 party's right to discovery and would allow the parties
17 the opportunity to conduct the discovery that they
18 need.

19 And based on that, the developer's requests
09:37:51 20 for extension of expert disclosure deadlines has been
21 so moved at the developer's request.

22 Now, we are facing premature -- a premature
23 motion for summary adjudication in which the developer
24 is attempting to cut off the City's right to conduct
09:38:13 25 discovery on these three causes of action and properly

09:38:18 1 prepare its case relative to these three causes of
2 action.

3 And I think it is -- it shouldn't be -- it
4 shouldn't go unnoted that the -- this motion is brought
09:38:35 5 and the hearing is requested in advance of the time
6 that the developer's expert witness disclosures are
7 even due.

8 And being cynical, I have to -- I have to
9 believe that the problems that the developer's counsel
09:38:55 10 has expressed in previous hearings that it was having
11 with its experts preparing its -- their reports has
12 something to do with this motion, that it is brought in
13 advance of the deadline to produce the expert
14 disclosures because the developer is still having
09:39:15 15 problems with its experts supporting its claims.

16 Nonetheless, the point is, your Honor, that
17 the City is not -- has not completed its discovery.
18 The discovery should -- the City should be able to
19 conduct all the discovery necessary to prepare its case
09:39:35 20 and to -- before motions for summary adjudication are
21 brought.

22 My second point is that the developer in
23 support of its motion for summary judgment on these
24 three causes of action produces an affidavit from a
09:39:53 25 witness who has never been disclosed and the City has

09:40:01 1 not had the opportunity to conduct discovery, conduct a
2 deposition on.

3 I -- it -- if the developer were to say that,
4 well, this witness really isn't material, well, then
09:40:17 5 why is the witness affidavit submitted in support of
6 the developer's motion for summary judgment?
7 Absolutely, the motion should be denied on that basis
8 alone, that it's based in part upon an affidavit from a
9 witness who's never been disclosed prior to the filing
09:40:44 10 of the developer's motion.

11 Additionally, my third point is, your Honor,
12 as the Court will recall, in response to the City's
13 motion for -- motion to compel that was heard by the
14 Court on November 17th, we were arguing over documents
09:41:06 15 that the City has been requesting and have not been
16 produced or had not been produced since July of 2019.

17 So 16 months later in November 2020, we were
18 at a hearing before your Honor on the City's motion to
19 compel. And at that time, and as the developer's
09:41:34 20 counsel advised the Court, the development -- the
21 developer's counsel called me the night before and
22 introduced the subject of allowing a limited deposition
23 of one of the principals of the developer, Yohan Lowie,
24 based on documents that the developer would produce at
09:41:56 25 the time of the deposition relative to a 20-year

09:42:01 1 history of the transactions between the developer and
2 the Peccoles, that the developer contends support its
3 contention that the value that it paid for the 250-acre
4 Badlands was \$45 million.

09:42:20 5 Well, I'm not going to rehash that argument.
6 I just want to bring the Court back to that -- to that
7 argument and the resolution of that argument.

8 Ultimately, it was agreed that the developer
9 would produce the documents of these -- this 20-year
09:42:38 10 history of transactions between the developer and the
11 Peccoles prior to the City taking the deposition of
12 Mr. Lowie so that the City had the opportunity to
13 review and evaluate the documents that it was going to
14 use to take Mr. Lowie's deposition.

09:43:01 15 The developer last month, pursuant to the
16 protective orders that were entered, produced some of
17 the documents. They produced documents related to a
18 2005 transaction between the developer and the
19 Peccoles, but didn't produce any other documents from
09:43:23 20 this purported 20-year history. That's the developer's
21 terms, not mine: A 20-year period of complicated
22 transactions with the Peccole family.

23 So we received one set of transactions from
24 2005. We didn't receive any other documents, and we
09:43:54 25 have requested the additional documents. And the

09:43:58 1 developer has responded that, well, there aren't any
2 additional documents that are relevant to the value
3 paid for the 250-acre Badlands property in 2015.

4 Well, if that's the case, that's the case.

09:44:18 5 But it's contrary to the representations made
6 to this Court that there were documents, binders and
7 binders of documents, that related to this 20-year
8 history of transactions that support the \$45 million
9 valuation that the developer places on its purchase of
09:44:42 10 the Badlands.

11 Nonetheless, getting back to the point that
12 I'm making here: We have -- we have only received
13 those 2005 documents. Again, if that's all the
14 documents that the developer is going to produce, fine.

09:44:56 15 But we're still entitled to conduct the deposition of
16 Mr. Lowie relative to the transaction documents that
17 the developer has produced, that purportedly support
18 the developer's contention that it paid \$45 million for
19 this property.

09:45:18 20 We haven't taken that deposition. We can
21 schedule that deposition. I was hoping to get
22 additional documents related to this 20-year history of
23 complicated transactions, but apparently there's not
24 going to be any forthcoming.

09:45:34 25 So nonetheless, the point is that the

09:45:38 1 developer, before any summary adjudication is briefed
2 and adjudicated by this Court, should produce Mr. Lowie
3 for deposition. That has not been conducted. And for
4 that, as well as the other reasons I've stated, I would
09:46:04 5 submit to the Court that the motion for summary
6 adjudication on the first, third, and fourth claims for
7 relief in the developer's amended complaint is
8 premature and should be denied without prejudice.

9 My final point on this is, there isn't any
09:46:23 10 prejudice to the developer if the Court denies the
11 motion without prejudice.

12 In the event that on one or more causes of
13 action the Court finds that there is liability, the
14 next step would be the jury trial on damages.

09:46:41 15 Well, we can't have a jury trial on damages
16 until all of the causes of action are adjudicated for
17 liability.

18 So the developer admits that it is not seeking
19 summary adjudication on its Penn Central claim. That
09:47:04 20 Penn Central claim is integral to the claims brought by
21 the developer in this action.

22 So at a minimum, the City is going to continue
23 to conduct discovery on the Penn Central claim. At
24 some point there will be cross motions for summary
09:47:22 25 judgment brought on that Penn Central claim. Only

09:47:25 1 after that time, the time at which the Court rules on
2 those cross motions for summary judgment, will there be
3 a -- a -- a determination as to whether or not there's
4 going to be a jury trial on damages; and, if so, that
09:47:41 5 trial will be set.

6 So my point in this, your Honor, is nothing is
7 going to happen relative to these causes of action, the
8 first, third, and fourth causes of action that the
9 developer is now seeking summary adjudication on until
09:47:58 10 all the causes of action have been ruled upon by this
11 Court for liability purposes.

12 Therefore, there is no -- absolutely no
13 prejudice in denying the City's -- or denying the
14 developer's motion without prejudice to allow the City
09:48:15 15 to complete its discovery and run at the appropriate
16 time the cross motions for summary judgment can be
17 heard by this Court.

18 So I submit to the Court the motion for
19 summary judgment should be -- or partial summary
09:48:32 20 judgment should be denied without prejudice and
21 granting leave for the developer to bring the motion
22 along with any other causes of action that it seeks
23 summary judgment -- adjudication on at the appropriate
24 time.

09:48:50 25 THE COURT: All right. Thank you, sir.

09:48:54 1 And we'll hear from the plaintiff.

2 MR. LEAVITT: Thank you, your Honor. Good
3 morning, your Honor. James J. Leavitt on behalf of the
4 plaintiff.

09:49:02 5 Your Honor, there will be significant
6 prejudice to the landowner if this summary judgment is
7 not heard. And I think we need to put this in
8 perspective, because what counsel just stated is that
9 the exchange of expert reports have not occurred yet
09:49:16 10 and the exchange of expert reports is not going to
11 occur until after the hearing on the summary judgment.

12 That's simply not true. The exchange of
13 expert reports, your Honor, is set for this Monday,
14 April 26th. We will be exchanging expert reports on
09:49:30 15 Monday, April 26th. The summary judgment hearing is
16 not even set until May 21st, nearly a month later, your
17 Honor.

18 So the government will have our expert
19 reports. And I assure you, your Honor, contrary to
09:49:42 20 what Mr. Ogilvie suggested to the Court, there is not
21 any problem with the experts in this matter.

22 So, your Honor, we will present those expert
23 reports to Mr. Ogilvie. He'll have them on Monday.
24 The summary judgment will not even occur until a month
09:49:56 25 after that.

09:49:56 1 And the expert reports, your Honor, are
2 valuing the property in this case. That's what they
3 will provide. That's for the -- that's for the
4 valuation phase. They won't even directly address the
09:50:07 5 matters that are before the Court. They're really
6 addressing the valuation issue.

7 But, your Honor, again, here's where the
8 prejudice occurs. This complaint in this case was
9 filed in September 2017. Your Honor, that's nearly
09:50:22 10 four years ago. That means this case has been ongoing
11 for four years.

12 If you will recall, the landowners filed a
13 motion for summary judgment one year after the
14 complaint was filed, in December 2018.

09:50:36 15 We asked for summary judgment at that time.
16 This Court said wait a minute. There hasn't been an
17 answer filed. We haven't had a 16.1. So we need to
18 have a 16.1, and we need to give the City an
19 opportunity to file an answer.

09:50:48 20 That was two and a half years ago, your Honor.
21 So the City has had two and a half years to conduct
22 discovery in this case.

23 Now, this Court, on May 15th, 2019, entered an
24 order denying the City's -- as you recall, the City
09:51:07 25 filed four motions to dismiss in this case.

09:51:10 1 On May 15, 2019, this Court entered an order
2 denying the City's motion to dismiss and also denying
3 without prejudice the landowner's summary judgment on
4 the take issue.

09:51:21 5 And then, two months after that, this Court
6 had a status check in July 2019 and set a briefing
7 schedule for liability -- for summary judgment on the
8 liability issue.

9 This Court determined that the brief on
09:51:40 10 liability should be due January 1st, 2020.

11 Okay. So we were going to have a hearing on
12 this, Judge, over a year ago. Fifteen months ago, we
13 were supposed to have a hearing on liability on the --
14 on summary judgment on the liability issue.

09:51:56 15 So the question is, Judge, why didn't we have
16 that hearing in January 2020 when this briefing
17 schedule was set forth for summary judgment? You want
18 to know why, Judge? Because the City filed an improper
19 notice of removal to federal court.

09:52:13 20 They took this case out of the Court's hands
21 knowing -- knowing, Judge, that we were going to have a
22 hearing on liability. And that notice of removal,
23 Judge, was only one month after this Court set the
24 briefing schedule for summary judgment. So one month
09:52:28 25 after this Court set the briefing schedule for summary

09:52:30 1 judgment, the City filed an improper notice of removal.

2 How do we know it's improper? Because the
3 federal court refused that notice of removal and
4 entered a written opinion, an extensive written
09:52:39 5 opinion, that the City's actions were improper in
6 trying to remove the case to federal court and remanded
7 it back to state court.

8 During that entire delay, the City has had
9 every single opportunity to do all of the discovery the
09:52:53 10 City needed to do in this case. They've had every
11 opportunity to obtain all the documents. They've had
12 every opportunity to go to the property and view it.

13 The City believes more documents are required
14 in this case. Judge, I don't know how many times we
09:53:07 15 can say this: We don't have more communications
16 amongst the landowners. We don't have more
17 communications than have already been produced.

18 The City's argument is essentially in its
19 other brief, which is tied to the 56(d) motion, is that
09:53:19 20 the City thinks that the landowner should have done
21 business differently than he did it. And because the
22 City thinks that he should have done business
23 differently than he did it, the City should get
24 documents that comport with the City's understanding of
09:53:31 25 how he should have done business.

09:53:33 1 That's what their argument is. Well, the
2 documents don't exist. We can't produce something that
3 doesn't exist, which is why this Court denied the
4 City's motion to compel initially.

09:53:43 5 That means that the discovery has been
6 completed which is necessary for these liability
7 complaints -- or these liability issues.

8 Your Honor, just as a side note, the City's
9 filed four motions to dismiss in this case.

09:53:55 10 The City has sought to dismiss this case
11 through an improper inclusion of paragraphs in the --
12 in the petition for judicial review order. I mean,
13 Judge, it's gone on too long. And -- and we need to
14 move forward with this case.

09:54:12 15 I mean, if we turn over the 65-acre case, your
16 Honor, the City's filed a motion to dismiss in the
17 65-acre case, then filed a motion to strike our
18 opposition trying to prohibit us from even being heard
19 on that issue. Judge Tierra Jones, for obvious
09:54:26 20 reasons, denied that, and then the City withdrew their
21 motion.

22 So I guess my point here, Judge, is we've had
23 significant delay on the liability issue that was
24 initially set for hearing in February 2020 with the
09:54:39 25 brief due January 2020.

09:54:43 1 We're now 15 months past that date. And keep
2 in mind, Judge, when we appeared before you in July
3 2019 and you set the briefing schedule on summary
4 judgment on liability, the City didn't object. The
09:54:54 5 City didn't object to that briefing schedule. The City
6 did not object to liability -- the summary judgment on
7 liability being heard 15 months ago.

8 So they've had 15 months to do all of the
9 discovery they needed, over two and a half years since
09:55:09 10 the initial summary judgment was issued. And -- and --
11 and so what that means is for a year and a half prior
12 to COVID, the City could have done everything they
13 needed to do such as visit the property, determine the
14 access. And I'm going to talk about those in just a
09:55:23 15 moment.

16 And for a year during COVID they've had the
17 opportunity to do it. Your Honor, in March 2020, I
18 sent an email to the City, pleading with the City to
19 come out to the property, inviting the City to go to
09:55:35 20 the property. It's a 35-acre property. There's
21 nothing that prohibited the City from visiting the
22 property.

23 So, Judge, my -- we've -- we've had this --
24 this discussion already on when liability should be
09:55:48 25 determined. An order was entered in July 2019. The

09:55:54 1 liability should have been determined in February 2020.
2 We're now 15 months after that. What has the City been
3 doing for 15 months? The City didn't -- again, did not
4 object to liability being determined in 2020. Why are
09:56:10 5 they objecting now?

6 So let me now turn, your Honor, to -- and I
7 agree with Mr. Ogilvie. If there's issues, outstanding
8 issues that are pertinent to and need to be addressed
9 in the summary judgment, then they should be addressed
09:56:22 10 through discovery.

11 But not when a party has had 2.5 years, two
12 and a half years to get that information and just
13 simply didn't get it. So -- or alleged -- or is
14 alleging that they didn't get it.

09:56:34 15 But in addition to that, the discovery that
16 the City is even asking for is entirely irrelevant to
17 our pending claims.

18 Judge, we made a conscious decision to bring
19 summary judgment only on our first claim for relief,
09:56:48 20 the landowner's third claim for relief, and the
21 landowner's fourth claim for relief. We made a
22 conscious decision to not bring a summary judgment
23 requesting summary judgment on the Penn Central
24 regulatory taking claim.

09:57:04 25 Now, if we go to the City's primary argument

09:57:06 1 before you here today, Judge, here's their primary
2 argument. On page 4, the first argument they make in
3 their 56(d) motion to delay summary judgment, they say,
4 "The landowner alleges that there's been a Penn Central
09:57:18 5 regulatory taking of the entire Badlands property, and
6 the City needs more discovery to address the Penn
7 Central regulatory taking claim."

8 Apparently, the City didn't read the summary
9 judgment motion before they wrote their 56(d) motion
09:57:31 10 because their entire 56(d) motion is tied to the Penn
11 Central regulatory taking claim, which addresses
12 whether the landowner exhausted their administrative
13 remedies.

14 Again, Judge, we are not moving for summary
09:57:46 15 judgment on the Penn Central regulatory taking claim.

16 I want that to be abundantly clear. So all of
17 the information that the City is asking for to address
18 the Penn Central regulatory taking claim is entirely
19 irrelevant to the claims that will be before the Court
09:58:03 20 at the May 21st special setting that we have on
21 liability for -- on the summary judgment for liability.

22 But, Judge, so let me -- let me just address
23 very briefly what those claims are. The first claim is
24 the -- is the landowner's claim for a per se regulatory
09:58:20 25 taking. The Nevada Supreme Court addressed the

09:58:23 1 standards for a per se regulatory taking.

2 They said if the government engages in actions
3 that -- that preserved private property for the public
4 use or authorizes the public to use private property,
09:58:35 5 that's a taking. And the Court held that's a per se
6 taking, meaning it's a taking in and of itself.

7 And what the -- what the Court focuses on
8 entirely under that claim is what the government has
9 done. It's entirely irrelevant what the landowner may
09:58:50 10 or may not have done. It's entirely irrelevant what
11 conversations the landowner may have had with their
12 lender or what conversations they may have had amongst
13 themselves or what the terms of the acquisition of the
14 property was because the Court focuses solely and
09:59:04 15 entirely on the government action.

16 We can look at the Sisolak case for
17 instruction on that. In the Sisolak case, the Nevada
18 Supreme Court looked at one thing: The county's action
19 in adopting Height Restriction Ordinance No. 1221. And
09:59:19 20 the Court held that the county action in adopting
21 Height Restriction Ordinance No. 1221 in 1990 was the
22 action that resulted in the taking and held that the
23 date of taking was 1990.

24 The Nevada Supreme Court didn't look at what
09:59:34 25 Mr. Sisolak paid for the property. They didn't look at

09:59:37 1 his acquisition. They didn't look at his conversations
2 with other people.

3 That's not what happened, Judge. What
4 happened is they focused entirely on the government
09:59:44 5 action.

6 Today we know what the government's actions
7 are.

8 And our third claim for relief for a per se
9 categorical taking, Judge, it's all in our brief. I'm
09:59:53 10 not going to go through it again. Again, the Nevada
11 Supreme Court held that a per se categorical taking
12 claim focuses entirely on the government actions.

13 And they put the word "per se" in front of
14 categorical takings because the government's actions in
10:00:08 15 and of themselves result in a taking.

16 And so the Court looks at, okay, here's the
17 standard for a per se categorical taking. And that
18 standard is if the government is engaged in actions
19 that deny the landowner all economic viable use of
10:00:23 20 their property, there is a taking. There is no
21 analysis of the landowner.

22 In fact, in all of these claims, Judge, the
23 Nevada Supreme Court doesn't even require the landowner
24 to exhaust their administrative remedies. The Court
10:00:34 25 doesn't even care what the landowners have done. The

10:00:36 1 Court couldn't care less what the landowner has done
2 because they focus on what the government has done and
3 the impact to that property as a result of the
4 government's actions.

10:00:44 5 The same for a nonregulatory de facto taking
6 claim. That that claim, your Honor, goes back all the
7 way to 1977, the Sloat vs. Turner case. And in that
8 case, the Court held if the government engages in
9 actions that substantially impair or extinguish a
10:01:00 10 property right, there's a taking.

11 And here's how it -- we can put this just in a
12 commonsense context, your Honor, is the landowner
13 cannot do anything to cause the taking of his property.
14 He can't do anything. It's only the government that
10:01:16 15 can take action that results in the taking.

16 And that's all we're asking for in our summary
17 judgment motion is to look at the standards for taking,
18 look at the government's actions in this case, and
19 determine if those government actions meet the standard
10:01:30 20 for a taking. That's it.

21 So all of these other issues that counsel is
22 trying to bring up about what the landowner may or may
23 not have done, what the landowner may or may not have
24 paid for the property, conversations he may have had
10:01:43 25 with Mr. Peccole, conversations he may have had with

10:01:46 1 his partners are entirely irrelevant to the pending
2 motion for summary judgment.

3 Again, anything the landowner could or could
4 not have done does not further substantiate a taking.
10:01:59 5 It's only the government's actions that substantiates
6 the taking in this case.

7 And there's been two and a half years of
8 discovery since our first motion for summary judgment
9 in this case.

10:02:11 10 We've obtained all of those government
11 actions. The City should know those actions and they
12 should have known them two and a half years ago because
13 it's the City's actions that resulted in the taking.

14 Since we know what those actions are, the
10:02:23 15 claims are properly before this Court, and there's no
16 reason to further delay this.

17 Now, let me -- let me just talk about how this
18 could prejudice the landowner and how it has prejudiced
19 the landowner.

10:02:35 20 As you'll recall, Judge, when we originally
21 brought our summary judgment motion clear back in 2018,
22 I said to the Court, Judge, we have a problem here.
23 This landowner has to carry a 35-acre property without
24 the ability to develop it. He has to carry all of the
10:02:55 25 costs. He has to pay significant attorney's fees. He

10:02:58 1 has to pay all of the costs that are associated with
2 carrying the property.

3 Let me just address one of those costs.

4 The City tax assessor has gone to the
10:03:10 5 landowner's 35-acre property, identified in 2016 the
6 landowner's property as a residential property,
7 determined that the lawful use of the 35-acre property
8 is a residential use, and has imposed a tax -- a real
9 property tax on the landowner of \$205,000 a year on
10:03:31 10 this property for use as a residential property for
11 which he can't use it.

12 So for this four years since we've commenced
13 this litigation, the landowner has been prohibited from
14 using this property for a residential use as a result
10:03:44 15 of the City's actions, and he's been required to pay
16 \$200,000 a year in taxes. So let's just put that into
17 perspective.

18 It's been two and a half years since the
19 landowner first asked for summary judgment. It's been
10:03:58 20 15 months since the City conceded to a briefing
21 schedule on summary judgment on the taking issue. And
22 in that two and a half years, he's paid \$500,000 just
23 in real property taxes, part of which has gone to the
24 City's coffers.

10:04:13 25 Why is that prejudice, Judge? Because it's

10:04:15 1 money out of his pocket. His property sits there
2 vacant. And where does that money go to? It goes
3 partly to the City.

4 And once liability is determined -- and the
10:04:23 5 City knows this. Once liability is determined, then
6 those taxes end and they don't get to collect that
7 \$205,000 from the landowner. So there is gross
8 prejudice to the landowner by delaying this summary
9 judgment hearing.

10:04:39 10 I can't express how -- how critical it is,
11 Judge, that we were before the Court two and a half
12 years ago on this summary judgment issue, the Court
13 said we're going to allow some discovery, 16.1 and an
14 answer.

10:04:51 15 Then later, just -- just five months later the
16 Court set a briefing schedule for the summary judgment,
17 gave the City a whole year to conduct discovery, the
18 City didn't object to that briefing schedule on summary
19 judgment for liability.

10:05:04 20 And the only reason we haven't had liability
21 determined to this date is because the City filed that
22 improper notice of removal to federal court causing us
23 to miss that date.

24 The City has now had an additional 15 months
10:05:16 25 since that initial briefing schedule was set for that

10:05:21 1 summary judgment on liability.

2 And we need to move forward, Judge. The costs
3 are crushing our landowner. I said that two and a half
4 years ago. And I said it probably five or six

10:05:33 5 additional times since that time two and a half years
6 ago.

7 Now, your Honor, let me end with identifying
8 the issues that the City says it needs discovery on so
9 that we can't have our day in Court. In other words,
10:05:46 10 we can't get this liability determination because the
11 City has to do these things. The first one is the City
12 says it has to identify the property rights and the
13 zoning on the property. Okay?

14 This is a response that the City gave in
10:06:01 15 discovery over two -- about two years ago. The
16 landowners asked for the City's opinion on -- or
17 requested certain documents related to zoning. The
18 City objected and then said in that discovery the City
19 does not dispute that the subject property is zoned
10:06:15 20 R-PD7. Before the Nevada Supreme Court, in the 17-acre
21 case, the City said the 250 acres at issue has always
22 been hard zoned R-PD7. The City does not dispute that
23 the property is zoned R-PD7.

24 In addition to that, your Honor, we've had a
10:06:33 25 full-blown hearing on the property rights issue. This

10:06:36 1 zoning issue, this property rights issue the City says
2 it needs more discovery on so we have to continue our
3 liability, we already did it. As you'll remember, we
4 filed extensive briefing on -- on the property interest
10:06:48 5 issue. The landowners filed a motion to determine
6 property rights.

7 I'm going to read just a few, Judge. This is
8 important. So I'm going to read just a few findings
9 this Court made as a result of that hearing where we
10:06:58 10 had about three to four hours of argument. This is
11 October 12, 2020, the Court held, Finding No. 16, the
12 Court bases its property interests on eminent domain
13 law.

14 Finding 17, Nevada eminent domain law provides
10:07:12 15 that zoning must be relied upon to determine the
16 property rights issue. Finding 18, the Court concludes
17 that the 35-acre property has been hard zoned R-PD7
18 since at least 1990. Finding 19, the Court further
19 concludes that the city code lists single family and
10:07:28 20 family -- single family and multifamily residential as
21 the legally permissible uses of R-PD7-zoned property.
22 And then the Court concludes the 35-acre property is
23 zoned R-PD7 and the permitted uses by right of the
24 35-acre property are single family and multifamily
10:07:46 25 residential.

10:07:47 1 So this argument at pages 7 and 11 of the
2 City's 56(d) motion that they need discovery on zoning
3 and land use issues is a red herring. It's already
4 been done.

10:07:56 5 Secondly, the City says, well, it needs to
6 visit the property so it can determine the access to
7 the property. Needs to go out there and see what the
8 access is. That was also part of the discovery that's
9 occurred over two and a half years.

10:08:08 10 This is the City's response to the landowner's
11 first set of interrogatories. The landowner has asked
12 the City to identify what it believes to be the access
13 to the 35-acre property. Here's the City's response,
14 Judge.

10:08:19 15 Here's the City's response on access that the
16 City said it needs more discovery on. Here's the
17 City's response: The 35-acre portion of the property
18 as defined has general legal access to public roadways
19 along Hualapai Way and Alta Drive. The Badlands has
10:08:35 20 general access to the public roadways along Hualapai,
21 Alta, and Rampart.

22 So the City is telling you today that it needs
23 to do discovery on access, so we need to kick our
24 summary judgment on liability, deny the landowner due
10:08:46 25 process, make him pay more fees to the City on an issue

10:08:49 1 that the City already conceded to in discovery.

2 In addition to that, the Nevada Supreme Court
3 has been very clear that every property that abuts a
4 roadway has a property right, a legal right to access.

10:09:00 5 All the City has to do is read State vs. Schwartz and
6 look at an aerial photo and see that the property abuts
7 Hualapai, it abuts Alta, and, therefore, there is legal
8 right to access, which is why the City answered this
9 discovery about a year ago on the access issue that it
10:09:14 10 now says it needs discovery on.

11 The City also says it has to visit the
12 property.

13 Your Honor, a year ago I invited the City to
14 the property.

10:09:22 15 Discovery has been ongoing for two and a half
16 years. That means one and a half years prior to COVID
17 and a year during COVID. And the City hasn't gone to
18 the property? The summary judgment is set for May
19 21st. They can go out Monday, Tuesday, Wednesday,
10:09:37 20 Thursday, or Friday of next week. We invite them. We
21 invited them a year ago. We invite them now. They can
22 go to the property. Go visit it.

23 I don't know what more we can -- we could have
24 done, Judge, than reached out to the City and said come
10:09:50 25 visit the property.

10:09:52 1 I don't know what more we could have also done
2 than to reach out to the City and tell them to depose
3 our client. We've sent emails to the City over this
4 two-and-a-half-year period saying come depose our
10:10:03 5 client. Depose him. He's available.

6 But now the City didn't do it, and now we're
7 in a situation where we need to move forward with
8 liability on -- in this case. The City says, well, we,
9 the City, didn't depose the client; therefore, we want
10:10:16 10 to depose him and kick the landowner's hearing on
11 liability, which, your Honor, wouldn't change a thing
12 at the summary judgment hearing, not a single thing,
13 because nothing the landowner could possibly say will
14 change what the City did to his property and to him
10:10:34 15 over the past five years. Nothing will change that.

16 And, your Honor, they also say that they
17 needed to depose Chris Kaempfer and Mr. Lowie because
18 they submitted an affidavit. Your Honor, those
19 affidavits list the property rights issue that's
10:10:48 20 already been decided, and they confirm what the City
21 did.

22 There's no inconsistencies between those
23 affidavits and what the City's actions were, that they
24 say that the City denied the 35-acre application. We
10:11:01 25 have the document showing that. They say the City

10:11:03 1 denied the MDA. We have the document showing that.

2 So the affidavits say that the City denied a
3 fence request. The affidavits say that the City denied
4 access so that the property could be preserved for
10:11:14 5 surrounding landowners. We have the documents showing
6 that.

7 We have all this information, Judge, so it
8 won't change a thing.

9 Then the last-ditch effort the City says is,
10:11:23 10 well, wait a minute. We need to get communications
11 between the developers, the lenders, and the Peccole
12 family. We've given them everything we have. And
13 nothing that they told the lenders, nothing that they
14 told one another, nothing that they told the Peccoles
10:11:35 15 will change what the City did to the landowner property
16 for the last five years.

17 Now, finally, what the City says is they need
18 to investigate Mr. Richards' pictures that he used on
19 the property. Judge, Mr. Richards attaches photos of
10:11:51 20 individuals using the property and authenticates those
21 photos. It's all it is.

22 And here's the sole reason that was attached
23 is because the City tells this Court that the Sisolak
24 case requires a physical invasion. It clearly doesn't.
10:12:07 25 The Sisolak court was very clear and so was the Hsu

10:12:10 1 court that if the City engages in actions that
2 authorizes the public to use property or preserves
3 property for use by the public, that's a taking.

4 That's common sense, Judge. If a government
10:12:21 5 adopts a statute that says the public can use your
6 property, or if the government adopts a statute that
7 says your property is preserved for the public, that in
8 and of itself is a taking. You don't need to show a
9 physical invasion.

10:12:32 10 But the government continually argues this
11 isn't a show of physical invasion, so we attached those
12 pictures showing that individuals are actually going
13 onto the property at the direction of the City of Las
14 Vegas, and we've provided the doc -- or the -- the
10:12:45 15 hearing where the City of Las Vegas told people to go
16 onto the landowner's property.

17 Not even needed, Judge, but we did it because
18 the City said we needed it.

19 And, your Honor, again, it's merely an
10:12:57 20 authentication of those photos.

21 Judge, let me end here. We've argued ad
22 nauseam that in these inverse condemnation cases, the
23 Court must engage in a two-step inquiry. The first
24 inquiry is to determine the property rights issue.

10:13:14 25 This Court did that. This Court gave us a ton

10:13:18 1 of briefing. Gave us about three or four hours to
2 argue and entered an order on October 12, 2020. It's
3 entitled "Findings of Fact and Conclusions of Law
4 Regarding Plaintiff Landowner's Motion to Determine
10:13:30 5 Property Interests."

6 You made that first sub-inquiry. That was
7 about six months ago.

8 It's time to now move to the second
9 sub-inquiry that the Nevada Supreme Court requires be
10:13:42 10 made in this case. And that second sub-inquiry is if
11 the City engaged in actions under those three claims
12 that we brought to take that property interest.

13 And, Judge, I mean, if we don't do this now,
14 it's not going to give the parties enough time to
10:14:03 15 prepare for the fall -- fall trial. It's been two and
16 a half years of discovery. We've been extraordinarily
17 patient.

18 Mr. Ogilvie is right. There have been some
19 times we had to continue the exchange of expert
10:14:15 20 reports, but that has nothing to do. What's an expert
21 going to say? He is just going to say, hey, the City
22 did these things. That's what the expert is going to
23 say, the City did these things.

24 We know the City did these things. We know
10:14:27 25 that the City denied the individual application. We

10:14:29 1 know that the City denied the MBA. We know the City
2 denied the access. These are things we know.

3 And, Judge, once we get to the May 21st
4 hearing, if you look at all of these government actions
10:14:39 5 and you say, "Hey, well, I don't think there's enough,"
6 then you can at that point in time deny the motion
7 without prejudice. You can at that point in time say,
8 "Well, Mr. Leavitt, I'm looking at the standard here.
9 And I think Mr. Lowie has to say one or two things."

10:14:54 10 You can do that at that time.

11 But to prohibit us at this time after two and
12 a half years of discovery, after the motion -- after
13 the property interest issue has been decided from even
14 presenting this issue to the Court, after two and a
10:15:06 15 half years, your Honor, will continue to cause gross
16 prejudice to this landowner and continue to just be
17 hundreds -- Judge, I'm not exaggerating here --
18 hundreds of thousands of dollars a month.

19 We've already suffered that prejudice -- our
10:15:21 20 client has already suffered that prejudice for two and
21 a half years. Continuing it more will perpetuate that
22 prejudice.

23 This matter is ripe, your Honor, and it should
24 be presented to the Court for an adjudication. So we
10:15:33 25 simply ask that the Court give us that day in court.

10:15:35 1 Again -- and I'll conclude here -- if there's
2 some 56(d) issue that comes up during that hearing, the
3 Court can consider it then. The Court can go through
4 the standard and look at the facts. It can go through
10:15:48 5 the standard of the third claim for relief, the fourth
6 claim for relief, the first claim for relief, and then
7 apply the facts to that claim and determine whether the
8 facts we know now amount to a taking.

9 So we respectfully request, Judge, to just
10:16:01 10 give us this opportunity to present our case. We've
11 waited for a very long time. We've -- the Court has
12 been -- has been great on giving us a special setting
13 in May 21st for the afternoon. We look forward to that
14 special setting and look forward to the opportunity to
10:16:16 15 finally present our case to this Court.

16 Thank you, your Honor.

17 THE COURT: All right. Thank you, sir.

18 MS. HAM: Your Honor, this is Elizabeth Ghanem
19 Ham. I don't know if it's now, but it's perhaps after
10:16:29 20 this particular, some of these issues, we did raise the
21 breach -- the City's breach of the Court's protective
22 order granted to us.

23 So I don't want to -- I don't know if you want
24 me to address it now or after the discussion of -- or
10:16:47 25 the ruling on -- maybe it's better suited for the other

10:16:53 1 motion to reconsider, but I just wanted to raise at
2 some point, I would like to address that as well.

3 THE COURT: Okay. And, ma'am --

4 MS. HAM: And I guess now that I'm saying it
10:17:00 5 out loud, I realize it was more part of the other
6 motion, so I'll wait on that.

7 THE COURT: Okay, ma'am. And thank you.

8 Okay. Mr. Ogilvie, sir.

9 MR. OGILVIE: Thank you, your Honor.

10:17:12 10 I hear again and again and again from the
11 developer's counsel that the developer is entitled to
12 its day in court.

13 Your Honor, the City is also entitled to its
14 day in court.

10:17:23 15 And for the City to be properly and adequately
16 provided that day in court, the City is entitled to
17 conduct the discovery that it needs to prepare its
18 case. It hasn't been able to do so.

19 What we have -- we have -- we have to take the
10:17:43 20 deposition of Mr. Richards, which is the only basis on
21 which the -- the only evidentiary basis on which the
22 City -- or the developer supports its motion for a
23 physical invasion.

24 We have to be able to take the deposition of
10:18:00 25 Mr. Lowie and Mr. Kaempfer, whose deposition --

10:18:03 1 THE COURT: I don't want to cut you off, but
2 as far as Mr. Richards is concerned, I would anticipate
3 it's his declaration and/or affidavit that supports the
4 motion for summary judgment on the three discrete
10:18:15 5 claims for relief, is that correct, sir?

6 MR. OGILVIE: You're posing that to me or
7 Mr. Leavitt?

8 THE COURT: Okay. No, but, I mean -- no, it's
9 for you. I just wanted to make sure I understand where
10:18:28 10 we're at, because you said you needed to take
11 Mr. Richards' deposition. And I remember listening to
12 the argument a little earlier, you indicated that there
13 was a declaration of an individual that you just became
14 aware of for the first time, something like that.

10:18:44 15 MR. OGILVIE: That is, in fact, Mr. Richards,
16 yes.

17 THE COURT: Okay. All right.

18 MR. OGILVIE: We're also entitled to take
19 Mr. Lowie and Mr. Kaempfer's depositions.

10:18:53 20 Now, Mr. Leavitt argued at length that the
21 City has had two and a half years to conduct discovery.
22 Your Honor, I'll go back to the point that we've made
23 again and again and again. We served discovery -- our
24 initial discovery requests in July 2019. July 2nd,
10:19:12 25 2019. Last month we received the documents that are in

10:19:19 1 part responsive -- responsive to those -- those
2 discovery requests.

3 Those -- the -- we haven't been in a position
4 to take Mr. Lowie's deposition until we received those
10:19:35 5 documents. That was the subject of our hearings on
6 November 17th and November 18th of last year, that the
7 developer was going to produce those documents and then
8 allow the City to take the deposition of Mr. Lowie
9 based on this 20-year history of transactions between
10:19:55 10 the developer and the Peccoles.

11 Mr. Leavitt said the City's primary argument
12 is that -- is the Penn Central claim, the discovery for
13 Penn Central discovery has not been completed.

14 As I said in my opening remarks is the primary
10:20:21 15 basis for our motion is, in fact, that there have been
16 several requests by the developer for an extension of
17 expert witness deadlines, and the City always responded
18 that it has no objection, but it wants to be -- ensure
19 that it has the opportunity to conduct the discovery
10:20:45 20 necessary to properly prepare its case.

21 And -- and I submit to the Court that the
22 motion for summary judgment on the first, third, and
23 fourth claims for relief is an attempt to cut off the
24 City's ability to conduct that discovery.

10:21:04 25 The developer's counsel states that the only

10:21:10 1 factors for the Court to consider on the first, third,
2 and fourth claims for relief are the City's actions.
3 The City disputes that and rejects that contention.

4 And we stated that in the reply that we filed
10:21:28 5 yesterday. We identified how the -- the -- the
6 discovery that the City needs is directly applicable to
7 those causes of action as well as the Penn Central
8 cause of action.

9 Additionally, the -- the City, one of its
10:21:50 10 primary arguments relating to the prejudice is that
11 there isn't any prejudice.

12 I didn't hear anything that Mr. Leavitt stated
13 to contradict that. Mr. Leavitt stated that the costs
14 are crushing the developer or the landowner. Well,
10:22:09 15 that wasn't an issue the two or three times that the
16 developers requested an extension of the discovery
17 deadlines, so they shouldn't be bringing it before the
18 Court at this point, saying that the City has been
19 delaying and will continue to delay the adjudication of
10:22:30 20 these -- of these claims.

21 The City hasn't been delaying. The City has
22 been agreeing to the developer's requests for
23 extensions.

24 The -- and finally, the prejudice issue.
10:22:45 25 Again, even if the Court finds liability, the next step

10:22:52 1 is a jury trial on damages.

2 The developer can't take new action, can't
3 collect damages, which is -- which is what the
4 developer's remedy is, is damages. And we're -- it's
10:23:05 5 clear -- it's clear at this point that the developer is
6 only desirous of damages.

7 The developer doesn't want to develop this
8 property anymore. The developer has the right to
9 develop the 17-acre parcel which is adjacent to this
10:23:25 10 75-acre parcel.

11 Going back in history -- your Honor, you know
12 this -- the City approved the developer's applications
13 to develop the 17-acre parcel, and the developer -- the
14 City has continued to allow the developer to develop
10:23:43 15 that parcel.

16 The developer doesn't want to. It hasn't
17 taken any action on doing so. It's not going to take
18 any action on developing the 35-acre parcel either. It
19 simply wants damages. It wants a windfall of this
10:23:59 20 \$7 1/2 million or this actually \$3 1/2 million purchase
21 of this property.

22 It doesn't -- it -- it just -- it does not
23 want to develop. It simply wants the damages. Which
24 if the Court ultimately finds liability and if a jury
10:24:19 25 ultimately finds damages, then -- then the developer

10:24:25 1 will be entitled to damages.

2 There isn't any prejudice between now and the
3 time that the developer brings -- or the developer and
4 the City bring cross motions for summary judgment,
10:24:39 5 the -- this -- there's nothing that's going to expedite
6 the damages that the developer can collect the first,
7 third, and fourth causes of action. So there isn't any
8 prejudice to the developer.

9 The City ought to be able to fully conduct
10:24:58 10 discovery and prepare its case, including taking the
11 deposition of Mr. Lowie, which it hasn't been in a
12 position to because the developer only last month
13 produced the documents that we're going to take his
14 deposition on; and take the deposition of Mr. Richards.

10:25:16 15 So, your Honor, we -- again, we submit to
16 the -- the Court that the City should be allowed to
17 complete its discovery. The City's motion for 56(d)
18 ruling should be granted. The motion by the developer
19 for summary judgment on the three causes of action
10:25:38 20 should be denied without prejudice. And the -- and
21 allow the developer to bring the -- to re-bring the
22 motion after discovery is completed.

23 THE COURT: Okay. Anything else?

24 MR. LEAVITT: Your Honor, I don't want to
10:25:54 25 interrupt, but if I may address that question about

10:25:57 1 Mr. Richards.

2 THE COURT: Well, here's the thing, gentlemen.
3 I want to make sure you both understand this. And one
4 thing I'm very sensitive to is a party's right to
10:26:05 5 conduct discovery, and for many reasons.

6 But -- and I think it's important to point out
7 that -- that, number one, if you don't permit a party
8 to conduct discovery and decisions are made
9 prematurely, that creates, as we all know, an appellate
10:26:24 10 issue. And I try to take appellate issues off the
11 table.

12 And I'm looking at this case, and I have a
13 fairly -- I remember a lot of the facts of this case
14 and also some of the prior hearings and discussions
10:26:37 15 we've had, and I realize we have a motion, for all
16 practical purposes, would be a summary judgment motion
17 as it relates to the taking and/or liability, vis-à-vis
18 the -- let me make sure I get the appropriate numbers
19 here -- the first, third, and fourth claims for relief
10:26:54 20 as set forth in the complaint.

21 And so in looking at it from this
22 perspective -- and I don't mind saying this -- my first
23 instinct would be this: That if an affidavit and/or
24 declaration is set forth as a basis to support a motion
10:27:13 25 for summary judgment or partial summary judgment and

10:27:16 1 that individual isn't fully disclosed, I feel that the
2 adverse party, if they raise that issue, would have a
3 right to depose them; right? I mean, that's pretty
4 straightforward, as far as that's concerned.

10:27:32 5 Next, and going back and looking at the
6 history of the case, I remember we had some law and
7 motion as it pertained to the calculation of damages.

8 And I think I addressed this in a minute order
9 of some point or at some level, and I do understand the
10:27:50 10 distinction between calculation of damages, for
11 example, in a tort case. At the time of the early case
12 conference, in a general sense, the plaintiff knows
13 what their medical expenses are; right? They know what
14 their wage loss is. They might not know what the pain
10:28:09 15 and suffering claim will be, but they have a good idea.
16 And so -- and I realize in a general sense you have to
17 have expert testimony to support that. But they still
18 know what the numbers are, typically.

19 In contrast, I did recognize the difference
10:28:24 20 here in this case, and that's why I ruled the way I
21 ruled is because I understand calculation of damages in
22 a taking case is expert intensive. It's not a calc you
23 say, look, you went to the doctor ten times and the
24 doctor charged \$100 a visit and that's \$1,000. That's
10:28:41 25 a different animal. And I get that.

10:28:44 1 Then I'm looking at it from this perspective,
2 too. And I don't mind telling you this. I don't think
3 any decision I make today would result in prejudice in
4 this regard because the bottom line is this: I'm just
10:28:57 5 going to put everybody on notice right now. We're
6 going to trial in October. I'm not moving the trial
7 date.

8 And I think that potentially could result in
9 prejudice, because the carrying costs appear to be
10:29:09 10 fairly significant, and I get that. I do. I just want
11 you to understand that. I'm not overlooking that.
12 But -- and things have happened in the interim.

13 But in looking at the conclusion that's set
14 forth in the reply that was filed yesterday, and I
10:29:25 15 think this is really what has to be developed and
16 discussed for -- and I'm looking at page 9 at line 15,
17 and this is the first issue raised by the City as to
18 why the motion should not be heard at this time or it's
19 premature.

10:29:50 20 And that would be, I guess, one, developer --
21 until the developer fully complies with the February
22 24th order and produces all documents related to all
23 relevant transactions between the developer and/or
24 Peccole family.

10:30:08 25 Now, I get why that's being requested. And I

10:30:13 1 remember the discussion on that. And that goes to the
2 evaluation issue, it's my recollection.

3 And so, number one, I want to know why that
4 would be necessary as it pertains to a potential
10:30:28 5 governmental taking issue and resolution.

6 And I'll hear from Mr. Ogilvie first and then
7 we'll pass it to Mr. Leavitt.

8 MR. OGILVIE: Thank you.

9 Your Honor, again, as stated earlier in the
10:30:42 10 reply, all of -- all of the causes of action, perhaps
11 other than a physical invasion, require the analysis of
12 the investment or the valuation of the property prior
13 to the -- prior to the purported taking and after.
14 Because if there's no change in the value of the
10:31:12 15 property as a result of government action, there is no
16 taking.

17 So it's not just a matter of a damages issue;
18 it is a matter of the seminal issue of whether or not
19 there's been a taking.

10:31:27 20 And the -- and that valuation is -- is
21 attributable to the causes of action that are -- is
22 relevant to the causes of action sought by the
23 developer.

24 Notwithstanding what the developer contends
10:31:43 25 that it's only -- the focus is only on the City's

10:31:49 1 action. The -- in order to determine whether or not
2 there's been a taking, in any sense, the -- there has
3 to be a determination of a value prior to and after to
4 the government action.

10:32:04 5 THE COURT: Here's my next question as far as
6 that's concerned. And I don't know specifically how
7 the discovery requests were responded to. But do we
8 know whether or not all documents have been produced as
9 it relates to transactions between developer and the
10:32:27 10 Peccole family?

11 MR. OGILVIE: Well, your Honor, what we
12 included as an exhibit to the -- I don't recall if it
13 was the motion. I think it was the reply brief. There
14 was an email from Ms. Ghanem Ham stating,
10:32:46 15 notwithstanding your belief that there are other
16 transactions relevant to the \$45 million valuation that
17 the -- that the developer places on its purchase of the
18 property, the -- we've now produced the only documents
19 that are relevant to that, which is the Suma 2005
10:33:14 20 transaction involving Queensridge Towers, Tivoli
21 Village and now -- and Hualapai Commons.

22 Now, if that's the case, that's the case.

23 We don't believe it is based on the
24 representations of counsel at the November 17, 18
10:33:36 25 hearings where the developer said, and I quote:

10:33:40 1 "Again, what happened is out of those
2 complicated land transaction deals was blowing the
3 right to purchase the property. Just one of those
4 complicated transactions that Mr. Lowie entered into
10:33:58 5 with the Peccole family involved the Queensridge
6 Towers; Tivoli Village, which is now -- which is built
7 now; Hualapai Commons, which is on the corner of
8 Hualapai and Sahara here in Las Vegas."
9 So taking the -- the developer's counsel at
10:34:18 10 its word -- at his word, that this -- there was only --
11 that this transaction involving Queensridge Towers,
12 Tivoli Village, and Hualapai Commons is just one of
13 these complicated transactions, we submit to the Court
14 that there are others.
10:34:35 15 Additionally, the developer's counsel talked
16 about binders and binders or several binders or many
17 binders of transaction documents. What we received
18 wouldn't fill a three -- one single three-ring binder.
19 And so in answer to your question whether or
10:34:57 20 not all of these transactional documents have been
21 produced, going from what the developer's counsel
22 represented to the Court in November of last year,
23 compared to what we received, we would say no.
24 THE COURT: All right.
10:35:16 25 MR. LEAVITT: Your Honor, may I be heard on

10:35:17 1 that?

2 THE COURT: Absolutely, yeah. Because we're
3 going to go through the issue by issue as set forth
4 there.

10:35:23 5 MR. LEAVITT: All right.

6 THE COURT: Because I want to make sure I
7 understand exactly what's going on from a procedural
8 perspective and where the case is as it pertains to
9 document production and the like.

10:35:34 10 Mr. Leavitt, sir, or Ms. Ghanem Ham.

11 MR. LEAVITT: Yeah. So on that Item Number 1,
12 there were two questions. The first question was, is
13 that necessary to determine the taking. And the second
14 question was whether those documents have been
15 produced.

10:35:46 16 I'm going to address the first question and
17 Ms. Ghanem Ham is going to address the second question.

18 So what the City is requesting, there are
19 documents related to transactions between the developer
10:35:58 20 and the Peccole family. Judge, just ask yourself, how
21 could transactions between the developer and the
22 Peccole family further the taking in this case? How?

23 It's such a commonsense answer. There's
24 nothing that Mr. -- the developer and the Peccole
10:36:20 25 family could have done that amounted to a taking of the

10:36:23 1 property.

2 Now, counsel for the City or Mr. Ogilvie
3 states, well, that's relevant to the value of the
4 property prior to the taking and the value of the
10:36:31 5 property after the taking, and there can be no taking
6 if you look at the value prior to the value after and
7 there's not been a total wipeout of the value of the
8 property.

9 Judge, that statement right there appears
10:36:43 10 nowhere in inverse condemnation law in the state of
11 Nevada. Nowhere.

12 Instead, what the Nevada Supreme Court
13 holds -- and we're moving on three claims -- is that if
14 the government authorizes the public to use private
10:36:57 15 property, that's a taking, whether they use it or not.
16 If the government preserves property for use by the
17 public, that's a taking, whether they use it or not.

18 If the government engages in actions that
19 substantially impair the use and enjoyment of the
10:37:09 20 property, that is a nonregulatory de facto taking,
21 whether there's -- so, your Honor, my point here, I can
22 go through each one of these standards. And you don't
23 look at the value of the property prior versus the
24 value of the property after to determine that taking
10:37:23 25 standard.

10:37:23 1 A per se categorical taking doesn't even
2 require that. A per se categorical taking states that
3 if a government engages in actions that result in a
4 loss of all economic viable use of the property, that's
10:37:35 5 a taking.

6 All you have to do to make that determination,
7 Judge, is to look at the government's actions and
8 determine whether the government's actions foreclosed
9 all use of the property.

10:37:44 10 We have that here. We went to the City and
11 asked them to use our property, and they said no. They
12 provided the only way to develop the property and they
13 said no.

14 I don't know how much clearer we can get there
10:37:57 15 for a per se categorical taking than the City saying
16 you can't use your property. We, the City, are taxing
17 you on a lawful residential use of the property, but
18 we're not going to let you use your property. You're
19 going to pay us, the City, \$200,000 a year on the
10:38:11 20 lawful residential use, but we're not going to let you
21 use the property. I don't know how much clearer it can
22 be than that.

23 So these documents or transactions between the
24 developer and the Peccole family are absolutely
10:38:23 25 100 percent entirely irrelevant and the standard that

10:38:26 1 counsel just cited to you might come into play on a
2 Penn Central regulatory taking claim, but that claim is
3 not before the Court on the summary judgment.

4 And, Judge, I got to go back to this depo of
10:38:37 5 Mr. Richards. The answer -- it's a short answer to
6 your question there, is Mr. Richards' deposition
7 necessary for the taking? Absolutely not. It's not.
8 We don't need it.

9 The sole reason it was provided to the Court
10:38:49 10 is because the City continually represents to the Court
11 that we need to show a physical appropriation or a
12 physical use under the Sisolak case. That's wrong.

13 But we provided that so we can see the
14 pictures. And we just authenticate those pictures.
10:39:03 15 What are they going to do? Depose him and say, "Hey,
16 are these the pictures?"

17 He's going to say, "Yeah."

18 What it's going to be, a ten-minute
19 deposition?

10:39:10 20 So, Judge, I just don't see the -- I
21 understand -- I totally agree with you, your Honor,
22 that every party has to have the opportunity to conduct
23 discovery. We have been at it for two and a half
24 years.

10:39:20 25 And Mr. Richards' deposition, yes, he is a new

10:39:23 1 individual. Yes, he does have an affidavit, but it's
2 not germane to the issues. It's only to show that even
3 if we needed that physical appropriation, here's the
4 pictures proving it and here's an affidavit
10:39:34 5 authenticating it.

6 So all of these issues the Cities are bringing
7 up -- the City is bringing up, you'll see, Judge, when
8 we go to the hearing on liability, we go through the
9 standards, we go through the facts.

10:39:43 10 The City is not going to bring any of this to
11 your attention because it's not going to be relevant.
12 They're just trying to kick this and delay it further,
13 Judge, and it's causing a lot of problems for our
14 client, Judge, because, again, once we get that
10:39:56 15 liability determination, some of the costs shift. One
16 is the taxes. Your Honor, that's \$20,000 a year.

17 If there was any client before you and they
18 said, hey, Judge, this is costing me -- I'm sorry --
19 20,000 a month, would we continue to make -- delay this
10:40:08 20 so they have to continue to pay the City 20,000 a
21 month? Certainly we wouldn't.

22 So that's the prejudice that's occurring here,
23 Judge.

24 And, your Honor, I'll let Ms. Ghanem Ham
10:40:18 25 address whether those documents have been produced

10:40:20 1 anyway to the City.

2 THE COURT: Okay. Thank you, sir.

3 Ma'am.

4 MS. HAM: Yes. Good morning, your Honor.

10:40:29 5 What you've heard from the City is just
6 semantics and distortion as they continue to do
7 throughout this matter, using discovery as sort of a
8 tactical weapon to harass, delay, and cause further
9 damage and harm to the landowner, something that we've
10:40:43 10 experienced with the City since the beginning of our
11 attempt to develop this land.

12 But in relation to your question specifically
13 what Mr. Ogilvie and I take issue with him saying this
14 is only one transaction as he enumerated the multiple
10:40:58 15 transactions and documents that they received.

16 And what they received -- and -- and has
17 stated them to you and Mr. Leavitt has repeated them to
18 you.

19 What I said to this Court when I begged for a
10:41:11 20 protective order, been begging for this protective
21 order for over a year, the City immediately violated
22 that order, which we'll get to shortly, but I think it
23 does have some reference here.

24 What I said to this Court was there are
10:41:25 25 binders and binders and binders. I could submit them

10:41:28 1 for an in camera review. These are transactions that
2 took place in 2005 and 2006 largely, and both the Court
3 and myself said nobody wants to go through all of
4 these -- these. They're bound books, which -- I don't
10:41:42 5 know if you have that where you can see -- are right
6 here on my -- on my desk.

7 I hadn't gone through them and Mr. Leavitt
8 hadn't gone through them. And until I did, did I
9 recognize that there -- that as it relates to what the
10:41:56 10 City was asking for, and I told this Court then, those
11 documents are not going to say X amount of dollars are
12 being -- utilized to pay for just the golf course.
13 They would not reference it. I told the Court that. I
14 told the City that. And that's exactly what the
10:42:16 15 documents showed.

16 What -- what happened and what transpired from
17 those documents that were produced -- and we produced
18 all of them -- the rest of the books that -- that --
19 that I just showed you or that I referenced have
10:42:29 20 largely to do -- Mr. Ogilvie is aware of it because I
21 sent it to him in correspondence -- they're
22 construction documents and they're renters' documents
23 as it relates to the building of Tivoli and the Towers.

24 They have nothing to do with what -- what will
10:42:47 25 ultimately and what has already been testified to as

10:42:51 1 what was paid for that claim. And as Mr. Leavitt has
2 always argued from the beginning, none of that matters.
3 It's -- regardless has nothing to do, ultimately, with
4 the value, and certainly nothing to do with the
10:43:06 5 liability. And that's what we're asking for is for you
6 to hear us on liability of three of those claims.

7 So have those documents been produced?
8 100 percent they have.

9 You hear -- you heard the City's narrative
10:43:19 10 from that production, what they now say was paid for
11 the land, which, of course, we take issue with.

12 But regardless, there is nothing further to
13 give them. Nor would I give them one more document
14 once they have immediately violated the protective
10:43:32 15 order and failed to -- to protect them. They filed
16 them in open court, something they were not allowed to
17 do.

18 Why would I give them one more document? Not
19 that I have anything else, but I find it somewhat
10:43:47 20 humorous that the City argues that they -- from the
21 documents they can now prove that we paid little to
22 nothing for the land, yet they want more documents to
23 further confirm that.

24 It's just -- it's absurd. There's nothing
10:44:01 25 further to give them. They have all the documents.

10:44:03 1 They haven't outlined within those documents that they
2 did receive that there was something else. They just
3 believe there is. And on that basis, which is not an
4 evidentiary basis or a basis for this Court to rule,
10:44:15 5 they want more.

6 Now, I know we're getting into a little bit of
7 the second motion before you, but it kind of bleeds
8 together.

9 So as it relates to your question
10:44:23 10 specifically, have we provided them with everything?
11 Yes, we have. There's nothing more to give.

12 Thank you, your Honor. If there's anything
13 further, I'd be happy to answer it.

14 THE COURT: Okay.

10:44:40 15 All right. Anything you want to add to that?
16 Then I'll move on to the second issue as set forth,
17 Mr. Ogilvie.

18 MR. OGILVIE: As I say, I can only go from
19 what they represented in November. I read to you a
10:44:53 20 portion of the transcript that this transaction that
21 they produced documents of was just one of the
22 complicated transactions that they contend supports
23 their -- their valuation.

24 But there's also another quote that they -- in
10:45:09 25 that same hearing, the developer's counsel said these

10:45:13 1 documents support, and I quote:

2 "Support the 20-year history that from those
3 transactions was born this right to purchase it for the
4 15 million."

10:45:26 5 So those aren't -- those aren't my words,
6 Judge. That's the developer's counsel's words. And
7 it's only based on those representations that we
8 submitted to the developer that it had not complied
9 with the Court's February order to produce these
10:45:43 10 documents.

11 It -- if -- if they -- if the developer is
12 going to stand on the fact that these are the only
13 documents, well, there's not a lot I can do. It's just
14 whether or not the Court wants to compel the additional
10:46:00 15 documents or -- or let it go with the representations
16 now made by counsel, which are, in my mind, contrary to
17 what I heard in -- in November.

18 MS. HAM: Your Honor, I'm sorry. I have to
19 take issue with -- it's not contrary. I 100 percent
10:46:15 20 stand by the -- the statement that I made to this Court
21 that they support -- they 100 percent support our
22 position on what was paid for the land.

23 Whether Mr. Ogilvie chooses to ignore it or
24 changes the narrative or somehow interprets it in a
10:46:30 25 different manner, that's for presentation to your

10:46:34 1 Honor. We're going to produce -- we're going to
2 provide the story that we provided all along. It was
3 truthful then that it supports our position and it's
4 truthful now.

10:46:42 5 Would he extrapolate from those documents
6 what -- the narrative that he wants to, you know,
7 pretend happened, that's -- that's -- that's for
8 presentation to this Court.

9 It doesn't mean there's more. It certainly
10:46:53 10 doesn't mean there's more.

11 So, you know, I take issue with Mr. Ogilvie
12 saying to you that I have misrepresented that or I
13 misrepresented --

14 THE COURT REPORTER: I'm sorry. You cut out.
10:47:07 15 Counsel. Counsel -- Judge, will you stop her?

16 THE COURT: And, ma'am, can you repeat your
17 last sentence or two?

18 Is that correct, Ms. Reporter?

19 THE COURT REPORTER: Yeah. You cut out. I
10:47:15 20 couldn't hear what you were saying.

21 MS. HAM: I'm sorry. I -- I don't know where
22 I left off.

23 But my position is that what I said to the
24 Court then in requesting a protective order and what
10:47:29 25 I'm saying to the Court now, having produced those

10:47:32 1 documents under the protective order, has not changed.
2 Our position is they do support the relationship and
3 they do support all that transpired between the Peccole
4 family and the principals of the landowners that
10:47:49 5 ultimately led to the right to purchase this land.

6 That's what I told the Court. I told the
7 Court it wouldn't mention the golf course. It wouldn't
8 say we paid X for the golf course, and I was exactly
9 right.

10:48:00 10 So Mr. Ogilvie's narrative and interpretation
11 of those documents doesn't make it that -- so that
12 there are more.

13 My position has never changed. It's never
14 been disingenuous to this Court then or now.

10:48:14 15 And so I just take issue with Mr. Ogilvie
16 claiming that I said something different then or that
17 Mr. Leavitt said something different now that's
18 different than what the documents show. The documents
19 show exactly what I said they would.

10:48:28 20 So that's -- that's my only position. There
21 is nothing more.

22 And then once we get into the other motion,
23 you'll see that -- and the City claims are all public
24 record anyway. So I don't know what more there is to
10:48:41 25 give them if they're all public record and they can

10:48:43 1 receive them, which, you know, we'll deal with then.

2 Unless you want to discuss that now.

3 THE COURT: Not yet, ma'am.

4 But I just wanted to understand what the

10:48:52 5 respective positions were of the parties as it relates

6 to the five issues that were raised by the City and

7 more specifically in the reply.

8 And so the next one would be the City has had

9 an opportunity to depose Yohan Lowie.

10:49:12 10 Why is that important, Mr. Ogilvie? And I

11 understand clearly where -- where it's germane to the

12 issue and we've had rigorous -- rigorous discussion on

13 the valuation. I get that. I get that.

14 But my focus and thrust as far as that

10:49:27 15 question is concerned, it focuses on the first claim

16 for relief, categorical taking, third claim,

17 self-regulatory taking, and the fourth -- I guess the

18 fifth claim because -- no, I'm sorry. Let me look at

19 my notes here. Yes, the fourth claim for relief. One,

10:49:51 20 three and four, how is that germane to that?

21 MR. OGILVIE: So, your Honor, I want to go

22 back to address Mr. Leavitt's arguments about

23 Mr. Richards' affidavit and -- and respond to that. If

24 Mr. Richards' affidavit isn't necessary and, therefore,

10:50:14 25 we're not entitled to conduct a deposition of him prior

10:50:18 1 to proceeding with their motion for summary judgment,
2 his affidavit wouldn't have been submitted in support
3 of the motion for summary judgment.

4 As it relates to the question regarding the
10:50:33 5 opportunity to depose Mr. Lowie, again, your Honor,
6 what -- what I said before, as identified in -- in the
7 City's reply brief that was submitted yesterday, there
8 isn't one case submitted by the developer in support
9 of -- just a moment. I apologize. Someone's calling.

10:51:17 10 There was no legal authority to support the
11 developer's argument that the inverse condemnation
12 claims focus solely on the government's action. And as
13 I indicated earlier, your Honor, these -- there can't
14 be a taking if there is no diminishment in the value of
10:51:34 15 the property.

16 So this value, again, it's not related solely
17 to damages. It relates to whether or not there is a
18 taking.

19 So the deposition of -- and -- and the City's
10:51:47 20 position is that on this particular 35 acres -- again,
21 the total purchase of the 250 acres, of which the
22 35 acres is one of the four parcels, the -- as set
23 forth in the purchase and sale agreement between the
24 developer and the Peccoles, and it included an express
10:52:17 25 \$7 1/2 million purchase price for the entire 250 acres,

10:52:24 1 of which this is maybe 12 percent, 10 percent -- or
2 it's more than 10 percent. You know, it's -- it's 35
3 acres of 250 acres.

4 So the value that the City has been able to
10:52:40 5 discern that the developer paid for this 35 acres is
6 merely \$630,000.

7 So in order to determine whether or not there
8 has been a taking, the City's entitled to confirm
9 its -- its determination that \$630,000 was paid for
10:53:05 10 this 35 acres with the -- by the taking of Mr. Lowie's
11 deposition, which developer's counsel says is going to
12 illuminate the City as to why that \$630,000 valuation
13 is incorrect.

14 So I need to take his deposition to get to the
10:53:30 15 very first determination as to whether or not there has
16 been any diminishment of the value of that property in
17 order to determine whether or not there's a taking.

18 THE COURT: All right. Mr. Leavitt.

19 MR. LEAVITT: Yes, your Honor. Your question
10:54:05 20 is what relevance does the deposition of Yohan Lowie
21 have to liability? Now, you correctly stated that he
22 will testify regarding valuation. You correctly stated
23 that he will be relevant to the valuation stage. But
24 that -- but -- and Mr. Ogilvie addressed that.

10:54:21 25 But the question is: What relevance does

10:54:24 1 Yohan Lowie's testimony have to liability? Here's the
2 City's -- your Honor, this is important. Here's what
3 the City's argument is. We -- we, the City, think that
4 Mr. Lowie only paid \$630,000 for a \$35 million piece of
10:54:39 5 property. Let's just say that. He got a great deal.
6 And because he got a great deal, we, the City of
7 Las Vegas get to take his property and not pay for it.
8 That's what the City's argument is. That's
9 what it boils down to. The City wants to get Mr. Lowie
10:54:55 10 to admit that he only paid \$630,000 for this property
11 that's worth over \$35 million. And because he got a
12 great deal, we at the City can take his property and
13 not pay for it. We can violate his constitutional
14 rights. We can set the Constitution to the side
10:55:11 15 because he got a great deal.
16 That's their argument.
17 So, your Honor, I inherent a \$100 million
18 piece of property. I didn't pay a dime for it. The
19 day after I hire it, the City of Las Vegas can pull
10:55:24 20 their Euclids out there and build a freeway on it not
21 paying me a penny for it because I got the property for
22 free. I got a great deal. So the City gets to take it
23 from me for free.
24 That's their argument to you, Judge. It's an
10:55:36 25 outrageous argument that appears nowhere in any case

10:55:39 1 law.

2 Now, counsel -- Mr. Ogilvie stated that I've
3 not been able to cite to you any case law that says
4 you're only supposed to focus on the government action.

10:55:47 5 Your Honor, in the Sisolak case, it's exactly what it
6 says. It says you have to focus -- it only addresses
7 government action.

8 In the State versus Eighth Judicial District
9 Court case, a 2015 case, the Court repeatedly
10:56:00 10 references government action.

11 They use those words. Not me, Judge. This is
12 the Nevada Supreme Court stating it's focusing on
13 government action.

14 And then Mr. Ogilvie -- and then the City's
10:56:12 15 position is there has to be a total wipeout of the
16 value so we look at the before and after condition.

17 Judge, let me just quote to you -- okay. I'm
18 quoting to you the standard. I'm not just saying it.
19 I'm not just making it up. I'm quoting you from case

10:56:24 20 law. 1977 Sloat versus Turner, the Court held that
21 there is a taking when "some property right which is
22 directly connected to ownership of the property is
23 substantially impaired or extinguished."

24 They're talking about property rights. It
10:56:41 25 focuses on a property right a landowner has, which is

10:56:44 1 why the Court says you have to determine the property
2 right first.

3 Then it focuses -- then the analysis focuses
4 on the government's action to interfere with that
10:56:54 5 property right. Not once in any -- and, Judge, here's
6 all the case law. Here's the Nevada case law. It's
7 right there. I got them all right here. Not once in
8 these cases do they say the judge determines the value
9 of the property before, then the judge determines the
10:57:10 10 value of the property after, then the judge determines
11 whether that property has been taken. That's not the
12 analysis.

13 The Court focuses on -- the Court should focus
14 on the property rights issue, which is why you entered
10:57:23 15 your October 12, 2020 order, finding that the landowner
16 had the property right to use this property for single
17 family and multifamily residential uses. You held that
18 they had the legally permissible right to do that.

19 So the only question now, Judge, for liability
10:57:37 20 is: Did the City engage in action to interfere with
21 that property right?

22 That's the question.

23 And if the Court -- and the Court will apply
24 those three standards -- you hit it right on the head,
10:57:51 25 Judge. You asked Mr. Ogilvie, "Well, what could

10:57:53 1 Mr. Lowie say that meets these standards?"

2 Your Honor, there's nothing he can say. I
3 mean, there's nothing he could have done himself to
4 cause the taking. That's my point here. I'm trying to
10:58:05 5 express so -- and I hope -- I hope I express it well
6 enough so that we look at what the government did to
7 the property right.

8 We don't look at what the landowner did to the
9 property right. We look at what the government did.
10:58:17 10 Therefore, whether they depose Mr. Lowie or not is
11 entirely irrelevant to liability.

12 Now, having said that, of course, his
13 testimony will be relevant to the valuation phase.

14 So, your Honor, again -- and having said that,
10:58:31 15 it's been 15 months since the last briefing scheduled
16 on this. And counsel has had every opportunity -- we
17 invited them to have every opportunity to depose him.
18 And if they were serious about deposing him after
19 receiving the documents on the -- on that number one we
10:58:49 20 just went through, as Mrs. Ghanem Ham explained, after
21 receiving those documents they would have immediately
22 deposed him.

23 I don't know if this is a tactic where they
24 just don't do anything, they don't go to the property,
10:59:01 25 they pretend they don't know what the access is, they

10:59:04 1 pretend they don't know what the zoning is, they don't
2 depose the landowner, and then when we file a motion
3 for summary judgment, they say, Judge, we have to do
4 this now.

10:59:11 5 So your Honor, it would not affect or impact
6 the situation now that we have before you on the
7 summary judgment for liability. That's my answer to
8 number two, Judge.

9 THE COURT: All right.

10:59:21 10 MR. OGILVIE: Your Honor, if I could respond.

11 THE COURT: Absolutely.

12 MR. OGILVIE: Your Honor, I should have
13 addressed this earlier. With respect to the City's not
14 inspecting the property to date, the developer on the
10:59:39 15 one hand a year ago was taking advantage of the stay
16 that was imposed by Administrative Order 20 dash, I
17 think, 13, that stayed all discovery and -- and refused
18 to produce any discovery during that time, yet now is
19 using the amount of time that lapsed during that stay
11:00:00 20 as a sword against the -- the developer -- or against
21 the City's inspection.

22 The City had prearranged an inspection of the
23 property -- I believe it was on March 31st. We had
24 arranged it two weeks in advance. And then -- and
11:00:18 25 fully intended to inspect the property at that time.

11:00:21 1 And then the pandemic hit. And so everything
2 was thrown up. And the Court -- we've had this
3 discussion before at various status conferences, Judge,
4 about the effect of the -- of the pandemic on discovery
11:00:39 5 and moving cases forward. And the Court would be
6 understanding in the party's efforts and lack of
7 ability to conduct the discovery they think is
8 necessary.

9 Your Honor, we're at a point now that we see
11:00:58 10 some light at the end of the tunnel which --
11 (telephonic audio glitch) --reduced positivity rates.
12 And because of the -- the vaccinations that are
13 available and that -- that people that have taken
14 advantage of to conduct the discovery, the site
11:01:16 15 inspections.

16 So to hear the -- the developer's counsel say
17 that we -- we somehow have been sitting on our hands
18 with respect to the site inspection, ignores the fact
19 that the developer took advantage of the stay that was
11:01:34 20 imposed as a result of this pandemic and now is using
21 it as a sword against the City.

22 With respect to the -- the deposition of
23 Mr. Lowie, why haven't -- why hasn't the City noticed
24 the deposition after it received -- finally received
11:01:54 25 after, let's see, 2019 to February 2021, what's that?

11:02:02 1 19 months -- after 19 months of trying to get the
2 documents, why didn't we immediately notice up
3 Mr. Lowie's deposition?

4 I'll tell you, Judge. It's exactly for the
11:02:13 5 reason that we have previously argued today. We didn't
6 believe and -- and, frankly, I still don't believe that
7 all the documents that we received last month are --
8 are the 20 years of transactions that the developer's
9 counsel represented would be produced.

11:02:34 10 So as I said earlier, if that's all that's
11 going to be produced, then that's all that's going to
12 be produced, and we'll take Mr. Lowie's deposition.

13 But it has always been -- it has been our
14 position since we received the documents just last
11:02:54 15 month -- it's not like we received them a year ago,
16 Judge. We just received them last month. It's been
17 our position that we're not going to take his
18 deposition on a partial production of those 20 years of
19 transactions.

11:03:11 20 But again, if that's all that's going to be
21 produced, then that's all that's going to be produced,
22 and we'll take Mr. Lowie's deposition. But to hear
23 that we should have taken it up to this point
24 without -- without all of the documents just rings
11:03:26 25 hollow.

11:03:27 1 With respect to the -- that the -- the City --
2 that the only consideration is the government action
3 relative to these -- these three claims for taking, the
4 developer again and again references the Sisolak case,
11:03:51 5 which was a physical taking, your Honor. And that's
6 not what we're talking about in the -- in all of the
7 three causes of action for which the developer is now
8 seeking summary judgment.

9 Government action is one of the
11:04:10 10 considerations, and -- and Mr. Leavitt, when he cites
11 the cases that he says support his position, yes, those
12 cases talk about government action.

13 But that is not the sole consideration in
14 anything other than a physical taking.

11:04:30 15 So, again, and -- and there has to be a
16 consideration of whether -- whether or not there's been
17 a taking has to be determined whether or not --

18 THE COURT REPORTER: Mr. Ogilvie --
19 Mr. Ogilvie, I'm sorry. It cut out a little bit. I
11:04:42 20 didn't get the last sentence. "There has to be
21 consideration of whether" --

22 MR. OGILVIE: Whether there has been a
23 taking -- I'm sorry, Judge.

24 THE COURT: No, no, no. To me it's so clear
11:05:01 25 what I have to do as far as this matter is concerned,

11:05:03 1 because here's my thoughts. And I've been listening.
2 And, for example, we're arguing issues of law.
3 And normally when you get a 56(d) request, typically
4 it's at the end of the opposition to the motion for
11:05:19 5 summary judgment.
6 And as a trial judge, I've had an opportunity
7 to be vetted as far as what the law is as it pertains
8 to any specific issue.
9 Here, we have arguments regarding whether or
11:05:34 10 not, you know, what would be the standard I have to
11 apply as it pertains to a taking in this case under
12 three different theories of liability. And I'm
13 listening to argument.
14 And I think what I need to do is essentially
11:05:52 15 this: Make sure it's clear in my mind as to what the
16 specific components and/or elements would be before
17 issuing a decision by just going back and sitting back
18 and going through the cases again.
19 Because normally I would have that opportunity
11:06:11 20 to do so as it pertains to a motion for summary
21 judgment. Now I'm dealing with 56(d) relief.
22 But I understand specifically what the issues
23 are based upon our rigorous discussion because I've
24 been sitting back listening.
11:06:28 25 And so I don't tell any -- I don't mind

11:06:32 1 telling you this: Those are my thoughts.

2 Just as important, too, whatever decision I
3 make today, I would anticipate -- or very shortly,
4 because I realize time is of the essence insofar as
11:06:44 5 this specific case is concerned. But -- and just as
6 important, too, this is one of my thoughts insofar as
7 this matter is concerned, because I get what's going
8 on.

9 From a briefing perspective, Mr. Ogilvie,
11:07:01 10 where are you at as far as opposition would be
11 concerned? And whether you haven't started it or not
12 or whatever, I'm okay with that. I'm just trying to
13 figure it out and consider all factors.

14 Because at the -- one thing for sure, and I
11:07:16 15 think it's important, we're going to hold our trial
16 date. We are. This case is going to trial. And as
17 far as my calendar is concerned, we'll get it done in
18 October.

19 And just for the record, it's my understanding
11:07:29 20 that all of the business court judges are moving up to
21 the 16th floor of the RJC, which I think for me is a
22 godsend because I'll have a much bigger courtroom. And
23 so that won't be an issue either.

24 But where are you at, sir, as far as -- if you
11:07:47 25 don't want to tell me, that's okay, too. I'm just

11:07:50 1 trying to figure out where everything is when I make my
2 decision.

3 MR. OGILVIE: Your Honor, we have started our
4 opposition.

11:07:57 5 THE COURT: Okay.

6 MR. OGILVIE: Obviously, if the Court denied
7 the Rule 56 motion, we have to turn in an opposition
8 fairly quickly.

9 THE COURT: That's what I'm trying to
11:08:09 10 figure -- trying to figure out.

11 And, for example, I mean -- and I don't know
12 what I'm going to do, Mr. Ogilvie. My mind is really
13 completely wide open. I just want to get closer to the
14 case law. That's what I want to do.

11:08:21 15 But, for example, if I did deny it, it's not
16 saying it would be -- I mean, my -- it wouldn't be the
17 last word until I read all the points and authorities.

18 But I want to get closer to the specific case
19 law that I'm dealing with as it relates to the first,
11:08:39 20 third, and fourth claims for relief, because that will
21 determine essentially what my ultimate decision will
22 be.

23 Just as important, too -- and I understand
24 your position as far as the site inspection is
11:08:55 25 concerned. I mean, I get it. I know what's going on.

11:08:58 1 But I just want to -- I think in order for me
2 to make a decision that would withstand review -- and I
3 don't mind saying that. I want to make sure I'm close
4 to the law.

11:09:11 5 MR. OGILVIE: I appreciate that, your Honor.
6 And I -- I totally endorse the Court's desire to become
7 intimately familiar with the case law. So -- so I -- I
8 support that.

9 I would ask -- I guess I would ask this, your
11:09:29 10 Honor: That the -- in the event -- in the event that
11 the Court, after reviewing everything that's been
12 argued today, the factual basis and then reviewing the
13 case law, in the event that the Court grants the motion
14 for 56(d) relief and, therefore, denies the motion for
11:09:56 15 summary judgment without prejudice, that's fine.

16 Then -- then things can be taken care of in proper
17 order. That doesn't need to be determined now.

18 But in the event that the Court ultimately
19 denies the City's -- the relief the City is seeking in
11:10:18 20 its Rule 56(d) motion, that the City be given ten days
21 from the issuance of the Court's minute order to file
22 the opposition and then --

23 THE COURT: That's exactly what I wanted to
24 know. That's exactly what I wanted to know. I get it.

11:10:41 25 MR. OGILVIE: Okay.

11:10:42 1 THE COURT: I do. I do. I get it.

2 MR. LEAVITT: If I may respond to that also,
3 your Honor.

4 THE COURT: Yes, sir.

11:10:47 5 MR. LEAVITT: Just very briefly. So we
6 anticipated something like this occurring.

7 And on April 15th, the parties entered into a
8 stipulation and order. And the stipulation and order
9 recognizes that we have scheduled a special setting
11:10:59 10 with this Court on April 21st, 2001 -- I'm sorry -- May
11 21st, 2001, is the special setting. I'm sorry, your
12 Honor. It's May 19, 2001. So we have a special
13 setting on the summary judgment issue from May 19th,
14 2021, at 1:30 p.m. in the afternoon.

11:11:20 15 We anticipated that if this Court denies the
16 City's 56(d) motion to -- at this time the City's
17 opposition to the motion for summary judgment would be
18 due on April 30th and the reply brief would be due May
19 11th.

11:11:37 20 That would give all of the briefing to the
21 Court ten -- or at least eight days prior to the
22 special setting.

23 So here's what I would recommend, Judge, is
24 you're right. The 56(d) motion is typically filed as
11:11:49 25 an opposition to a motion for summary judgment. We

11:11:53 1 appear at the summary judgment hearing. The Court
2 hears all of the evidence that it's hearing today.

3 We're arguing the motion for summary judgment
4 before you today. We're arguing the standards. We're
11:12:04 5 arguing the facts.

6 What would be -- this is what I would
7 recommend: Let's continue the City's 56(d) motion to
8 that hearing on May 19th. Let's put all the issues
9 before the Court at that point in time. Let's let the
11:12:17 10 Court -- at least give the Court the opportunity to go
11 through that -- that special setting, to go through the
12 standards, go through the facts, and the Court can at
13 that point in time make a determination of whether the
14 City's actions amount to a taking.

11:12:31 15 And when we only focus on the City's actions,
16 if at that point in time the Court decides that, hey,
17 wait a minute, I think that the other actions are
18 necessary, we need to look at what Mr. Yohan Lowie
19 said -- which, by the way, your Honor, I want to
11:12:44 20 clarify.

21 He does say in his affidavit that he confirms
22 the City's actions. So to that extent, he confirms
23 what the City did to his property. So to that extent
24 he does support the liability in his affidavit. But
11:12:55 25 those are confirming actions that the City engaged in

11:12:58 1 that we have evidence of.

2 So my point, Judge, is that we have a
3 stipulation and order on a briefing schedule. We can
4 keep that -- that May 19th, 2021, special setting date,
11:13:12 5 which sometimes, I understand, is difficult to get. We
6 have the afternoon on May 19th from -- at 1:30 p.m.

7 We can -- we'll prepare the standards. We'll
8 go through the facts. And then -- and then you can
9 make a decision on whether these other factors are
11:13:26 10 relevant or not, whether these 56(d) issues are
11 relevant or not.

12 I think that's the appropriate action. We
13 anticipate it. We did a stipulation and order. I
14 understand it wasn't -- Mr. Ogilvie didn't stipulate he
11:13:37 15 was going to -- and I don't want to misrepresent
16 that -- he didn't stipulate that he was going to lose
17 and he wanted to brief it. But we stipulated that in
18 the event the Court did deny the 56(d), we would
19 provide the City plenty of time to do that.

11:13:49 20 So that would be my request, Judge, let's move
21 forward and consider the 56(d) at the appropriate time,
22 which is the hearing on the summary judgment issue.

23 THE COURT: Okay.

24 And for the record --

11:14:00 25 MR. OGILVIE: Your Honor --

11:14:01 1 THE COURT: -- Mr. Leavitt, I thought about
2 that, too. And I'm listening to everyone.

3 Anything else you wanted to add? I don't want
4 to overlook you, Mr. Ogilvie, or Ms. Ghanem Ham. I
11:14:10 5 don't want to overlook you. I don't.

6 MR. OGILVIE: Your Honor, I -- yes, we did
7 enter -- we did -- there needed to be some -- when I
8 say "order," some orderly resolution of briefing and
9 whatnot going into this hearing.

11:14:29 10 So, yes, we did enter into a stipulation that
11 was premised upon the Court ruling today, but also
12 anticipated that the Court may not rule today.

13 And -- and as I said, I encourage the Court to
14 delve into the case law on three -- these three causes
11:14:52 15 of action before it rules on the City's 56(d) motion.

16 And -- and simply asking that the Court --
17 that the City not be required to respond to the
18 developer's opposition -- or the developer's motion for
19 summary judgment, prior to having the opportunity to
11:15:15 20 conduct the discovery, is not an unreasonable request.

21 So I -- again, I would endorse the Court's
22 proposed course of action that the Court examine the
23 case law, issue a ruling on the 56(d) motion, and then
24 give the -- the City ten days to -- to file the
11:15:36 25 opposition. And we set a hearing at -- when -- when

11:15:40 1 available in the afternoon and -- and proceed further
2 if -- if, in fact, the Court denies the Rule 56(d)
3 motion, which, again, obviously the City submits
4 that -- that it should not be denied.

11:15:57 5 And one other thing, your Honor. Before we
6 got a little bit derailed, I was responding to
7 Mr. Leavitt's arguments. And -- and it -- just one
8 small point. Mr. Leavitt indicated what the Court's
9 rulings or what the Court's findings of facts and
11:16:18 10 conclusions of law from these developer's motion to
11 determine a property interest, Mr. Leavitt indicated in
12 his arguments that the Court found that residential use
13 of the 35-acre property was a property right.

14 What the Court found -- and the order speaks
11:16:43 15 for itself. I just want to be clear that what the
16 Court found was that a -- that the residential use is a
17 permitted use, not necessarily a property right. But
18 the order -- the order speaks for itself.

19 THE COURT: Okay. I understand, sir.

11:17:04 20 All right. And what I'd like to do at this
21 point -- and I'm going to go back and look at this. I
22 realize time is of the essence.

23 And I can't tell you why things are this way,
24 but from a historical perspective, typically, unless
11:17:20 25 I'm in a jury trial, I tend to have my law and motion

11:17:23 1 calendar -- I'm sorry -- my afternoons free for case
2 review, reviewing points and authorities, and those
3 types of things. But for the last 90 days, maybe 120
4 days or so, we have been booked almost every afternoon.

11:17:42 5 And -- and which, in fact, I don't mind
6 telling you this: That's one of the reasons why I came
7 back down to the courthouse, because I've had my
8 vaccinations now and, yes, we mitigate and do all the
9 appropriate things we have to do, but I'm just more
11:17:57 10 efficient, as you would anticipate, versus working at
11 home in a home office.

12 But it's been somewhat difficult in that
13 regard. And so -- but I do realize that time is of the
14 essence. I'm going to -- this is a priority item for
11:18:11 15 me to get a decision out very shortly as far as this is
16 concerned.

17 And I do understand the competing interests
18 and what the issues are.

19 At the end of the day, I can tell you this,
11:18:20 20 though: We're going to trial in October, regardless of
21 what decision I make.

22 Last, but not least -- and I don't know if we
23 need as much rigorous discussion on this issue. We do
24 have the City's motion for reconsideration. I do
11:18:33 25 understand what the issues are.

11:18:34 1 And this -- and clearly, this was part of the
2 discussion we've had. But when it comes to the
3 requested documentation, I was wondering, once the
4 documents were produced pursuant to the motion to
11:18:53 5 compel, were there any affirmations that, Look, this is
6 all we have on this specific issue; there's nothing
7 else?

8 I realize there was an email.

9 MS. HAM: Yes, your Honor. As it relates --
11:19:11 10 are you asking about as it relates to the transactions
11 that transpired 20 years ago?

12 THE COURT: Yes.

13 MS. HAM: It's a little different than how
14 it's framed by the City. But that transpired 20 --
11:19:25 15 about 20 years ago, as it relates to those documents,
16 there is nothing further. There is a lot of
17 construction documents, you know, with the various
18 contractors and subs.

19 It's actually, you know, build -- some of
11:19:40 20 those transactions that were referenced in the, you
21 know, membership interest exchange and so forth. But
22 beyond -- beyond my statement that transactions that
23 gave rise to the right to purchase the property and
24 how -- you know, what transpired then versus the later
11:19:59 25 purchase of the 250 acres, as it relates to that, there

11:20:03 1 is nothing further.

2 THE COURT: All right. Is --

3 MS. HAM: In other words, there's no other
4 documents in that regard.

11:20:16 5 THE COURT: Mr. Ogilvie, sir.

6 MR. OGILVIE: So if I heard Ms. Ghanem Ham
7 correctly, it was responding to the inquiry as to
8 whether or not there are any additional transactional
9 documents that support the developer's contention that
11:20:38 10 it -- that the consideration that it paid for the 250
11 acres was the \$45 million.

12 That -- that -- that representation has been
13 made several times today, and -- and I understand that
14 that's the developer's position.

11:20:59 15 But that's -- as the Court knows, that's not
16 the only inquiry that's being -- or request that's
17 being made by the City's motion for reconsideration.
18 There are three groups of documents, the first being
19 communications relevant to the developer's
11:21:22 20 investment-backed expectations.

21 And those are communications with the
22 developer's land use counsel, specifically Mr. Kaempfer
23 and his colleague; and then there is the communications
24 between the developer's principals. So what we
11:21:44 25 received, your Honor, is -- is 12 emails between Yohan

11:21:48 1 Lowie -- or from Yohan Lowie and five emails from
2 Vickie DeHart over the course of many or several years.

3 Your Honor, I have that many emails with my
4 partners on a daily basis about a particular issue.

11:22:06 5 So I cannot imagine that what -- the only --
6 the only emails between the developer's principals
7 about the purchase of this 250 acres was a total of 17
8 emails. So I -- I -- I can't say that I know for
9 certain that there are more emails, but I just can't
11:22:33 10 imagine that there are a total of 17 emails between the
11 principals about this 250-acre purchase.

12 Then there's the communications with the
13 developer's lenders. We received zero emails between
14 the developer and the developer's lenders which have to
11:22:58 15 contain information related to the developer's plans
16 for the property.

17 And then communications with the Peccole
18 family about this purchase. Notwithstanding the fact
19 that there's been a representation, and an ongoing
11:23:16 20 representation that there's 20 years of history between
21 the developer and the Peccoles, we didn't receive
22 the -- the emails that would be reflective of that.

23 Then finally, under the communications,
24 there's communications with Greg Borgel, who is the --
11:23:37 25 one of the developer's consultants. And we didn't

11:23:41 1 receive any email communications with Greg Borgel,
2 which would have been relevant evidence regarding the
3 development potential for the property. Mr. Borgel, as
4 the Court probably knows because he appears in many
11:23:57 5 court actions, because he is a land use expert,
6 probably one of the most widely used land use experts
7 in southern Nevada.

8 We received no communications between
9 Mr. Borgel and the developer.

11:24:15 10 And we submit that that evidence or the
11 communications between the developer and Mr. Borgel
12 would be highly relevant as to the development
13 potential for the property -- for the 250 acres.

14 That second category of documents that we
11:24:39 15 are -- that are submitted in the motion for
16 reconsideration is the City's request for cost
17 estimates. And we're not seeking expert materials,
18 which, you know, maybe -- maybe this will be rendered
19 moot by what we see in the expert disclosures.

11:25:00 20 I submit that I suspect that it won't be,
21 because the -- the documents that will be referenced in
22 the disclosures will be, for lack of a better word,
23 cherrypicked to suit the developer's position in this
24 litigation.

11:25:20 25 So we know that there are estimates --

11:25:25 1 additional estimates, cost estimates for grading and
2 drainage that were provided to the appraiser,
3 Mr. Dunaway.

4 But we don't have those. And then these are
11:25:42 5 not protected, and -- and they should be produced,
6 because they're relevant to the development, the -- the
7 developer's plans for development of the property,
8 which goes to, you know -- and we're offering the
9 liability.

11:26:01 10 Well, it's still a liability issue. But it's,
11 you know, really indisputably relevant as to the
12 damages that the -- that the developer will be seeking.
13 And we have -- we don't have a bifurcated discovery
14 process in this case.

11:26:20 15 It -- we're entitled to this -- this
16 documentation now.

17 And then the last -- I'm sorry. We've already
18 covered the transactions between the developer and the
19 Peccoles. So it's -- it's -- it's those three groups
11:26:44 20 of documents. We've already discussed the transaction
21 documents. The developer's counsel's representations
22 are what they are.

23 And I will submit it to the Court.

24 THE COURT: Okay. And Ms. Ghanem Ham,
11:26:59 25 anything else you want to add, ma'am? I just want to

11:27:02 1 make sure.

2 MS. HAM: Yes, your Honor. I didn't address
3 the other items. I wasn't sure that that's what you
4 were asking.

11:27:09 5 THE COURT: Yes.

6 MS. HAM: But what you -- and I think
7 Mr. Leavitt may want an opportunity to respond as well.

8 But what you are hearing is nothing new. They
9 haven't even met the standards for a motion to

11:27:19 10 reconsider. You've heard this entire argument that was
11 before you on a motion to compel, and you denied it.

12 You denied it because there simply are no -- I
13 appreciate Mr. Ogilvie telling us how many emails he
14 gets in a few minutes as an attorney. But to use that

11:27:38 15 as a basis that there must be more is, quite frankly,
16 absurd.

17 Our, you know, principals are located in the
18 same offices. So they could simply walk into an office
19 to have a conversation. So his disbelief that we're

11:27:57 20 hiding the ball or there must be more because he says
21 so or because it's based on his experience as a lawyer
22 and how many emails he gets is absurd. It's absolutely
23 absurd.

24 But I'm getting beyond just the basic standard
11:28:13 25 of a motion to consider there's nothing new here,

11:28:17 1 there's nothing more here. It's just a game that the
2 City continually plays. It refuses to accept your
3 orders. That's why it's filed four motions to dismiss
4 our case in different ways. It refuses to accept your
11:28:29 5 orders on discovery. That's why it continues to file
6 motions for reconsideration without ever even
7 addressing the standard for the motions to reconsider.

8 So my -- I can reargue what I argued to you
9 however many weeks ago it was when you first determined
11:28:45 10 that they weren't entitled to more. We have produced
11 to date over 38,000 pages of documents in response to
12 the City's requests.

13 We continue to provide them with documents,
14 even though we argue that they are not related to
11:29:05 15 either the claims or defenses. We give it to them
16 anyway, so long as we're protected, something they
17 completely likewise ignore. And I'll get to that
18 request for sanctions when we're there.

19 But there's nothing else to give them.

11:29:20 20 Our responses haven't changed. This is not a
21 new basis for which they seek. They've provided you
22 zero evidentiary basis for why they want more, are
23 entitled to more, think there are more.

24 And I submit to you that Mr. Ogilvie's
11:29:37 25 personal experience and emails he's received is not a

11:29:40 1 basis to claim that we must have more. As -- do you
2 want me to address each one specifically? Or I can
3 turn it over to Mr. Leavitt.

4 But I just want to address one more statement
11:29:49 5 that was made by the City earlier when they said that
6 we utilized COVID as a means -- as a shield not to
7 produce documents. During the heat of it last summer
8 is when we produced -- largely produced this
9 38,000-plus documents.

11:30:06 10 The only delay in production of any documents
11 has been caused by the City itself for refusing to
12 stipulate to a Court -- to a protective order. Later
13 moving the Court to compel us to sign a protective
14 order and requiring that those documents be utilized in
11:30:26 15 every single case. Finally being granted a protective
16 order and then immediately violating it.

17 So the -- this claim that we've delayed is
18 just -- couldn't be further from the truth. Largely
19 our production happened during that time. We continued
11:30:40 20 to produce everything that they've asked us to produce.
21 And if there's nothing more, there's simply no more.

22 But you've already ruled on all the other
23 topics and issues. And so I don't -- unless this Court
24 wants me to reargue what we argued weeks ago and when
11:30:56 25 you made that reasonable determination that they've

11:30:58 1 received the documents, that there is enough, that
2 there's nothing more that they're entitled to, I'm
3 happy to reargue that. But I think you've -- you've
4 heard it all before.

11:31:06 5 So I'll turn it over to Mr. Leavitt. I think
6 he has some items to add.

7 Thank you, your Honor.

8 THE COURT: And, ma'am, I can't say I have a
9 computer-like recollection on every issue.

11:31:18 10 For example, as it is relates to
11 communications with the land use consultant, Greg
12 Borgel, was that part of my prior ruling in this
13 matter?

14 MS. HAM: Yes, your Honor, it was.

11:31:30 15 THE COURT: Okay. All right. Thank you,
16 ma'am.

17 Mr. Leavitt.

18 MR. LEAVITT: Yes, your Honor. I'll just be
19 very brief. As stated, there is a process for
11:31:43 20 reconsidering a motion. That process has not been
21 followed at this point.

22 The one issue in regards to the cost
23 estimates, your Honor, we've reached out to our client.
24 We've obtained all of the documents as it pertains to
11:31:55 25 this 35-acre property.

11:31:58 1 We're here to adjudicate -- and you've
2 addressed this issue several times. We're here to
3 adjudicate the 35-acre property. We're not
4 adjudicating the 17-acre, 65-acre or 133-acre property.
11:32:09 5 Those are before different judges. They're before
6 Judge Trujillo; they're before Judge Sturman.

7 Other judges are deciding the issues in those
8 cases. In those cases, there may be cost estimates to
9 develop those portions of the property. But for this
11:32:22 10 35-acre property, Judge, there are no cost estimates.
11 We've explained that, that there are none. And -- and
12 we've produced every document that we could possibly
13 produce.

14 I can only go to our client and say, here's
11:32:35 15 the request. Please give us all the documents. They
16 can give us the documents they have. We can't produce
17 documents that we don't have.

18 Your Honor, we've met this request previously.
19 We've argued it to you previously. And there's no
11:32:44 20 reason to change that prior ruling because we've either
21 produced the documents or the other documents don't
22 exist, or the Court found that that was way outside the
23 bounds of discovery and the landowner should not be
24 required to -- to produce other documents.

11:32:59 25 But if you have any further questions, your

11:33:01 1 Honor, I can respond.

2 THE COURT: Not at this time, sir.

3 Mr. Ogilvie.

4 MR. OGILVIE: Yes. Thank you, your Honor.

11:33:09 5 What I didn't hear from the developer's
6 counsel is that there are no more emails between the
7 principals.

8 So what I heard was simply because I receive a
9 lot of emails doesn't mean that there are more than 17
11:33:24 10 emails between the principals on -- on -- relative to
11 this purchase of 250 acres.

12 First of all, let me be quite clear. What I
13 said wasn't that I receive a lot of emails. I said
14 that to -- between my partners, who are all in my
11:33:43 15 office here, I have -- I have more than 17 emails a day
16 on a particular issue. So I just want to make sure
17 that the record is clear on that I didn't say I receive
18 a lot of emails from various matters.

19 But, again, what I didn't hear relative to
11:34:04 20 emails between principal -- (telephonic audio
21 glitch) -- is that there are no more than 17 or that
22 they didn't send -- and this is -- this is really
23 salient because we don't know if they kept the emails,
24 that there were never more than 17 emails between
11:34:22 25 Mr. Lowie and Ms. DeHart relative to the purchase of

11:34:26 1 this property.

2 And if there -- and if -- if that's the
3 representation, I would like to hear it.

4 Then relative to the lenders, I didn't hear
11:34:37 5 any argument that there aren't any emails between the
6 developer and the lenders or not any communications
7 with the -- with the lenders.

8 So I submit to the Court that, again, it's
9 relevant to the developer's plans for the property
11:34:57 10 which is relevant to damages, at a minimum.

11 And, therefore, and -- and it's relevant to
12 the Penn Central takings test. The -- the
13 investment-backed expectations, reasonable
14 investment-backed expectations of the developer.

11:35:18 15 So we're entitled to those as well as the
16 communications between the developer and the Peccoles
17 relative to the purchase of the property as well as the
18 communications with Mr. Borgel about the property.

19 And finally, as addressing the issue that
11:35:39 20 Mr. Leavitt argued, the cost estimates, what I'm
21 hearing is a cute argument that there -- that there are
22 no more cost estimates relative to the 35-acre
23 property.

24 But if -- if there is cost estimates as to the
11:35:59 25 250 acres as a whole, those should be produced now

11:36:04 1 relative to this 35 acres, because the 35 acres is
2 included within the 250-acre parcel -- property that
3 they purchased. And, yes, they may not have cost
4 estimates that apply only to the 35 acres.

11:36:23 5 But, again, if there are cost estimates
6 relative to the 250 acres, we're entitled to those as
7 well.

8 THE COURT: And was that issue addressed at
9 the prior hearing? I don't remember that.

11:36:38 10 MR. OGILVIE: Well, your Honor, to go back, so
11 the motion for reconsideration or -- I'm sorry. The
12 motion to compel was originally heard on November 17th.
13 And -- and, you know, I know the Court has a lot of
14 matters that it hears, and it's heard a lot of matters
11:36:58 15 since November 17th --

16 THE COURT: Yeah.

17 MR. OGILVIE: -- of last year. So -- so I
18 just recount to the Court what transpired. I made my
19 argument on the motion to compel.

11:37:08 20 And -- and we were focused on -- on November
21 17th with the transaction documents. And Mr. Leavitt
22 responded with his proposal regarding the 20 years of
23 history of transaction documents and that we be allowed
24 to take Mr. Lowie's deposition. At that time, they
11:37:32 25 would produce the documents.

11:37:35 1 And then the argument directed towards, well,
2 your Honor, if we do that, then we're entitled to
3 receive those documents well in advance of the
4 deposition. And so we discussed that for a while. And
11:37:48 5 then, ultimately, that issue got -- didn't -- actually
6 that issue did not get resolved that day. It was
7 continued over to the next day. We had a status
8 conference, a regularly scheduled status conference on
9 November 18th.

11:38:06 10 So the developer asked the Court to -- to
11 consider the proposal and discuss it with the client,
12 the principals of the developer, whether or not they,
13 indeed, would be willing to produce these transactions
14 documents.

11:38:23 15 So the Court continued the hearing on the
16 motion to compel to November 18th.

17 And we -- we heard from the developer on the
18 morning of November 18th that, in fact, the developer
19 would be producing these documents. And we argued
11:38:41 20 about the protective order, whether one was necessary.

21 And as the Court will recall, the City's
22 position is these aren't proprietary. They're not
23 confidential. But we got beyond that, right? And
24 then -- and then there was a protective order and we
11:38:59 25 got through that.

11:39:00 1 And then at the end of the hearing relative to
2 the motion to compel, the Court indicated to me,
3 Mr. Ogilvie, you know, I have the -- I have the City's
4 motion relative to the rest of the requests. If the
11:39:15 5 City would like to argue it further, you can, but I
6 think I understand the City's position or the party's
7 position.

8 And I'm paraphrasing, your Honor. I -- but --
9 so -- so at that point there wasn't further argument on
11:39:33 10 these specific documents that we're seeking on
11 reconsideration today.

12 THE COURT: Okay. And so I just want to make
13 sure I'm clear. These specific documents weren't
14 identified with some form of particularity at the time
11:39:47 15 of the prior hearings in this matter?

16 MR. OGILVIE: Yes, your Honor. I think we're
17 all in agreement that that's correct.

18 THE COURT: Okay.

19 MR. LEAVITT: Your Honor, if I may. The
11:39:56 20 question is: Has this issue of the cost estimates been
21 addressed by the Court?

22 The short answer is yes. I mean, yes, they
23 have. That's why it's part of the motion to
24 reconsider.

11:40:11 25 I recall those hearings. I don't recall the

11:40:14 1 dates as well as Mr. Ogilvie does, but I recall having
2 on my desk each one of these issues, and we addressed
3 each one of these issues. So, yes, it has been fully
4 briefed. It has been fully argued. And, again, if it
11:40:24 5 hadn't been fully briefed and fully argued, the City
6 wouldn't be asking for a reconsideration of that issue.

7 So that issue regarding the cost estimates has
8 been addressed. There aren't any for this 35-acre
9 property. I can't go to our client and say invent
11:40:39 10 them. It doesn't exist, your Honor. So, yes, it has
11 been addressed. And it's been fully briefed and
12 argued. And the reconsideration at this time is
13 inappropriate, your Honor, in our opinion.

14 THE COURT: What about the land use consultant
11:40:49 15 issue?

16 MR. LEAVITT: I think Ms. Ghanem Ham is going
17 to address that.

18 THE COURT: Okay.

19 MS. HAM: Your Honor, and I just want to -- I
11:40:59 20 want to address, you know, Mr. Ogilvie's contention
21 that he hasn't heard me testify as to whether there are
22 more documents sent or not. And that -- that response
23 is absurd as well because we responded in the request
24 for production of documents saying "none."

11:41:16 25 We then held 2.34 conferences with the City

11:41:19 1 insisting there must be more where we said there is no
2 more.

3 We have stated to this Court at multiple
4 hearings there is nothing further.

11:41:30 5 So all of this is just a feigned response.
6 Gee, we're so confused. We don't know what -- you
7 haven't really told us whether there's more.

8 We have told them repeatedly in writing, in
9 response to the request for production of documents, in
11:41:45 10 2.34 conferences that have been held, and in court
11 hearings that followed thereafter.

12 So to pretend like none of these have been
13 vetted or none of these have been argued or none of
14 these have been truly decided by you is just to sort of
11:42:03 15 defend that they continue to file frivolous motions.

16 As it relates to Mr. Borgel, we list --
17 Mr. Borgel was utilized in a couple of manners, but he
18 was listed as a consultant. And I believe we did
19 address that in the original motion, what we had or
11:42:21 20 didn't have or why we didn't produce it. But
21 regardless, largely, attorney-client privilege as there
22 was ongoing litigation at the time that we were still
23 trying to develop. And the rest of it has either, you
24 know, been produced through -- as Mr. Borgel did appear
11:42:44 25 at some of our matters in front of city hall.

11:42:46 1 So it was addressed, responded to.

2 I would have to look back at our production to
3 see what exact answer we gave or what was produced in
4 that regard or what we have in that regard. As I sit
11:43:01 5 here at this moment, not expecting to address each
6 issue all over again, I don't know exactly how we
7 responded or what was produced or if it was a privilege
8 log or beyond that. So I'd have to look that up, which
9 I'm trying to do as I sit here at my computer.

11:43:18 10 But I know that you ruled on it. And I know
11 that they brought nothing new to you. And -- and I
12 don't know what it is they're seeking from Mr. Borgel,
13 because I don't recall how the question was beyond just
14 give us everything you have with Mr. Borgel.

11:43:36 15 And I can't let you know at this moment
16 whether I have anything or not, whether there are
17 documents, what my answer was as it relates to that
18 particular one. But if you give me a moment, I can
19 continue to search for it to provide that answer.

11:43:47 20 But I would submit to you that whatever has
21 been produced is all that we have, or it's been
22 attorney-client privilege and you've already ruled in
23 those regards to all of those items. Both the lender,
24 the emails, and as it relates to Mr. Borgel. And I
11:44:08 25 believe it was in your minutes.

11:44:10 1 But I would need an opportunity to pull that
2 up specifically because, again, the City has produced
3 nothing new, has not met the standards for a motion to
4 reconsider, and it's already been hashed out and
11:44:21 5 rehashed. And so I can address that particular issue
6 if you want to give me time to find our response to it.

7 THE COURT: And that's fine, ma'am. While
8 you're looking, if there is other issues you want to
9 address, that would be fine, too.

11:45:11 10 MS. HAM: And, your Honor, I don't know if I'm
11 going to be able to find it very quickly because there
12 have been multiple requests for production both to 180
13 Land for (indiscernible). If the City can identify
14 which specific request it was, that would be helpful.

11:45:27 15 MR. OGILVIE: I couldn't tell you off the top
16 of my head.

17 MR. LEAVITT: Mr. Ogilvie, do you have -- I'm
18 looking through our discovery. I don't -- I'm not --
19 I'm searching for "Borgel," and I'm not even seeing
11:46:39 20 even the word "Borgel" appearing in any, which doesn't
21 mean it doesn't exist. I'm just telling you I don't
22 see it.

23 MS. HAM: I'm doing the same search so -- I
24 likewise don't find it.

11:48:37 25 THE COURT: I just have one final question for

11:48:39 1 everyone. I just want to make sure I get the dates.
2 What I want to do is this: I want to -- what was the
3 date that motion to compel was heard? Do we know?

4 MR. OGILVIE: November 17th and 18th, 2020,
11:48:54 5 your Honor.

6 THE COURT: Because I don't have the exact
7 recollection like everyone else. This is your case;
8 it's not my case.

9 But I do remember some discussion as it
11:49:18 10 pertains to the burden pertaining to damage claim in
11 this case.

12 And what I meant by that was this: I think I
13 pointed out that if you're going to make a claim for
14 damages, of course you are, that you've got to produce
11:49:36 15 all documents that support that damage claim.

16 And just as important, too, the adverse party,
17 i.e., the City, under the facts of this case has a
18 right to test it based upon the production.

19 And I'm just trying to figure out in looking
11:49:55 20 at it, because I'm going to go back and take a look at
21 my order. And I do realize I've made certain
22 decisions, and I'll probably stick with that.

23 But looking at, for example, Mr. Borgel, would
24 that have come under some sort of generic request for
11:50:16 25 production of documents, or was there anything

11:50:22 1 requested as it pertains to some specificity as it
2 pertains to him? I don't know.

3 MR. LEAVITT: During our research, your Honor,
4 I'm not finding anything which specifically requests
11:50:32 5 information from Mr. Borgel. Perhaps Mr. Ogilvie could
6 direct us to either a specific request for Mr. Borgel
7 or a general request under which Mr. Borgel would fall.

8 MR. OGILVIE: So, your Honor, the City -- the
9 developer in his third supplement to interrogatory
11:50:50 10 responses, which was attached as Exhibit X to the
11 City's motion to compel, requested the -- the developer
12 to produce communications with the three local land use
13 experts that the developer identified as consultants in
14 its interrogatories.

11:51:14 15 And again, the developer identified
16 Mr. Borgel, Mr. Chris Kaempfer, and Stephanie Allen in
17 its third supplement to the interrogatory responses.

18 We didn't receive the communications.

19 So it -- on page 25 of our motion to compel,
11:51:35 20 we stated -- we requested specifically, accordingly,
21 the developer must be compelled to comply with Request
22 No. 5 by producing all communications with Mr. Borgel,
23 who is not an attorney.

24 And -- and going to the point that he is not
11:51:54 25 an attorney, I want to address the developer's

11:51:59 1 counsel's representation today that those
2 communications are somehow attorney-client privilege.

3 There is no attorney-client privilege.

4 Mr. Borgel is not an attorney. There is no basis for
11:52:13 5 withholding Mr. Borgel -- the communications with
6 Mr. Borgel on attorney-client privilege.

7 MS. HAM: Again, your Honor, I need to locate
8 the exact request and how it was responded to. But in
9 our opposition, written opposition that was provided to
11:52:37 10 you over 17 -- and I think it was a general question as
11 it related to consultants. Maybe it didn't specify
12 Mr. Borgel, which is why in that search I can't find
13 it.

14 Regardless, there were over 1,700 pages of
11:52:50 15 documents provided to the City as it relates to their
16 request for communications with consultants.

17 As far as -- and it -- I don't know that it
18 would be a first time, because claiming that it would
19 be either attorney-client privilege or attorney work
11:53:11 20 product or something under one of the privilege
21 designations, that was certainly responded to in our
22 answer to the City for the requests for production.

23 So this continued, this is the first time
24 we're hearing this and the first time we're hearing
11:53:26 25 that, it just couldn't be further from the truth,

11:53:28 1 because we did answer all the requests for productions
2 and we did produce documents related thereto, and we
3 did produce privilege logs related thereto. So, you
4 know, what was before you the last time as -- in
11:53:42 5 relation to consultants was that we provided 1,700
6 pages worth of documents.

7 And I believe, your Honor, I'm trying to pull
8 up your minute order. The minute order that was issued
9 as a result of our hearings which addressed these
11:53:55 10 items, and you recognized that we had produced what we
11 had, you know, what was either in our possession or
12 fell under the attorney-client privilege.

13 But you specifically ruled in relation to each
14 of those items. And they're asking you to change that
11:54:14 15 ruling based on nothing new before them. And so here
16 we are all trying to recall exactly what took place in
17 November and what was argued and what was said.

18 And this is why there's a standard for motion
19 to reconsider, why you have to have something new to
11:54:26 20 present to the Court, not just rearguing the same
21 positions. Because here we are, you know, with so many
22 issues before you and going back and trying to remember
23 exactly what happened and pulling documents and wasting
24 the Court's time and everyone else's in the meantime.

11:54:40 25 So I would just submit to you that in that

11:54:43 1 opposition and in your minute order, you did address
2 each of those items that either we already produced a
3 substantial amount of documents responsive thereto with
4 objections, with proper objections, both claiming that
11:54:57 5 either there were none, there's nothing further, you
6 received everything, or it falls under a privilege.

7 So all of that has been presented and --
8 and -- to this Court previously and again today. And
9 so, you know, that -- that's what I have for you at
11:55:14 10 this moment, again, still trying to locate exactly how
11 we responded in the request for production.

12 But in reviewing our opposition, you know, we
13 listed out under each item what was provided.
14 Consultant, 1,707 documents produced. And then we
11:55:31 15 listed the numbers, the Bates numbers for them, and
16 then which items were held for privilege.
17 Communications with the previous owners, 413 documents
18 produced. Which ones were withheld by Bates number.

19 So they have them all in their -- in their
11:55:48 20 possession. And you ruled specifically on each one of
21 those items.

22 And so I would -- I would refer you back to
23 our opposition page for specifically listing out each
24 and every document that they received and/or whether we
11:56:02 25 produced them under a privilege log. That opposition

11:56:04 1 was filed with this Court 11/6 of 2020, if you want to
2 refer back to it specifically.

3 And then your minute, which I'm searching for
4 that was the basis of the eventual order, but you had a
11:56:17 5 minute order relation to that also, sort of detailing
6 what was produced and your ruling in regard to each of
7 those items.

8 THE COURT: Is this the minute order dated
9 January 29th, 2021? Is that it?

11:56:34 10 MS. HAM: I'm looking for that as well.
11 January 29th.

12 THE COURT: I'm sorry. January 19th. Did I
13 say 29th? It's the 19th; right?

14 THE COURT CLERK: Yes. January 19th.

11:56:51 15 MR. OGILVIE: Yes, your Honor. That --
16 that -- that is the minute order.

17 THE COURT: Okay. I think there was one other
18 issue regarding sanctions; is that correct?

19 MS. HAM: Yes, your Honor. It's in relation
11:57:17 20 to the City's violation of the protective order. So
21 I'll begin, if you'd like me to.

22 THE COURT: Yes, you may, ma'am.

23 MS. HAM: Okay. As you may recall, your
24 Honor, I had been begging for a protective order for
11:57:35 25 over a year now. Since February of 2020 when the City

11:57:39 1 filed the motion to compel us to sign a protective
2 order and that they be allowed to utilize all of these
3 documents in every case, we had said to the Court then,
4 we've said to you repeatedly, all we want is a
11:57:51 5 protective order.

6 We begged you for a protective order because
7 of the City's, quite frankly, outrageous actions during
8 our attempts to develop, the way in which they sought
9 intel on the principals of the landowners so that they
11:58:06 10 could use it because, and I quote from one of our
11 then-sitting council members, "Dirt may be handy if I
12 need to get rough."

13 All of the ways that the City and the council
14 members and the --

11:58:19 15 THE COURT REPORTER: I'm sorry, Counsel. You
16 cut out. Counsel. Counsel. Counsel, you cut out.

17 THE COURT: Ma'am, you talked about the --

18 MS. HAM: Sorry. I don't know why it's being
19 cut off.

11:58:37 20 Am I too far away or is it just cutting out
21 completely?

22 THE COURT: I think for whatever reason it was
23 an anomaly, because we've been hearing you fairly well.

24 MS. HAM: Okay. I apologize. So let me --
11:58:47 25 let me back up just a bit.

11:58:51 1 I was kind of reminding the Court why we
2 wanted a protective order. All of the City's actions
3 and what they have done throughout the attempt to
4 develop and throughout this lawsuit, we begged for
11:59:05 5 protective orders. We asked and -- and that was the
6 basis of delay, not -- not an unwillingness to provide
7 documents, but our fear that the City would use -- do
8 exactly what they did.

9 I told this Court that the City wouldn't
11:59:22 10 adhere to -- that we were concerned how the Court --
11 the City would utilize these documents.

12 We then -- you then granted us a protective
13 order. Two weeks after your signing a protective order
14 that we stipulated to and nine days after having
11:59:37 15 received the documents, the City filed this motion to
16 reconsider and attached those very documents they were
17 not allowed to attach.

18 That by way of this court order, they were to
19 notify us that they intended on filing it. We were
11:59:53 20 then to bring the matter before you, your Honor, so
21 that you could decide whether they could be publicly
22 disseminated or not.

23 They completely thumbed their nose at the
24 protective order as they've done every order by this
12:00:05 25 Court. They thumb their nose at the law. They thumb

12:00:08 1 their nose at what -- at anything that they -- they
2 want to ignore in order to support their defense.

3 What they -- what the City is -- is doing is
4 using the discovery and using documents as a tactical
12:00:24 5 weapon. It is their intent to harm us, which they have
6 done. We have undergone substantial fees and costs in
7 both maintaining this land and attorney's fees and
8 taxes and all of the things that you have heard. And,
9 frankly, your Honor, we have had enough.

12:00:41 10 Since the inception of this case -- rather
11 since the inception of the attempt to develop, the City
12 has played games, run us through hoops, if you'd only
13 do this, if you'd only do that, delayed development of
14 our land for years, for years and years, in opposition
12:01:00 15 of their own code and the own law only for their own
16 nefarious reasons is all I can say to this Court.

17 And you've heard some of them, and you're
18 going to hear all of it when we get to the evidentiary
19 hearing. But we are outraged at the City's immediate
12:01:19 20 violation of the court ordered protective order.

21 And we would ask this Court to stop the City's
22 gamesmanship and to provide us with sanctions. Not
23 only monetary sanctions, but sanctions in other ways.

24 So I would ask this Court for my year-long
12:01:41 25 fight of a protective order and many motions before

12:01:43 1 this Court to -- to allow me -- I am certain that we
2 have spent over -- well over \$25,000 attempting to get
3 a protective order that was completely ignored by the
4 City. Completely ignored by the City. So I would
12:01:57 5 request a minimum sanction of \$25,000 for violation of
6 that order.

7 I would also ask this Court to consider some
8 of the sanctions that, at your discretion, can be
9 provided when court orders, especially as it relates
12:02:16 10 for not being a discovery order, as it related to
11 discovery orders, and that would be items found under
12 our Nevada Rules of Civil Procedure -- I believe it's
13 37(b) -- prohibiting the disobedient party from
14 supporting or opposing designated claims or defenses or
12:02:38 15 introducing those designated materials into evidence.

16 And you heard a lot about how and why they
17 need all of these transactional documents to support
18 their position. I would ask this Court that -- to --
19 to order that they cannot use what they claim is the
12:02:55 20 purchase price as a basis or as a defense to their
21 actions and to the liability of this case.

22 And I would also ask this Court that it not
23 order us to produce further confidential documents,
24 which we assuredly know now because the City has done
12:03:12 25 it, they will immediately disseminate to the public by

12:03:15 1 way of filing or otherwise.

2 And so I would ask this Court to grant us
3 sanctions to prevent the City from their continued
4 abusive discovery tactics to harass, delay, and
12:03:27 5 increase costs, and to -- and the games that they've
6 played since our ownership of the land and attempt to
7 develop.

8 And without Court -- the Court sanctioning the
9 City, then they will continue to violate orders, ignore
12:03:42 10 the law, ignore your orders. I -- I -- I've begged for
11 a protective order which was ignored by the City, and I
12 am now begging for sanctions to prevent the repeated
13 discovery abuses.

14 I have nothing further to add on that.

12:03:57 15 Mr. Leavitt, I don't know if you have
16 something you'd like to add.

17 MR. LEAVITT: No. I think Ms. Ghanem Ham
18 handled that.

19 THE COURT: Okay.

12:04:15 20 Mr. Ogilvie, sir.

21 MR. OGILVIE: Thank you, your Honor.

22 I want to take a step back and address what I
23 hear again and again and again without any -- any
24 support whatsoever that the City, from the outset of
12:04:34 25 the developer's ownership of this land, has taken

12:04:40 1 actions to deprive the owner of the entire value of
2 this 250 acres.

3 It's clearly not true, your Honor.

4 The very -- the very fact that this -- the
12:04:55 5 City approved the -- the developer's applications
6 relative to the 17-acre property to develop 435 luxury
7 units on that 17 acres, which would have eclipsed the
8 purchase price that the -- that the developer paid for
9 the entire 250 acres by a factor of over ten, the City
12:05:30 10 allowed the developer --

11 THE COURT: And, Mr. Ogilvie --

12 MR. OGILVIE: -- to develop --

13 THE COURT: Mr. Ogilvie, I don't want to cut
14 you off, sir. I really don't. And, of course, if you
12:05:36 15 want to make a record. But understand this: I
16 understand what my charge would be as it pertains to
17 Rule 37 sanctions, right?

18 And the way I look at this -- this -- this
19 issue, I'm not going beyond what's contained in the
12:05:50 20 points and authorities. And I don't mind saying this.
21 In 15 years as a trial judge, I've always been very
22 reluctant to assess sanctions or Rule 37 violations
23 unless it was clear. What happened pre-litigation
24 happened pre-litigation, right? That is another issue.

12:06:12 25 And I'm looking at it from this perspective.

12:06:14 1 It was my recollection the primary issue dealt with
2 potential breach of a confidentiality order issued by
3 the Court.

4 Anything beyond that, I would -- I'd have to
12:06:26 5 have thoroughly briefed and vetted. In fact, I have a
6 hearing this afternoon starting at 1:30, I have to deal
7 with that type of problem.

8 And I understand spoliation issues and all
9 those wonderful things.

12:06:41 10 And so I think the thrust would be very
11 limited, at least based upon what I have in front of me
12 to whether these documents were confidential and they
13 were produced in violation of a court order. That
14 would be it.

12:06:56 15 MR. OGILVIE: I understand, your Honor.

16 I just -- I apologize. I just feel compelled
17 at times to address what I hear in these -- in these
18 hearings.

19 So let me -- let me address the documents.

12:07:11 20 THE COURT: Yeah.

21 MR. OGILVIE: The documents were produced
22 before the protective order even existed.

23 So to claim that -- that they -- a protective
24 order was imposed and then documents were -- were
12:07:28 25 produced and then those -- those documents that were

12:07:30 1 produced after the protective order was imposed were --
2 were improperly utilized is a fiction.

3 And then, secondly, none of these transaction
4 documents contained any confidentiality provisions and
12:07:50 5 then what could even be deemed confidential as they
6 involve public -- the transactions involving public
7 companies involved or listed on the Tel Aviv stock
8 exchange.

9 So -- so it's -- to -- to claim that there are
12:08:10 10 sanctionable disclosure of purportedly confidential
11 documents just isn't accurate. And I -- I don't see
12 any basis for being in a position of sanctions.

13 THE COURT: All right. Thank you, sir.

14 And, ma'am, you get the last word.

12:08:31 15 MR. OGILVIE: Or for that matter -- I'm sorry,
16 your Honor.

17 THE COURT: Go ahead, sir.

18 MR. OGILVIE: For that matter, even a finding
19 of a violation of a protective order.

12:08:44 20 MS. HAM: Your Honor, may I respond?

21 THE COURT: Yes.

22 MS. HAM: I don't know -- it's very difficult
23 for me to, first of all, quell my emotions about what
24 the City has done in this case and especially as it
12:09:01 25 relates to violation of court orders.

12:09:04 1 But to hear Mr. Ogilvie state that there was
2 no protective order in place is just outrageous to me.

3 They filed a motion to reconsider using the
4 very documents that you ordered be produced under this
12:09:19 5 protective order and attached them to that motion and
6 publicly filed them. And now they're saying, gee, we
7 didn't have -- we didn't have a protective order in
8 place.

9 That is -- couldn't be further from the truth.
12:09:33 10 It was in place. Those were the documents -- the
11 documents they received within the -- from these
12 transactions that they then created an error from, were
13 the very documents that were the subject of a
14 protective order.

12:09:46 15 There were two orders that you granted. One
16 for documents that had been previously produced and one
17 for documents that they were requesting as it relates
18 to the transactions.

19 They then filed a motion to reconsider,
12:09:58 20 utilized those very documents that they had received
21 from the transaction that -- from which was born the
22 right to purchase this land, and saying we need more.

23 You have heard nothing from the City as to why
24 they did that.

12:10:13 25 What they were supposed to do was put us on

12:10:16 1 notice that they were intending on filing it so that we
2 could bring the issue before you so that you could make
3 some determination. They didn't do that. They ignored
4 it completely and decided themselves, well, gee, we
12:10:28 5 found out that one of the parties is a -- is a publicly
6 traded party on the Tel Aviv exchange and, therefore,
7 nothing is confidential.

8 That -- that is inaccurate, your Honor.

9 That is -- and then they cite the documents
12:10:44 10 from 2013, not even as some kind of proof that these
11 certain information in those documents is public,
12 documents that we had to produce, documents that they
13 had in their possession from before.

14 So they switched documents when they attempted
12:11:02 15 in a paragraph to defend their position never having
16 addressed their breach of the order. They have
17 breached it. You can look at the documents yourself.
18 They are stamped -- those documents are stamped
19 confidential. They are stamped pursuant to the order
12:11:17 20 that this Court granted us.

21 So I am -- and the City simply doesn't care.
22 They ignore the orders that they don't care for.

23 So I am asking -- they have 100 percent
24 breached your order. They will continue to breach the
12:11:34 25 order, as we know, based on their actions. And the

12:11:37 1 only reason I brought up all their actions
2 pre-litigation was, that was the basis that I begged
3 for the protective order because we knew what the City
4 is up to because they've been doing this to us for
12:11:47 5 years.

6 So, again, I ask you to give some teeth to the
7 protective order, to give some meaning to your orders
8 and sanction the City for their continued violation and
9 abuses.

12:12:01 10 And I ask for a minimum of a \$25,000 sanction.
11 We have been before this Court so many times begging
12 for a protective order that they never intended on
13 abiding by. And they didn't. And I've spent -- we
14 have spent -- this company has spent, the landowners
12:12:18 15 have spent thousands of dollars in an attempt to get a
16 protective order that was completely ignored by the
17 City. So we ask for that.

18 We ask for an order that stops them from
19 claiming that we paid nothing for the land or that it's
12:12:35 20 valueless.

21 THE COURT: Ma'am, we're going well beyond --

22 MS. HAM: And we ask --

23 THE COURT: I mean, that would have to be
24 thoroughly briefed and vetted. If I'm going to deal
12:12:43 25 with Rule 37 sanctions like that, that's akin to some

12:12:46 1 sort of case-terminating sanction for filing documents
2 that potentially were in violation of a protective
3 order.

4 I don't think that will -- would withstand
12:12:58 5 scrutiny by our Nevada Supreme Court.

6 I'm looking at it from a real simple
7 perspective. This is what I'm going to do. I'm going
8 to take a look at the protective order. It's my
9 understanding that was signed on or entered on February
12:13:09 10 24th, 2021.

11 And the alleged exhibits that would be in
12 violation of the protective order would be Exhibits A
13 through Q that are attached to the motion for
14 reconsideration, right?

12:13:23 15 MS. HAM: Yes.

16 THE COURT: Am I missing something?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Okay. All right. That's what I
19 am going to do. But I want to just keep it realistic
12:13:32 20 for anything like that. Number one, there would have
21 to be evidentiary hearings. There would have to be
22 significant behavior from either party as it pertains
23 to litigation or maybe some spoliation issues
24 pre-litigation. And -- and just because lawyers are
12:13:53 25 aggressive in their prosecution and/or defense of their

12:13:55 1 case doesn't necessarily rise to the level of
2 sanctionable conduct. So I'm going to take a look at
3 that.

4 And, Mr. Ogilvie, any reason -- are you saying
12:14:08 5 that you feel that it's not in violation of the order?
6 I just want to understand what your position is.

7 MR. OGILVIE: Correct, your Honor. The
8 documents were produced before any protective order
9 was -- was put in place.

12:14:21 10 THE COURT: So you're saying they wouldn't be
11 covered by the protective order? Is that it?

12 MR. OGILVIE: Correct.

13 THE COURT: Okay. I understand.

14 All right. Okay.

12:14:31 15 MS. HAM: He didn't provide that in the brief.
16 And I'm just -- that's not even accurate. But you can
17 see for yourself when looking at the exhibits they
18 attached and the date of the protective order and when
19 they were provided.

12:14:41 20 THE COURT: I understand. Okay.

21 Everyone, enjoy your day.

22 MR. OGILVIE: Thank you, your Honor.

23 MR. LEAVITT: Thank you very much for the
24 time.

12:14:48 25 THE COURT: Okay.

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(Proceedings were concluded.)

* * * * *

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE
6 TELEPHONIC PROCEEDINGS HAD IN THE BEFORE-ENTITLED
7 MATTER AT THE TIME AND PLACE INDICATED, AND THAT
8 THEREAFTER SAID STENOTYPE NOTES WERE TRANSCRIBED INTO
9 TYPEWRITING AT AND UNDER MY DIRECTION AND SUPERVISION
10 AND THE FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE
11 AND ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17 _____
18 PEGGY ISOM, RMR, CCR 541
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[1] 86/6</p> <p>uses [3] 29/21</p> <p>29/23 67/17</p> <p>using [8] 26/14</p> <p>33/20 55/7 69/19</p> <p>70/20 110/4 110/4</p> <p>116/3</p> <p>utilize [2] 108/2</p> <p>109/11</p> <p>utilized [6] 56/12</p> <p>90/6 90/14 99/17</p> <p>115/2 116/20</p>	<p>V</p> <p>vacant [1] 27/2</p> <p>vaccinations [2]</p> <p>70/12 82/8</p> <p>valuation [12]</p> <p>11/9 15/4 15/6</p> <p>47/12 47/20 48/16</p> <p>58/23 62/13 64/12</p> <p>64/22 64/23 68/13</p> <p>value [20] 10/3</p> <p>11/2 47/14 48/3</p> <p>51/3 51/4 51/6 51/6</p> <p>51/7 51/23 51/24</p> <p>57/4 63/14 63/16</p> <p>64/4 64/16 66/16</p> <p>67/8 67/10 113/1</p> <p>valueless [1]</p> <p>118/20</p> <p>valuing [1] 15/2</p> <p>various [3] 70/3</p> <p>83/17 93/18</p> <p>VEGAS [11] 1/12</p> <p>2/11 2/22 3/8 4/1</p> <p>4/18 34/14 34/15</p> <p>49/8 65/7 65/19</p> <p>Vegas's [1] 5/8</p> <p>versus [5] 51/23</p> <p>66/8 66/20 82/10</p> <p>83/24</p> <p>very [22] 5/21</p> <p>21/23 31/3 33/25</p> <p>37/11 44/4 64/15</p> <p>74/3 77/5 82/15</p> <p>91/19 101/11</p> <p>109/16 113/4 113/4</p> <p>113/21 114/10</p> <p>115/22 116/4</p> <p>116/13 116/20</p> <p>120/23</p> <p>vetted [4] 73/7</p> <p>99/13 114/5 118/24</p> <p>VIA [1] 2/2</p> <p>viable [2] 23/19</p> <p>52/4</p>	<p>Vickie [1] 85/2</p> <p>view [1] 17/12</p> <p>Village [3] 48/21</p> <p>49/6 49/12</p> <p>violate [2] 65/13</p> <p>112/9</p> <p>violated [2] 55/21</p> <p>57/14</p> <p>violating [1] 90/16</p> <p>violation [10]</p> <p>107/20 110/20</p> <p>111/5 114/13</p> <p>115/19 115/25</p> <p>118/8 119/2 119/12</p> <p>120/5</p> <p>violations [1]</p> <p>113/22</p> <p>vis [4] 5/11 5/11</p> <p>44/17 44/17</p> <p>vis-à-vis [2] 5/11</p> <p>44/17</p> <p>visit [6] 19/13 30/6</p> <p>31/11 31/22 31/25</p> <p>45/24</p> <p>visiting [1] 19/21</p>	<p>W</p> <p>wage [1] 45/14</p> <p>wait [4] 15/16</p> <p>33/10 38/6 78/17</p> <p>waited [1] 37/11</p> <p>walk [1] 88/18</p> <p>want [60] 4/6 4/23</p> <p>6/11 6/11 6/16 10/6</p> <p>16/17 21/16 32/9</p> <p>37/23 37/23 39/1</p> <p>42/7 42/16 42/23</p> <p>43/24 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<p>94/15 94/17 95/7</p> <p>95/10 96/1 96/3</p> <p>98/1 98/23 107/10</p> <p>108/23 111/2 117/4</p> <p>118/21</p> <p>went [3] 45/23</p> <p>52/10 68/20</p> <p>were [57] 6/19</p> <p>6/19 9/3 9/14 9/17</p> <p>10/16 11/6 16/11</p> <p>16/13 16/21 17/5</p> <p>27/11 32/23 48/7</p> <p>50/12 56/17 57/16</p> <p>60/20 62/5 62/6</p> <p>68/18 83/4 83/5</p> <p>83/20 87/2 88/4</p> <p>93/24 95/20 99/22</p> <p>104/14 106/5</p> <p>106/16 106/18</p> <p>109/10 109/16</p> <p>109/18 109/19</p> <p>114/12 114/13</p> <p>114/21 114/24</p> <p>114/24 114/25</p> <p>115/1 115/2 116/10</p> <p>116/12 116/13</p> <p>116/15 116/17</p> <p>116/25 117/1 119/2</p> <p>120/8 120/19 121/1</p> <p>122/8</p> <p>weren't [2] 89/10</p> <p>97/13</p> <p>WEST [1] 3/6</p> <p>what [175]</p> <p>what's [6] 35/20</p> <p>50/7 70/25 74/7</p> <p>75/25 113/19</p> <p>whatever [4] 74/2</p> <p>74/12 100/20</p> <p>108/22</p> <p>whatnot [1] 80/9</p> <p>whatsoever [1]</p> <p>112/24</p> <p>when [28] 16/16</p> <p>19/2 19/24 20/11</p> <p>25/20 54/7 55/19</p> <p>66/21 69/2 72/10</p> <p>73/3 75/1 78/15</p> <p>80/7 80/25 80/25</p>	<p>83/2 89/9 89/18</p> <p>90/5 90/8 90/24</p> <p>107/25 110/18</p> <p>111/9 117/14</p> <p>120/17 120/18</p> <p>where [18] 5/13</p> <p>15/7 27/2 29/9 32/7</p> <p>34/15 39/9 48/25</p> <p>50/8 56/5 60/21</p> <p>62/11 62/11 68/23</p> <p>74/10 74/24 75/1</p> <p>99/1</p> <p>WHEREOF [1]</p> <p>122/13</p> <p>whether [41] 13/3</p> <p>21/12 37/7 47/18</p> <p>48/1 48/8 49/19</p> <p>50/14 51/15 51/17</p> <p>51/21 52/8 54/25</p> <p>59/14 59/23 63/17</p> <p>64/7 64/15 64/17</p> <p>67/11 68/10 72/16</p> <p>72/16 72/17 72/21</p> <p>72/22 73/9 74/11</p> <p>78/13 79/9 79/10</p> <p>84/8 96/12 96/20</p> <p>98/21 99/7 100/16</p> <p>100/16 106/24</p> <p>109/21 114/12</p> <p>which [66] 7/23</p> <p>13/1 17/19 18/3</p> <p>18/6 21/11 26/11</p> <p>26/23 31/8 32/11</p> <p>38/20 38/21 38/21</p> <p>42/3 42/3 42/9</p> <p>42/23 43/11 48/19</p> <p>49/6 49/6 49/7</p> <p>55/22 56/4 57/11</p> <p>58/3 59/16 62/1</p> <p>63/21 64/1 64/11</p> 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1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 180 LAND CO LLC, A Nevada)
limited liability company,)
5 FORE STARS, LTD., a Nevada)
limited liability company and)
6 SEVENTY ACRES, LLC, a Nevada)
limited liability company, DOE)
7 INDIVIDUALS I-X, DOE)
CORPORATIONS I-X, and DOE)
8 LIMITED LIABILITY COMPANIES)
I-X,)
9)
10 Plaintiffs,)
11 vs.) CASE NO.: A-17-758528-J
DEPT. NO.: XVI
12 CITY OF LAS VEGAS, a)
political subdivision of the)
13 State of Nevada; ROE)
GOVERNMENT ENTITIES I-X; ROE)
14 CORPORATIONS I-X; ROE)
INDIVIDUALS I-X; ROE)
15 LIMITED-LIABILITY COMPANIES)
I-X; ROE QUASI GOVERNMENTAL)
16 ENTITIES I-X,)
17)
Defendants.)
18 _____)
19
20 CONFIDENTIAL VIDEOCONFERENCE DEPOSITION OF
21 NRCP 30(b)(6) DESIGNEE OF PECCOLE-NEVADA CORPORATION
22 WILLIAM BAYNE
23 LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021
24 REPORTED BY: JOHANNA VORCE, CCR NO. 913
25 JOB NO.: 777801

<p style="text-align: right;">Page 2</p> <p>1 CONFIDENTIAL DEPOSITION OF WILLIAM BAYNE, held at 2 remotely via Zoom videoconference, located at 2300 W. Sahara 3 Avenue, Suite 1200, Las Vegas, Nevada 89102, on Friday, July 4 16, 2021, at 9:10 a.m., before Johanna Vorce, Certified 5 Court Reporter, in and for the State of Nevada. 6 7 APPEARANCES: 8 For the Defendant, City of Las Vegas: 9 McDONALD CARANO LLP 10 GEORGE F. OGILVIE, III, ESQ. 11 CHRISTOPHER MOLINA, ESQ. 12 2300 West Sahara Avenue 13 Suite 1200 14 Las Vegas, Nevada 89102 15 (702) 873-4100 16 gogilvie@mcdonaldcarano.com 17 18 For PECCOLE-NEVADA CORPORATION and WILLIAM BAYNE: 19 WILLIAMS STARBUCK 20 DONALD WILLIAMS, ESQ. (Appeared remotely.) 21 612 South Tenth Street 22 Las Vegas, Nevada 89101 23 (702) 320-7755 24 dwilliams@dhwlawlv.com 25 26 For the Plaintiff, 180 LAND CO LLC: 27 LAW OFFICES OF KERMIT L. WATERS 28 JAMES LEAVITT, ESQ. (Appeared remotely.) 29 AUTUMN WATERS, ESQ. (Appeared remotely.) 30 704 South 9th Street 31 Las Vegas, Nevada 89101 32 (702) 733-8877 33 jim@kermittwaters.com</p>	<p style="text-align: right;">Page 3</p> <p>1 For the Plaintiff, FORE STARS,LTD: 2 EHB COMPANIES 3 ELIZABETH GHANEM HAM, ESQ. (Appeared remotely.) 4 TODD DAVIS, ESQ. (Appeared remotely.) 5 1215 South Fort Apache Road 6 Suite 120 7 Las Vegas, Nevada 89117 8 (702) 940-6930 9 eham@ehbcompanies.com 10 tdavis@ehbcompanies.com 11 12 Also Present: 13 SANDY GUERRA (Appeared remotely.) 14 JENNIFER KNIGHTON (Appeared remotely.) 15 16 17 18 19 20 21 22 23 24 25</p>
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1	LAS VEGAS, NEVADA; FRIDAY, JULY 16, 2021		1	hopefully, we'll get lucky and one of my kids won't pop in,	
2	9:10 A.M.		2	but I can't guarantee that.	
3	-oOo-		3	Q. Okay.	
4	(The Court Reporter was relieved of her duties		4	A. I can identify them as they come in, if you'd	
5	under NRCP 30(b)(5).)		5	like. There's six of them.	
6	Whereupon,		6	Q. No, that's fine.	
7	WILLIAM BAYNE,		7	Mr. Bayne, I understand you have -- you're	
8	having been first duly sworn to testify to the truth, was		8	appearing today in response to the subpoena to	
9	examined and testified as follows:		9	Peccole-Nevada Corporation to designate a witness to testify	
10			10	on behalf of the corporation to certain matters that were	
11	EXAMINATION		11	identified as topics of deposition as Exhibit A to that	
12	BY MR. OGILVIE:		12	subpoena; is that correct?	
13	Q. Good morning, Mr. Bayne. It's -- maybe I didn't		13	A. That is correct.	
14	introduce myself. I'm George Ogilvie. I represent City of		14	Q. Okay. Just very briefly, let me -- let me go	
15	Las Vegas. With me today is Christopher Molina, who is an		15	through some formalities.	
16	attorney in my office, again representing the City of		16	Have you ever had your deposition taken before?	
17	Las Vegas.		17	A. I have.	
18	Could you identify where you are and who is in the		18	Q. On how many occasions?	
19	room with you?		19	A. Four or five.	
20	A. I am at my home address in Mapleton, Utah, 144		20	Q. Okay. In -- were those in professional capacity	
21	East 700 North, Mapleton, Utah.		21	or personal capacity?	
22	And in the room with me is my attorney Butch		22	A. Those were in professional capacity, typically on	
23	Williams and Jim Leavitt attorney for Yohan.		23	insurance lawsuits from slip and falls at different shopping	
24	Q. There's nobody else in the room?		24	centers.	
25	A. There is no one else in the room. Although,		25	Q. Okay. What is your current position -- or do you	

<p style="text-align: right;">Page 10</p> <p>1 currently work?</p> <p>2 A. I -- I do currently have a job. I do not work for</p> <p>3 Peccole-Nevada Corporation currently.</p> <p>4 Q. Okay. What position do you currently hold?</p> <p>5 A. Currently, I own and manage Peccole Management</p> <p>6 Consulting, which is a separate company that the Bayne</p> <p>7 Family owns, and we do our own real estate exogenous of the</p> <p>8 rest of the Peccole Family.</p> <p>9 Q. Did you previously work for Peccole-Nevada</p> <p>10 Corporation?</p> <p>11 A. I did.</p> <p>12 Q. Okay. Can you tell me from when to when and what</p> <p>13 positions you held?</p> <p>14 A. From -- I started working there in about February,</p> <p>15 March, 2006. And I worked there until December of 2019. At</p> <p>16 the beginning, I was just kind of there doing things. I</p> <p>17 don't know that there was an official position. I think I</p> <p>18 became the official CEO in 2010 or '11, I think. And I</p> <p>19 stayed with the company until we divested ourself from the</p> <p>20 bulk of our assets in December of 2019.</p> <p>21 Q. Are you related to William, Bill Peccole?</p> <p>22 A. Bill Peccole was my grandfather. I am the oldest</p> <p>23 grandchild of the overall Peccole Family.</p> <p>24 Q. Was Bill Peccole still alive when you started</p> <p>25 working for Peccole-Nevada Corporation?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I need to restate.</p> <p>2 I actually started working for Peccole-Nevada</p> <p>3 Corporation in 1999 and then again in 2001. And then I left</p> <p>4 them from 2001 until 2006, and then came back in 2006.</p> <p>5 And, yes, my grandfather was there through the</p> <p>6 earlier parts. In 2006 -- I can't remember the year my</p> <p>7 grandfather died. I think he was -- he was passed away when</p> <p>8 I came back in '06.</p> <p>9 Q. Okay. So you identified the positions that you</p> <p>10 held from 2006 to 2019.</p> <p>11 What about the earlier tenure? What --</p> <p>12 A. I did accounts receivable, I did accounts payable,</p> <p>13 and I helped with various projects that would come up from</p> <p>14 time to time.</p> <p>15 Q. What is Peccole-Nevada Corporation?</p> <p>16 A. Say it again.</p> <p>17 Q. What is Peccole-Nevada Corporation?</p> <p>18 MR. WILLIAMS: What is?</p> <p>19 THE WITNESS: What is it?</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. Yes.</p> <p>22 A. It's a land development company that my</p> <p>23 grandfather started many years ago.</p> <p>24 THE COURT REPORTER: Is there a way you can hide</p> <p>25 the non-video participants so that way we can see them</p>
<p style="text-align: right;">Page 12</p> <p>1 better?</p> <p>2 (Discussion off the record.)</p> <p>3 MR. LEAVITT: Hey, George, I have a quick</p> <p>4 question. This is Jim Leavitt.</p> <p>5 Is this being videotaped or just transcribed?</p> <p>6 MR. OGILVIE: Just transcribed.</p> <p>7 MR. WILLIAMS: (Inaudible.)</p> <p>8 MR. OGILVIE: I'm sorry?</p> <p>9 MR. WILLIAMS: No. We were just talking about</p> <p>10 what we're all wearing. So yeah, good.</p> <p>11 MR. OGILVIE: Okay.</p> <p>12 THE WITNESS: You look good, Elizabeth. You're</p> <p>13 fine. We're just not as dressed up.</p> <p>14 MR. OGILVIE: Let me direct you to what will be</p> <p>15 marked as Exhibit 1, Identified as the Articles of</p> <p>16 Incorporation of Peccole-Nevada Corporation.</p> <p>17 (Defendant's Exhibit 1 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. Are these the -- are these the articles of</p> <p>21 incorporation for Peccole-Nevada?</p> <p>22 A. Give me one second. I got to pull it up.</p> <p>23 MR. WILLIAMS: Are you going to flash them,</p> <p>24 George, or do you want us to dig through what you have sent?</p> <p>25 MR. OGILVIE: Hold on. We will -- we will put --</p>	<p style="text-align: right;">Page 13</p> <p>1 we will share our screen.</p> <p>2 THE WITNESS: I got it.</p> <p>3 MR. WILLIAMS: We think we got them pulled up if</p> <p>4 it's dated December 20th, 1993, George.</p> <p>5 MR. OGILVIE: Yes.</p> <p>6 THE WITNESS: Yeah, we got it.</p> <p>7 MR. WILLIAMS: That's it.</p> <p>8 MR. OGILVIE: So for purposes of the -- for</p> <p>9 Elizabeth's purposes -- Elizabeth, can you see the share</p> <p>10 screen?</p> <p>11 MS. HAM: Yes, I can. Thank you.</p> <p>12 MR. OGILVIE: Okay. Okay.</p> <p>13 Q (By Mr. Ogilvie) Mr. Bayne, are these the articles</p> <p>14 of incorporation for Peccole-Nevada Corporation, as you have</p> <p>15 previously described that entity?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And does -- does -- or did Peccole-Nevada</p> <p>18 ever manage other entities?</p> <p>19 A. Peccole-Nevada Corporation manages many other</p> <p>20 entities.</p> <p>21 Q. Was it -- does -- was it ever the trustee of any</p> <p>22 Peccole Family trust?</p> <p>23 A. I didn't catch the question.</p> <p>24 Q. Was Peccole-Nevada Corporation ever the trustee of</p> <p>25 any Peccole Family trusts?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. I believe they were for a little while, yes.</p> <p>2 Q. Let me direct you to what will be marked as</p> <p>3 Exhibit 2, which is entitled "Certificate of Amendment of</p> <p>4 the Articles of Incorporation of Peccole-Nevada</p> <p>5 Corporation."</p> <p>6 A. Got it up.</p> <p>7 (Defendant's Exhibit 2 was marked</p> <p>8 for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Okay. Are these -- is this an amendment to the</p> <p>11 articles of incorporation of Peccole-Nevada Corporation?</p> <p>12 A. Yes.</p> <p>13 Q. And does the amendment, specifically Article 4,</p> <p>14 completely and accurately describe the business activities</p> <p>15 of Peccole-Nevada Corporation as of February 1994?</p> <p>16 A. Yes.</p> <p>17 Q. Generally, was Peccole-Nevada Corporation the</p> <p>18 entity that managed the Peccole Family's land holdings?</p> <p>19 A. Yes.</p> <p>20 Q. And did that include the -- what was known as the</p> <p>21 Peccole Ranch Master Plan Development?</p> <p>22 A. I do not know. Peccole Ranch Master Plan was a</p> <p>23 joint venture with Triple Five, and my understanding is that</p> <p>24 they were the managing member. And I don't know what</p> <p>25 function Peccole-Nevada Corporation served at that time</p>	<p style="text-align: right;">Page 15</p> <p>1 period. That was in 1992 when I was a sophomore in high</p> <p>2 school.</p> <p>3 MR. OGILVIE: Okay. Let me direct your attention</p> <p>4 to what will be marked as Exhibit 3.</p> <p>5 (Defendant's Exhibit 3 was marked</p> <p>6 for identification.)</p> <p>7 BY MR. OGILVIE:</p> <p>8 Q. Peccole -- Exhibit 3 is identified in the bottom</p> <p>9 right-hand corner as the "Peccole Generalized Land Use</p> <p>10 Plan," dated April 15th, 1981.</p> <p>11 Do you recognize the area that is depicted by this</p> <p>12 aerial map?</p> <p>13 A. I do. I've walked it a million times with my</p> <p>14 grandfather and -- yeah, I'm familiar them.</p> <p>15 Q. Okay. The -- there is an outlined area outlined</p> <p>16 in red that is bordered by Sahara Avenue on the south;</p> <p>17 Hualapai Way on the west; while it's not written here, Alta</p> <p>18 Drive on the north; and it's, again, not written here, but I</p> <p>19 believe it is Durango on the east. Is that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. And then it's splitting -- probably about a</p> <p>22 third of the east side of the area outlined in red is a</p> <p>23 street Fort Apache Road, which turns into South Rampart; is</p> <p>24 that correct?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 16</p> <p>1 Q. Okay. I wanted to direct your attention to the</p> <p>2 area that is bounded by Hualapai Way on the west, Fort</p> <p>3 Apache slash Rampart Boulevard on the east -- or on the</p> <p>4 east, Alta Drive on the north, and Sahara Avenue on the</p> <p>5 south.</p> <p>6 Is that the area that -- that is -- was Peccole</p> <p>7 Ranch Master Plan?</p> <p>8 A. That was the conceptual idea of the original</p> <p>9 master plan that I understand from historical documents.</p> <p>10 Q. Okay. And that was split into two phases, Phase I</p> <p>11 generally bounded by Hualapai, Fort Apache, Sahara, and</p> <p>12 Charleston; and Phase II, which was generally bounded by</p> <p>13 West Charleston, Alta, Hualapai, and Rampart, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And Phase II was ultimately developed into</p> <p>16 Queensridge, correct?</p> <p>17 A. Phase II was ultimately developed into Queensridge</p> <p>18 and Fore Stars and Suncoast Hotel and Sir Williams Court and</p> <p>19 Emerald Gardens and some Rampart Commons and then another</p> <p>20 little condo community, actually two other little condo</p> <p>21 communities.</p> <p>22 Q. Okay. So using Exhibit 3, could you designate for</p> <p>23 us the -- where on Exhibit 3 the areas that you just</p> <p>24 itemized?</p> <p>25 A. Well, I would have to go back. If you're talking</p>	<p style="text-align: right;">Page 17</p> <p>1 about original -- the original thought process of Peccole</p> <p>2 Ranch Master Plan from historical documents, Phase II would</p> <p>3 have been Charleston to Alta -- Charleston to South Alta on</p> <p>4 the north, Hualapai on the west, and Rampart on the -- on</p> <p>5 the east.</p> <p>6 Q. Okay.</p> <p>7 THE COURT REPORTER: Sorry, who was on the west?</p> <p>8 MR. OGILVIE: Hualapai.</p> <p>9 THE COURT REPORTER: Thank you.</p> <p>10 BY MR. OGILVIE:</p> <p>11 Q. Okay. So that was the area I described as</p> <p>12 Queensridge. And then you clarified that and threw in</p> <p>13 probably five, maybe six different components of that.</p> <p>14 Could you describe them for me both verbally and</p> <p>15 where they're located on Exhibit 3?</p> <p>16 A. Suncoast Hotel is on the -- it's on Rampart on</p> <p>17 the -- on the north, bordered by nothing. But it's between</p> <p>18 Alta and the property line and Rampart. Up in the top</p> <p>19 right-hand corner is the Suncoast Hotel and Casino.</p> <p>20 Q. Okay.</p> <p>21 A. That's the land leased with Suncoast.</p> <p>22 Sir Williams Court, if you come down Rampart, you</p> <p>23 can see Sir Williams Court depicted. There's three</p> <p>24 buildings. That's the next buildings just coming south on</p> <p>25 Rampart.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Mid -- about mid -- about midway between Alta and 2 Charleston on -- 3 A. Yep. 4 Q. -- the west side of Rampart? 5 A. Yep. 6 Q. Okay. 7 A. And then you come down from Sir Williams Court, 8 and that is a water pumping station that's owned by the 9 water district. 10 Q. What appears to be vacant land? 11 A. That's correct. 12 Q. Okay. 13 A. And then you get to a shopping center next. 14 That's called "Rampart Commons." And that's on the corner 15 of Charleston and Rampart. That would be on the northwest 16 corner of Charleston and Rampart. 17 Q. And that's where, on the very corner, P.F. Chang's 18 sits? 19 A. That's correct. 20 Q. Okay. What were the other areas you described? 21 A. There's a little condo -- condominium community as 22 you're going into the entrance of Badlands or Fore Stars. 23 If you're going into the entrance off of Alta on your -- on 24 the west side is a condominium community that is not part of 25 Queensridge.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. On the -- does it border Charleston and it's 2 directly to the -- 3 A. No. 4 Q. Okay. 5 A. It boards on Alta. So go back on Alta and Rampart 6 and go north towards Hualapai from Alta. 7 Q. West? West -- 8 A. And you go -- 9 Q. West on Al- -- Hual- -- west on Alta? Alta? 10 A. All right. West on Alta towards Hualapai, and you 11 run into -- 12 THE COURT REPORTER: I'm sorry, can you repeat 13 that? 14 THE WITNESS: You go west on Alta towards 15 Hualapai, and the condominium community is right there. You 16 can see it on the map. 17 MR. WILLIAMS: Isn't there a way you can mark it? 18 THE WITNESS: Yeah, there is. 19 MR. LEAVITT: Yeah, but they -- the court reporter 20 won't have the marking. She has physical copies. 21 THE WITNESS: It might be easier for them to see. 22 MR. LEAVITT: Yeah -- oh, yeah, the markings -- 23 MR. WILLIAMS: Just to get your -- 24 MR. LEAVITT: Oh, absolutely. See if we can mark 25 that.</p>
<p style="text-align: right;">Page 20</p> <p>1 Do you know where he's talking about, George? 2 THE WITNESS: Hold on. Let me see if I can do 3 something. 4 MR. OGILVIE: I think he's describing the area -- 5 THE WITNESS: I'm going to request remote control. 6 Can you guys give me the remote? 7 THE COURT REPORTER: Also, when they're having a 8 discussion in the room, I can't tell who's saying what. 9 MR. OGILVIE: Okay. 10 THE WITNESS: I'm going to give you back the 11 remote because all I did was take off your thing. Sorry. I 12 thought I was smart. Apparently, I'm not. 13 BY MR. OGILVIE: 14 Q. So -- 15 A. You're going to have to -- there you go. 16 MR. OGILVIE: You can -- you can mark it, right? 17 MR. MOLINA: I think so. 18 BY MR. OGILVIE: 19 Q. Seems that you're referring to an area that's, 20 what I will describe as, kitty-corner to -- 21 A. Yes. 22 Q. -- the Suncoast? 23 A. Yep. 24 Q. Okay. 25 A. That's it. That's what I was going to try to do.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. And what were the other area or areas that 2 you identified that in -- within the Queensridge borders 3 that I described? 4 A. Within the borders that you described, there's 5 another condominium community just west of Rampart Commons 6 on the corner of Charleston and Rampart. So go to 7 Charleston and Rampart, then just go -- just west of Rampart 8 Commons is another condominium community that is not part of 9 Queensridge. 10 Q. Okay. 11 A. Yep. 12 MR. MOLINA: This one? 13 THE WITNESS: Yep. Yep. 14 BY MR. OGILVIE: 15 Q. Okay. Anything else that is not part of 16 Queensridge? 17 A. The towers were not part of Queensridge. 18 Q. When you refer to "the towers," you're referring 19 to Queensridge Towers? 20 A. Yeah, those two. But then the vacant land next to 21 it where it's also part of Queensridge Towers. 22 The other challenge that you have is that that -- 23 those -- well, that's done. 24 Q. I'm sorry, what? You were saying something? 25 A. If you go up to the corner of Alta and Hualapai,</p>

<p style="text-align: right;">Page 22</p> <p>1 the Hutchison & Steffen building is up there and the</p> <p>2 Merryhill school next to it and then two vacant lots as</p> <p>3 well.</p> <p>4 Q. Okay. Anything else that was not a part of</p> <p>5 Queensridge that was within the boundaries that I indicated?</p> <p>6 A. Boca Park would not be part of Queensridge. That</p> <p>7 was in the boundaries you initially indicated.</p> <p>8 Q. Yeah. I then -- my subsequent boundary was</p> <p>9 Rampart on the east.</p> <p>10 A. Okay. Then you're good.</p> <p>11 Q. Okay. Let me ask you about two other components</p> <p>12 of what was -- what is within this -- this red outlined</p> <p>13 boundary. First, what I believe is referred to as "Sahara</p> <p>14 commons." No?</p> <p>15 A. That's on the corner of Hualapai and Sahara?</p> <p>16 Q. Sahara Hual- --</p> <p>17 MR. MOLINA: Sahara Commons down.</p> <p>18 MR. OGILVIE: Yes.</p> <p>19 THE WITNESS: Yep.</p> <p>20 I have a question on how you handle Canyon Gate.</p> <p>21 BY MR. OGILVIE:</p> <p>22 Q. I'm not sure I understand your question.</p> <p>23 A. Well, it's identified in the red, but it wasn't</p> <p>24 part of Peccole Ranch Master Plan.</p> <p>25 Q. Okay. So the Peccole Ranch Master Plan, are you</p>	<p style="text-align: right;">Page 23</p> <p>1 saying, ended -- well, south of Charleston, ended at Fort</p> <p>2 Apache?</p> <p>3 A. I honestly don't know.</p> <p>4 Q. Okay.</p> <p>5 A. I don't -- I don't know what -- which ones we're</p> <p>6 referring to. I'd have to -- you'd have to show me some</p> <p>7 more maps.</p> <p>8 Q. Okay. Let me refer -- direct your attention to</p> <p>9 something that I believe was referred to as the "end cap."</p> <p>10 Are you familiar with the term "end cap"?</p> <p>11 A. I'm assuming you are referencing the end cap at</p> <p>12 Hualapai and Charleston. You have Home Depot, which is</p> <p>13 depicted as the big white building, and then the end cap</p> <p>14 coming west from Home Depot.</p> <p>15 Q. Coming east from Home Depot?</p> <p>16 A. No. Going west from Home Depot.</p> <p>17 So you have Home Depot is on Charleston.</p> <p>18 Q. Oh, I --</p> <p>19 A. You see the big white building? And then the end</p> <p>20 cap is this little gray end cap. Right there.</p> <p>21 Yeah. (Inaudible.)</p> <p>22 But that's Home Depot right there. And then the</p> <p>23 end cap is the end cap right there. I'm assuming that's</p> <p>24 what you're referring to. There's many, many end caps in</p> <p>25 all of our shopping centers, but I'm assuming that's the one</p>
<p style="text-align: right;">Page 24</p> <p>1 that's --</p> <p>2 Q. Okay.</p> <p>3 A. -- relevant for your conversation.</p> <p>4 Q. We'll get back to that as we go through some</p> <p>5 documents.</p> <p>6 THE COURT REPORTER: And then as far as this one,</p> <p>7 are you going to send that one to me and mark that as well?</p> <p>8 MR. MOLINA: How do I do that?</p> <p>9 THE COURT REPORTER: You can e-mail it to me and I</p> <p>10 can mark it as four.</p> <p>11 MR. OGILVIE: Mark it 3-A?</p> <p>12 THE COURT REPORTER: Yeah, however you want to do</p> <p>13 it.</p> <p>14 THE WITNESS: Might be easier if I do it for you.</p> <p>15 MR. MOLINA: We got it.</p> <p>16 (Defendant's Exhibit 3-A was marked</p> <p>17 for identification.)</p> <p>18 MR. OGILVIE: Am I waiting?</p> <p>19 MR. MOLINA: I don't know.</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. So let me identify a couple more people here. I'm</p> <p>22 looking at the list of Peccole-Nevada Corporation officers</p> <p>23 filed with the Secretary of State's office January 1st,</p> <p>24 1990- -- 1999. It reflects Wanda Peccole as the president.</p> <p>25 Is Wanda Peccole Bill Peccole's wife?</p>	<p style="text-align: right;">Page 25</p> <p>1 A. Yes.</p> <p>2 Q. Your grandmother?</p> <p>3 A. She's my grandmother.</p> <p>4 Q. And then Lauretta P. Bayne, is that your mother?</p> <p>5 A. That's my mother.</p> <p>6 Q. She's identified as secretary and treasurer.</p> <p>7 A. Yeah.</p> <p>8 Q. And then Larry A. Miller, he is your uncle,</p> <p>9 correct?</p> <p>10 A. Yep.</p> <p>11 Q. Okay. What was -- he's identified as a director</p> <p>12 on this Secretary of State filing.</p> <p>13 What was your uncle Larry Miller's role with</p> <p>14 Peccole-Nevada Corporation?</p> <p>15 A. It would be hard for me to characterize, from my</p> <p>16 knowledge base, until 2006. In 2006, when I came back, he</p> <p>17 was the CEO. I do not know when he became the CEO.</p> <p>18 Q. Okay.</p> <p>19 A. Sometime between '99 and 2006.</p> <p>20 MR. OGILVIE: Let me refer you to another map, and</p> <p>21 this will be marked as Exhibit 4.</p> <p>22 (Defendant's Exhibit 4 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. OGILVIE:</p> <p>25 Q. And Exhibit 4 is identified in the bottom</p>

<p style="text-align: right;">Page 26</p> <p>1 right-hand corner as "City of Las Vegas Peccole Ranch Phase 2 I Land Use Case Files." And it is -- appears to be, and 3 correct me if I'm wrong, a little bit of a zoomed in aerial 4 map or aerial photo zoomed in from Exhibit 3, identifying 5 Phase I of the Peccole Ranch Master Plan, bounded by Sahara 6 on the south, Charleston on the north, Hualapai somewhat on 7 the east -- or on the west. And I say "somewhat," because, 8 as I understand it, the area between Charleston and Sahara, 9 that was bounded by Hualapai Way on the -- on the far west, 10 was part of Phase II; is that correct? 11 A. That's my understanding based on the map. 12 Q. Okay. You don't have any independent knowledge of 13 that? 14 A. I do not. 15 Q. Okay. Do you have any reason to believe that what 16 is detailed on this map is incorrect? 17 A. What this map details would be consistent with 18 what Peccole Ranch HOA charges their fee for. And they do 19 not charge a fee for Hualapai Commons, depicted at 20 Charleston and Hualapai. So that -- that would seem logical 21 to me. 22 Q. Okay. And you were not involved in any of the 23 zoning cases that are identified on Exhibit 4; is that 24 correct? 25 A. That is correct.</p>	<p style="text-align: right;">Page 27</p> <p>1 We -- we do currently own Village Square, depicted 2 on exhibit -- on this exhibit, on the corner of Sahara and 3 Fort Apache. The Bayne Family owns that corner. 4 Q. Okay. That's where the movie theater is? 5 A. That's correct. 6 Q. Now, you mentioned -- you mentioned the Bayne 7 Family. 8 The Bayne Family owns that separate and apart from 9 Peccole? 10 A. We purchased it after our dissolution in 2019. We 11 took our proceeds and purchased that corner. 12 Q. Okay. When you say "our," you mean the Bayne 13 Family? 14 A. I do. 15 Q. So let me direct your attention specifically to a 16 couple of these zoning events that are identified on Exhibit 17 4. There's a string of them identified as Case Z-0139-88. 18 And on the west -- or on the east side of Peccole Ranch. 19 And then there's a set of indications identified as Case 20 Z-0040-89. 21 You didn't have any participation in those zoning 22 events, did you? 23 A. I did not. 24 Q. Did you ever have any participation in zoning 25 events for any of Peccole Ranch Master Plan?</p>
<p style="text-align: right;">Page 28</p> <p>1 MR. WILLIAMS: Let me just object to compound. 2 You can answer if you have -- 3 THE WITNESS: I would say that I have never had 4 any interaction with zoning events having to do with the 5 master plan. I've had interactions with zoning events at 6 Hualapai Commons and at properties north of Charleston. But 7 when we were doing the zoning, they were not identified at 8 the time as part of the master plan. 9 THE COURT REPORTER: And was that Mr. Leavitt who 10 objected? 11 MR. OGILVIE: No. It's Mr. Williams. 12 MR. WILLIAMS: No. It was Mr. Williams. 13 THE COURT REPORTER: Thank you. 14 MR. WILLIAMS: You're welcome. 15 MR. OGILVIE: Well, then let me direct you to 16 another aerial, which we will mark as Exhibit 5. 17 (Defendant's Exhibit 5 was marked 18 for identification.) 19 BY MR. OGILVIE: 20 Q. Exhibit 5 is identified in the bottom right-hand 21 corner as "City of Las Vegas Peccole Ranch Phase II Land Use 22 Case Files." And it identifies in shaded blue the area that 23 I understand, correct me if I'm wrong, was -- is Phase II of 24 the Peccole Ranch Master Plan. 25 A. I'm not seeing anything yet.</p>	<p style="text-align: right;">Page 29</p> <p>1 Do you want me to find it? 2 Q. Oh, I'm sorry. 3 A. From my understanding, the land depicted in blue, 4 my family did not annex into the Peccole Ranch Master Plan. 5 So maybe you could rephrase your question in a way I could 6 answer, or I could just muddle through an answer. 7 Q. Okay. So when you say -- when you use the word -- 8 the term "annexed," what do you mean? 9 A. Looking at historical documents and reading 10 through the original CC&Rs for Peccole Ranch, which I did 11 when we were in a lawsuit with Bob Peccole, my cousin, we 12 had an obligation or an opportunity to annex property as we 13 jointly developed it with Triple Five. We didn't just put 14 all of our property into the master plan with Triple Five as 15 partner. I will speculate that the reason for that was we 16 didn't know Triple Five, and they were new, and my 17 grandfather probably wanted to see how our relationship 18 would progress. 19 So in knowing my grandfather, it seems that he 20 would have been prudent and not put all of his property into 21 this giant master plan that you're depicting, and that we 22 would take the opportunity to annex property in as we 23 developed it as the partnership progressed. 24 Having said that, I am not aware of ever annexing 25 in the properties north of Charleston. I do think that at</p>

<p style="text-align: right;">Page 30</p> <p>1 some point the property south of Charleston, except for that 2 Hualapai Commons shopping center, were annexed in. I also 3 do not believe the Sahara Commons shopping center was ever 4 annexed in.</p> <p>5 Q. Okay.</p> <p>6 A. So when you refer to all of the properties in the 7 Phase II master plan, I would take issue that those 8 properties became part of the master plan per the City of 9 Las Vegas, not per Peccole.</p> <p>10 Q. Okay. Are you aware of Peccole generated 11 documents that refer to Peccole Ranch Master Plan Phase I 12 and Peccole Ranch Master Plan Phase II?</p> <p>13 A. I am -- this is pretty far outside of my 14 wheelhouse and when I was there and involved. I would have 15 to refer you to probably Clyde Spitze for how those 16 documents were generated and what was generated. He would 17 know more about that than I would by a lot.</p> <p>18 Q. Okay. Please describe to me your understanding of 19 who Clyde Spitze is and what services he performed for 20 Peccole-Nevada Corporation or any of -- and -- and let me 21 just -- let me back up and say, when I refer to Peccole -- I 22 don't know if I should refer --</p> <p>23 How do -- how do you refer to the -- the Peccole 24 Family Holdings that -- well, actually, let me -- let me 25 back up even further.</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Peccole Ranch, for us, is everything south of 2 Charleston. The rest of it was Queensridge and other 3 properties. Again, we never -- from 2006 forward, when I 4 was there and then when I became CEO, I never -- I never was 5 hampered or encumbered by dealing with the master plan. 6 When I got things rezoned, there was no master plan 7 discussion. When I went and did a commercial subdivision at 8 Hualapai and Charleston, there was no master plan 9 contemplated.</p> <p>10 Q. Okay.</p> <p>11 A. The city didn't ask us to conform. They didn't 12 ask us if we conformed. It never got brought up.</p> <p>13 Q. Okay.</p> <p>14 A. It never became an issue until these lawsuits.</p> <p>15 Q. Let me -- let me back up.</p> <p>16 Did -- was Peccole-Nevada Corporation the manager 17 of Fore Stars Limited prior to the sale of Fore Stars 18 Limited to Yohan Lowie's entity in March of 2015?</p> <p>19 A. Yes.</p> <p>20 Q. Did Peccole-Nevada Corporation manage 21 Stars 21 Limited?</p> <p>22 A. Yes.</p> <p>23 Q. Does 21 Stars Limited own the -- the property on 24 which the Suncoast Hotel currently sits?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 32</p> <p>1 Q. What other entities did Peccole-Nevada Corporation 2 manage?</p> <p>3 A. That's a really long list.</p> <p>4 Q. Okay. So that's kind of getting where I'm -- 5 where I was going.</p> <p>6 Did Peccole-Nevada Corporation generally act as 7 the manager of the Peccole Family land holdings, the Peccole 8 Family and its entities and trusts?</p> <p>9 A. It did. But in the case of Peccole Ranch, the 10 property between Sahara and Charleston, the managing member, 11 my understanding, was Triple Five. And again, my 12 understanding is limited to just historical -- I don't have 13 firsthand knowledge of that.</p> <p>14 Q. Okay. I'm not asking if it managed --</p> <p>15 A. I don't believe Peccole-Nevada Corporation managed 16 Peccole Ranch.</p> <p>17 Q. Okay. But it managed the Peccole interest in 18 Peccole Ranch?</p> <p>19 A. I -- I don't know how to characterize their -- the 20 operating agreement or the partnership agreement with Triple 21 Five. I honestly have never seen it.</p> <p>22 Q. I'm not asking that. I'm only -- I'm not asking 23 about the relationship with Triple Five at all or who 24 managed Peccole Ranch Master Plan Phase I.</p> <p>25 I'm just -- I'm just asking a -- more of a very</p>	<p style="text-align: right;">Page 33</p> <p>1 general question of --</p> <p>2 A. Peccole-Nevada Corporation managed all of the 3 Peccole properties.</p> <p>4 THE COURT REPORTER: I'm sorry, who managed all of 5 the Peccole properties?</p> <p>6 THE WITNESS: Peccole-Nevada Corporation managed 7 all of the Peccole properties. When I was there in 2006 8 forward, that was our manager.</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Okay. And when you say "the Peccole properties," 11 you're talking about the land holdings of Peccole entities 12 and trusts; is that correct?</p> <p>13 A. The land holdings of Peccole's entities and 14 trusts?</p> <p>15 There may have been a few trusts that 16 Peccole-Nevada Corporation did not manage.</p> <p>17 Q. What about the William and Wanda Peccole Family 18 Limited Partnership?</p> <p>19 A. It managed that.</p> <p>20 Q. Okay. Okay. So back to Exhibit 5.</p> <p>21 Were you -- there are various zoning case events 22 identified on Exhibit 5. Were you involved in any of those 23 zoning case events?</p> <p>24 A. I don't -- I don't know case event numbers. You 25 don't have -- you don't have dates, do you?</p>

<p style="text-align: right;">Page 34</p> <p>1 Let me look.</p> <p>2 I don't think I was involved in any of these</p> <p>3 zoning case events depicted.</p> <p>4 Q. Okay. You mentioned --</p> <p>5 MR. WILLIAMS: George, George, this is Butch.</p> <p>6 Is the date -- the date referenced on the bottom,</p> <p>7 it has a case number, and then it hits like 90, 95, 90, 90;</p> <p>8 is that the date?</p> <p>9 MR. OGILVIE: Yes.</p> <p>10 MR. WILLIAMS: Okay.</p> <p>11 THE WITNESS: Yeah.</p> <p>12 MR. WILLIAMS: All right.</p> <p>13 THE WITNESS: Okay. If that's the date, then I</p> <p>14 don't think I was involved in any of them.</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. It is the year, rather than the date.</p> <p>17 A. Yeah.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah. But I'm -- just got back from (inaudible.)</p> <p>20 Q. So you mentioned Clyde Spitze. I wanted to go</p> <p>21 back to Clyde.</p> <p>22 But who is Clyde Spitze and what role did he play</p> <p>23 with the -- with Peccole-Nevada Corporation?</p> <p>24 A. Clyde Spitze -- my understanding, Clyde Spitze</p> <p>25 worked with my grandfather in coming up with a lot of -- a</p>	<p style="text-align: right;">Page 35</p> <p>1 lot of the land use plans and then getting the zoning put</p> <p>2 together. And then when my grandfather stepped out of the</p> <p>3 picture -- I think my grandfather died -- my memory comes</p> <p>4 back. It's around '99. Clyde worked with my grandmother</p> <p>5 and Larry Miller, and he had the same role. He helped</p> <p>6 with -- all of these zoning things, Clyde could probably</p> <p>7 comment on.</p> <p>8 Q. Okay.</p> <p>9 A. Clyde probably presented them at the city. So his</p> <p>10 role was an outside third party. He worked for a land use</p> <p>11 company. I'm trying to remember the name. PentaCore at one</p> <p>12 point and then another name. And -- and that's -- that's</p> <p>13 Clyde -- Clyde's worked for my family and with my family for</p> <p>14 many, many years.</p> <p>15 Q. Is it fair to say that Clyde Spitze was the</p> <p>16 consultant through which Peccole-Nevada Corporation obtained</p> <p>17 the land use regulations allowing it to develop Queensridge?</p> <p>18 A. Yes, I think that's fair to say.</p> <p>19 Q. Is there anybody that you know of, whether within</p> <p>20 the family or outside the family, that has more</p> <p>21 institutional knowledge regarding the Peccole Family's</p> <p>22 development of Queensridge than Mr. Spitze?</p> <p>23 A. No. I would -- not more -- not more institutional</p> <p>24 knowledge than Mr. Spitze. My -- the next best guess would</p> <p>25 be Larry Miller, but I don't think he did as much as Clyde</p>
<p style="text-align: right;">Page 36</p> <p>1 did as -- as it relates to getting the zoning packages</p> <p>2 applied for, getting the zoning done, interfacing with the</p> <p>3 city. That was all Clyde.</p> <p>4 Q. Okay. Now, aside from Clyde and Larry -- where is</p> <p>5 Larry located?</p> <p>6 A. He's in Australia.</p> <p>7 Q. Okay. So you've been designated as the 30(b) --</p> <p>8 30(b)(6) designee, which is essentially a person most</p> <p>9 knowledgeable, but it's not simply a person most</p> <p>10 knowledgeable. It carries with it obligations to conduct</p> <p>11 research and be prepared to present testimony on behalf of</p> <p>12 the corporation. You've been designated as that individual,</p> <p>13 as opposed to Larry Miller. With respect to the development</p> <p>14 of Queensridge, you said other than Mr. Spitze, Mr. Miller</p> <p>15 would have the most institutional knowledge.</p> <p>16 Why is it that Mr. Miller is not being presented</p> <p>17 as the 30(b)(6) designee of Peccole-Nevada Corporation?</p> <p>18 A. Probably because when you sent over the subpoena,</p> <p>19 most of the items in the subpoena that were relevant were</p> <p>20 post 2006, and I have the most institutional knowledge of</p> <p>21 those items. The few items in the subpoena that were pre,</p> <p>22 as I -- as I've stated in the past, I did not know about</p> <p>23 those items. But the reason that we didn't try to find</p> <p>24 Larry and get Larry to do this was because those were --</p> <p>25 there were far fewer of those items.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Okay. Other than Larry Miller, is there anyone</p> <p>2 from the Peccole Family with more knowledge regarding the</p> <p>3 development of Queensridge than you?</p> <p>4 A. Well, Clyde.</p> <p>5 Q. No. I said within the Peccole Family.</p> <p>6 A. Oh, no. No. My -- my -- my dad did a lot of the</p> <p>7 construction. But as far as the development goes and the</p> <p>8 zoning goes, my -- my mother and father were on the board,</p> <p>9 in a few board meetings, but they -- they didn't have any --</p> <p>10 they didn't -- they weren't involved that way.</p> <p>11 Q. Okay. Let's move on to your dad.</p> <p>12 What -- what specifically -- what role</p> <p>13 specifically did he play, if any, relative to the</p> <p>14 development of Queensridge?</p> <p>15 A. My -- my dad was -- was involved in the</p> <p>16 construction. He could tell you where the sewer lines are.</p> <p>17 He could tell you the sewer lines capacity, the</p> <p>18 complications in Queensridge related to the sewer lines.</p> <p>19 He -- he just did the construction, and a lot of the super</p> <p>20 construction the -- the -- the roads, the -- that kind of</p> <p>21 thing. So that was his role, is he was on site doing most,</p> <p>22 if not all, the construction. And then Larry's role was --</p> <p>23 was working with Clyde on the development and on the zoning</p> <p>24 and on those things.</p> <p>25 Q. Okay. Who developed the golf course?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. I can't remember if it's American Golf or Senior 2 Tour Players. It was one of those two.</p> <p>3 Q. Okay. Who participated in the development of the 4 golf course from the Peccole Family?</p> <p>5 A. It would have been both Larry -- Larry and my 6 father and my grandmother. It would have been those three.</p> <p>7 When you say "participated," they signed a land 8 lease, so they negotiated a land lease, and then the golf 9 course developed it. They -- they didn't do any of the 10 development other than they would drive out on it and look 11 at the development. I don't know what you mean.</p> <p>12 Q. Okay. You said "the golf course developed it." 13 What -- who are you referring to when you say "the 14 golf course"?</p> <p>15 A. Either American Golf or Senior Tour Players. They 16 had the original lease. I'd have to go back through the 17 documents and remember which one it was.</p> <p>18 Q. Okay.</p> <p>19 A. You probably --</p> <p>20 Q. When did -- do you know when development of the 21 golf course began?</p> <p>22 A. About '92.</p> <p>23 Q. Okay. And who paid to develop the golf course?</p> <p>24 A. American Golf or Senior Tour Players, whichever 25 one had the lease. If you want, give me a minute. I can go</p>	<p style="text-align: right;">Page 39</p> <p>1 figure it out.</p> <p>2 Q. Did the Peccole Family pay anything towards the 3 development of the golf course?</p> <p>4 A. I am not aware of it. Though, it would be 5 consistent that if there was some zoning applications or 6 things like that, Peccole may have paid for some of those.</p> <p>7 Q. Do you have an understanding of when -- well, 8 strike that. Let me -- let me back up a second.</p> <p>9 My understanding is when the golf course was 10 initially developed, it was developed as an 18-hole golf 11 course; is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Do you have an understanding as to when an 14 additional nine holes was incorporated into the golf course?</p> <p>15 A. I do not remember the year. It would have been in 16 the late '90s, I think early 2000s. And we were getting 17 ready to develop Queensridge, and it became evident through 18 Clyde that we could -- we could add another -- another 19 little bit of golf course, and we could lease that to the 20 same individuals that at the time were leasing the golf 21 course.</p> <p>22 Q. Okay. Let me direct your attention back to 23 Exhibit 3, the first aerial.</p> <p>24 Exhibit 3 is the first aerial photograph that I 25 was asking you about, and you identified various areas that</p>
<p style="text-align: right;">Page 40</p> <p>1 were not included in the Queensridge property between 2 Charleston, Alta, Hualapai, and Rampart.</p> <p>3 Can you identify on this aerial where the third 4 nine holes was, I guess, or the -- the additional nine holes 5 was developed?</p> <p>6 A. Yeah. It was -- you see the lake off of Hualapai?</p> <p>7 Q. Immediately to the east of Hualapai?</p> <p>8 A. Yeah, that lake.</p> <p>9 Q. Yes.</p> <p>10 A. So all of that green right there where it's -- 11 where you can clearly see golf course land, all -- all -- 12 from that lake down to the lake on the west side by the 13 clubhouse. Yeah. That whole course was -- was it.</p> <p>14 And then if you keep coming around -- no. Include 15 that little -- that little bit right there. And then come 16 back up against the golf course and the property on that 17 side, and you'll -- you'll -- you'll get most of it, if 18 that's not all of it. No. Come down. You'll include all 19 of these holes down below. Sorry. Yep, right there. Stay 20 on that line and go right along the houses. Stay right 21 along the houses. Yep. And then wiggle down there and stay 22 along the houses.</p> <p>23 Q. So you're describing the string of -- the two 24 strings of fairways on the northern most portion of 25 Queensridge?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Yes. And that's -- there was some other 2 configuration that was done, but that's -- that's a pretty 3 close approximation.</p> <p>4 Q. Okay.</p> <p>5 A. You can -- you can include those houses in the 6 redevelopment because a lot of Queensridge North came from 7 the redevelopment.</p> <p>8 Q. Explain that to me.</p> <p>9 A. So we had this -- Queensridge North hadn't been 10 built yet, and we didn't have the third nine holes. And so 11 when we started to want to develop Queensridge North, that's 12 when we decided we could go ahead and put in a third nine 13 holes. And so all of that property was -- was part of that 14 redevelopment process.</p> <p>15 Q. Okay.</p> <p>16 A. So the third line came from that.</p> <p>17 Q. Okay. When you describe Queensridge North, you're 18 describing the housing development that borders Alta, 19 between the condominium project that you described was not 20 part of Queensridge to the east and extending up to Hualapai 21 on the west; is that correct?</p> <p>22 A. That's correct.</p> <p>23 THE COURT REPORTER: Save this as 3-B?</p> <p>24 MR. OGILVIE: Yes, that's 3-B.</p> <p>25 (Defendant's Exhibit 3-B was marked</p>

<p style="text-align: right;">Page 42</p> <p>1 for identification.)</p> <p>2 THE WITNESS: And I might be off -- you might be</p> <p>3 off a little bit on your drawing, but that's generally where</p> <p>4 it was.</p> <p>5 BY MR. OGILVIE:</p> <p>6 Q. After the completion of that additional nine</p> <p>7 holes, were there any significant changes to the golf course</p> <p>8 between when it was completed in 2015?</p> <p>9 A. Not from a zoning standpoint, no. There was -- we</p> <p>10 redid greens. We spent some money and redid a lot of</p> <p>11 greens. They're very expensive. But -- but other than just</p> <p>12 maintenance items, no.</p> <p>13 MR. OGILVIE: Let me direct your attention to what</p> <p>14 will be marked as Exhibit 6.</p> <p>15 (Defendant's Exhibit 6 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. OGILVIE:</p> <p>18 Q. Exhibit 6 is a grant, bargain, and sale deed that</p> <p>19 was recorded at the Clark County Recorder's Office on</p> <p>20 April 14th, 2005.</p> <p>21 Is this the deed by which the William, Peter, and</p> <p>22 Wanda Ruth Peccole Family Limited Partnership deeded the</p> <p>23 Badlands Golf Course to Fore Stars Limited?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So after this 2005 deed -- grant, bargain,</p>	<p style="text-align: right;">Page 43</p> <p>1 and sale deed, Fore Stars was the fee simple owner of the</p> <p>2 golf course; is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Let me advance forward a little bit.</p> <p>5 You referenced the Queens- -- Queensridge Towers</p> <p>6 site and -- and identified on one of the exhibits where --</p> <p>7 where the towers were located.</p> <p>8 Was there an event related to the development of</p> <p>9 the Queensridge Towers in which there was a dispute relating</p> <p>10 to the encroachment of the towers' development onto the</p> <p>11 Badlands Golf Course?</p> <p>12 A. There was.</p> <p>13 Q. Okay. And was that dispute -- did that dispute</p> <p>14 arise as a result of the lease of the golf course property</p> <p>15 to -- you mentioned American Golf or Senior Tour Players?</p> <p>16 A. That is correct.</p> <p>17 Q. And specifically, could you describe what -- what</p> <p>18 happened there?</p> <p>19 A. My understanding is that we were developing</p> <p>20 jointly with Mr. Lowie the Queensridge Towers project, and</p> <p>21 we had allowed him to start construction on golf course</p> <p>22 leasehold proper- -- property.</p> <p>23 At the time, we had made a mistake in thinking</p> <p>24 that the golf course would have no problems with us doing</p> <p>25 that. We were wrong. The golf course did. And that became</p>
<p style="text-align: right;">Page 44</p> <p>1 a mess that had to be cleaned up. And the way we cleaned</p> <p>2 that up was we purchased the lease back for approximately</p> <p>3 30-some-odd-million dollars. I think it was 30 million or</p> <p>4 \$32 million.</p> <p>5 Q. Okay. When you say "we," are you referring to the</p> <p>6 Peccole Family?</p> <p>7 A. I am.</p> <p>8 Q. And when you say "purchased" -- I'm sorry, what</p> <p>9 did you purchase back for 30 to \$32 million?</p> <p>10 A. We purchased back the leasehold interest in the</p> <p>11 property.</p> <p>12 Q. Okay. And you purchased that back from American</p> <p>13 Golf or Senior Tour Players; is that correct?</p> <p>14 A. That is correct. And it may have even -- that</p> <p>15 lease may have even been transferred one more time, and I'd</p> <p>16 have to go back and tell you.</p> <p>17 Q. So I take it from your last response is you don't</p> <p>18 know who -- from whom at the time you resolved this in --</p> <p>19 A. I don't remember. I -- I did know, but I do not</p> <p>20 remember right now.</p> <p>21 MR. OGILVIE: Okay. Let me direct your attention</p> <p>22 to what will be marked as Exhibit 7.</p> <p>23 (Defendant's Exhibit 7 was marked</p> <p>24 for identification.)</p> <p>25 THE WITNESS: Yeah, it's American Golf. That's</p>	<p style="text-align: right;">Page 45</p> <p>1 correct. Okay.</p> <p>2 BY MR. OGILVIE:</p> <p>3 Q. Okay. Exhibit 7 is identified as a termination of</p> <p>4 operating lease agreement at Badlands Golf Club. The first</p> <p>5 paragraph says that it's a termination of operating lease by</p> <p>6 and between Badlands Golf Club, Inc. and American Golf</p> <p>7 Corporation.</p> <p>8 Who is the Badlands Golf Club, Inc.?</p> <p>9 A. I do not know.</p> <p>10 Can you scroll down to the signature page for me</p> <p>11 really fast?</p> <p>12 I don't know who that is.</p> <p>13 Q. You do not know who Elby J. Beal is?</p> <p>14 A. I do not. I think you're getting an interim</p> <p>15 agreement.</p> <p>16 What -- what's the year on this?</p> <p>17 Q. 2005.</p> <p>18 A. The Badlands Golf Club, Inc., I am not -- that's</p> <p>19 not a -- that is not one of our entities. When I say "our,"</p> <p>20 I mean the Peccole Family's. So I'm not sure who this is</p> <p>21 with. Hold on.</p> <p>22 Maybe this was an entity we formed to purchase</p> <p>23 back the leasehold, and we kept the leasehold in this entity</p> <p>24 while Fore Stars remained the land owner. But I don't know</p> <p>25 who the Ely [sic] guy is.</p>

<p style="text-align: right;">Page 46</p> <p>1 Scroll down again.</p> <p>2 I don't know who that is.</p> <p>3 There's Senior Tours, that's the original ground</p> <p>4 lease.</p> <p>5 Scroll down. Who is that with?</p> <p>6 My guess it's with the family limited partnership</p> <p>7 and the (inaudible) trust. Check that -- that's correct.</p> <p>8 Senior Tours, yeah, that's right. And 76 Trust</p> <p>9 they pledged and signed, yeah.</p> <p>10 THE COURT REPORTER: I'm sorry, can you speak more</p> <p>11 clearly for me?</p> <p>12 THE WITNESS: I'm just thinking -- thinking out</p> <p>13 loud. Sorry.</p> <p>14 THE COURT REPORTER: It's okay.</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. So is it -- as you sit here now, after reviewing a</p> <p>17 couple of documents, is it your belief that the original</p> <p>18 ground lease for the development of the golf club was</p> <p>19 between Peccole Family entities and trusts and Senior Tour</p> <p>20 Players, Inc.</p> <p>21 A. Yes, that is correct.</p> <p>22 Q. And then at the time that the lease was</p> <p>23 terminated, the lease was held by American Golf Corporation,</p> <p>24 correct?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. And you indicated that the Peccole Family or an</p> <p>2 entity of the Peccole Family paid 30 or \$32 million to</p> <p>3 terminate the lease that was then held by American Golf</p> <p>4 Corporation?</p> <p>5 A. That is correct.</p> <p>6 Q. Okay. Did Yohan Lowie contribute to that 30 to</p> <p>7 \$32 million termination price?</p> <p>8 A. Not from my family's perspective.</p> <p>9 MR. OGILVIE: Okay.</p> <p>10 (Defendant's Exhibit 8 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. OGILVIE:</p> <p>13 Q. Let me direct your attention to what has been</p> <p>14 marked as Exhibit 8, which is the appraisal of real property</p> <p>15 prepared for 180 Land Company, care of James J. Leavitt, by</p> <p>16 Tio S. -- Tio S. DiFederico.</p> <p>17 MR. LEAVITT: George, this is Jim Leavitt.</p> <p>18 Which exhibit is this?</p> <p>19 MR. OGILVIE: Eight.</p> <p>20 MR. LEAVITT: And so just for the record, would</p> <p>21 the memorandum of ground -- that wasn't referenced as an</p> <p>22 exhibit, so . . .</p> <p>23 MR. OGILVIE: Yeah. No, that was not -- that was</p> <p>24 not marked as an exhibit.</p> <p>25 MR. LEAVITT: Okay.</p>
<p style="text-align: right;">Page 48</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Let me direct your attention to what is Bates</p> <p>3 numbered TDG Rpt 9, 000009. Second-to-last page of Exhibit.</p> <p>4 Are you with me?</p> <p>5 A. Yes. I'm sorry. Yes.</p> <p>6 Q. Okay. Underneath the photographs -- well, the</p> <p>7 photographs -- actually, let me ask you this: Do the</p> <p>8 photographs depict what we were just discussing, the area in</p> <p>9 which the --</p> <p>10 A. They do.</p> <p>11 Q. -- development of Queensridge Towers encroached</p> <p>12 into the ground lease of -- held by American Golf?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Immediately below the photographs, there is</p> <p>15 the paragraph, "In 2005, the golf course was being leased by</p> <p>16 American Golf. Mr. Lowie stated that after the above hole</p> <p>17 conversion was completed, at a cost of approximately</p> <p>18 \$800,000 to Mr. Lowie's company, American Golf informed the</p> <p>19 Peccole family that they had broken their lease by changing</p> <p>20 the course and using a portion of it for the development."</p> <p>21 Are those two -- two sentences generally accurate?</p> <p>22 A. Yes.</p> <p>23 Q. Then the next sentence says, "American Golf</p> <p>24 demanded the Peccole Family buy out the lease for</p> <p>25 \$30 million."</p>	<p style="text-align: right;">Page 49</p> <p>1 Is -- is that accurate?</p> <p>2 A. American Golf told us to vacate the property or</p> <p>3 buy out the lease.</p> <p>4 Q. Okay. "At the same time" -- the next sentence</p> <p>5 says, "At the same time, there was a cash call for the</p> <p>6 partners in Queensridge Towers, of which the Peccole family</p> <p>7 had a 30 percent interest. To" --</p> <p>8 A. That is my understanding.</p> <p>9 Q. Okay. And then it continues on, "To resolve the</p> <p>10 issues, Mr. Lowie worked a deal with his then partners to</p> <p>11 borrow money to cover the Peccole family obligation to</p> <p>12 American Golf and buy them out of their joint ventures."</p> <p>13 Is that accurate?</p> <p>14 A. That is not my understanding.</p> <p>15 Q. Okay. What is your understanding?</p> <p>16 A. We borrowed money against the Suncoast Hotel and</p> <p>17 paid American Golf.</p> <p>18 Q. And what is your understanding based on?</p> <p>19 A. The fact that we had a loan and we borrowed money</p> <p>20 from the Suncoast Hotel and wrote a check to American Golf.</p> <p>21 Q. Okay. Let me take you to a page immediately</p> <p>22 preceding where we were in Mr. DiFederico's report.</p> <p>23 Specifically the paragraph -- second-to-last paragraph on</p> <p>24 page 3, which is Bates No. 8. It says, "It was in early</p> <p>25 2001, while Mr. Lowie's company was building a home that he</p>

<p style="text-align: right;">Page 50</p> <p>1 noted dirt being moved behind it on what was known as the 2 Badlands golf course. He stated that was when he learned 3 that the Peccole family was looking to develop homes on what 4 had been the Badlands golf course. Mr. Lowie stated that 5 the Peccole family halted this development due to a 6 waterline easement that ran under that portion of the site." 7 Are you aware of any grading being performed by 8 the Peccole -- Peccole Family or any of its entities on the 9 golf course in 2001? 10 A. Yes. 11 MR. WILLIAMS: Let me just -- let me just object. 12 Lack of foundation. 13 THE COURT REPORTER: And I'm sorry, is that 14 Mr. Leavitt or Mr. Williams? 15 MR. WILLIAMS: Yes, sorry. That was Mr. Leavitt, 16 lack of foundation. 17 BY MR. OGILVIE: 18 Q. What grading are you aware of being performed by 19 the Peccole Family entities on the Badlands Golf Course in 20 2001? 21 A. When we were developing different properties, we 22 used a part of the Badlands for landscape material. And 23 once we finished, we were grading that out, and that was 24 going to become a few homes on the Badlands, and that's when 25 we ran into this problem.</p>	<p style="text-align: right;">Page 51</p> <p>1 Q. When you say "this problem," what problem are you 2 describing? 3 A. The easements and the challenges with getting 4 those developed. 5 Q. Specifically, where on the Badlands Golf Course 6 was this? 7 A. Pull up your map and I can probably show you. 8 Q. Okay. 9 A. Pull up exhibit -- I think it's Exhibit 1, the 10 red -- the one with the red lines. 11 MR. LEAVITT: Three. 12 MR. WILLIAMS: I think it's three, yeah. 13 THE WITNESS: Exhibit 3. 14 MR. LEAVITT: Exhibit 3. Pull up three, George. 15 THE WITNESS: Oh, yeah Exhibit 1 was -- 16 All right. Can you zoom in on the Badlands? 17 Specifically, let's zoom in on that new nine holes. 18 Okay. Stop for one second. Let me get my 19 bearings. 20 Do you see -- I'm going to refer to it as the 21 Michael Galardi home. It's the big white home in the center 22 of your screen. That one. 23 I believe that that portion of that that you just 24 read to me refers to the blank land across the street that's 25 part of the golf course. Yes.</p>
<p style="text-align: right;">Page 52</p> <p>1 BY MR. OGILVIE: 2 Q. Okay. Did -- did the Peccole entity obtain a 3 grading permit for that, that grading? 4 A. I -- I don't know. I -- I suspect we did, but I 5 don't know. We wouldn't have just graded something on the 6 off chance that we could do something with it. We would 7 have gotten a permit. And I -- I know we had a dust control 8 permit for the landscape area. 9 Q. Okay. 10 A. And I know -- I can -- I can say I know we had a 11 dust control permit because that was one of my jobs back in 12 2001. 13 Q. Okay. We've been going for about an hour and a 14 half. Why don't we take a five minute break. 15 A. Okay. 16 MR. OGILVIE: Thank you. 17 (Off the record.) 18 (Defendant's Exhibit 9 was marked 19 for identification.) 20 BY MR. OGILVIE: 21 Q. Okay. Let's go back on the record. 22 Mr. Bayne, let me direct your attention to what's 23 been marked as Exhibit 9, which is identified as the 24 operating agreement of Queensridge Towers LLC. 25 Who is Queensridge Highrise LLC, which is</p>	<p style="text-align: right;">Page 53</p> <p>1 identified as the property member in -- 2 A. I believe that is one of the Peccole entities. 3 Q. Okay. So if we skip back to the last page of the 4 exhibit and look at the signature page, we have an entity 5 where the members are Queensridge Highrise LLC. 6 Is that signed by your uncle Larry Miller? 7 A. It is. 8 Q. Okay. Does that confirm your understanding that 9 Queensridge Highrise -- Queensridge Highrise LLC is a 10 Peccole entity? 11 A. It does. 12 Q. Okay. Also in this document there is an entity 13 identified as Executive QT Holdings LLC, and that's 14 identified as the construction member. 15 Do you have an understanding of who Executive QT 16 Holdings LLC is? 17 A. My understanding was that was Yohan's arm, as far 18 as I know. 19 THE COURT REPORTER: Yohan's what as far as I 20 know? 21 THE WITNESS: Yohan's construction arm of this 22 partnership. 23 BY MR. OGILVIE: 24 Q. And just for clarity, when you refer to Yohan, 25 you're referring to Mr. Lowie; is that correct?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. It is Mr. -- yes, that's correct.</p> <p>2 Q. Also identified in this document is an entity</p> <p>3 known as Queensridge Towers Investments LP, which is</p> <p>4 identified in the first paragraph as the investment member.</p> <p>5 Who is Queensridge Towers Investments LP?</p> <p>6 A. I do not know.</p> <p>7 Q. So if we look again at the signature page, there</p> <p>8 is a signature on behalf of Queensridge Towers Investments</p> <p>9 LP.</p> <p>10 Do you recognize Mr. Lowie's signature?</p> <p>11 A. It looks like Mr. Lowie's signatures.</p> <p>12 Q. Okay. In any event, that's not a Peccole entity,</p> <p>13 correct?</p> <p>14 A. That is correct.</p> <p>15 Q. At the time this operating agreement was entered</p> <p>16 into, the -- there was the Peccoles on one side and</p> <p>17 Mr. Lowie's entities on the other side, correct?</p> <p>18 A. That is correct.</p> <p>19 Q. No -- there weren't any other entities involved</p> <p>20 other than Peccole entities and Mr. Lowie's entities,</p> <p>21 correct?</p> <p>22 A. That is my understanding.</p> <p>23 Q. Okay. If we could turn to -- back to the first</p> <p>24 page of the actual agreement, Section 1.2, entitled</p> <p>25 "Business," it says, "The business of the company shall be</p>	<p style="text-align: right;">Page 55</p> <p>1 to engage in any lawful activity . . . without limitation,</p> <p>2 the acquisition, financing, and development of that certain</p> <p>3 real property consisting of approximately 14 acres of land</p> <p>4 depicted in Appendix i attached hereto and generally</p> <p>5 described as being situated at the southwest corner of the</p> <p>6 intersection of Rampart Boulevard and Alta Road in</p> <p>7 Las Vegas, Nevada," and then defines -- defines as "the</p> <p>8 'property,' which property is adjacent to the 'Badlands'</p> <p>9 Golf Course."</p> <p>10 The property that's being described here is the</p> <p>11 property on which the Queensridge Towers were ultimately</p> <p>12 developed, correct?</p> <p>13 A. That is what it sounds like.</p> <p>14 Q. Okay. Do you have any reason to believe that it</p> <p>15 isn't the property?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. Section 2.1 states that the property -- the</p> <p>18 property member -- and again, the property member is</p> <p>19 identified on the first page as the Peccole entity</p> <p>20 Queensridge Highrise LLC, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It says that the property member, or -- or</p> <p>23 the Peccole entity, shall execute and deliver for the</p> <p>24 property to convey to the company good and marketable title,</p> <p>25 right?</p>
<p style="text-align: right;">Page 56</p> <p>1 A. That's correct.</p> <p>2 Q. And the investment member -- and again, the</p> <p>3 investment member was Executive QT Holdings LLC. The</p> <p>4 executive [sic] member was to contribute \$4 million,</p> <p>5 correct?</p> <p>6 A. That is what it says.</p> <p>7 Q. So the Peccoles contributed the -- the property,</p> <p>8 and Mr. Lowie's entity contributed \$4 million; is that</p> <p>9 correct?</p> <p>10 A. That's what it says, yes.</p> <p>11 MR. LEAVITT: George, let me just enter an</p> <p>12 objection here that the documents that we're going through</p> <p>13 speak for themselves.</p> <p>14 MR. OGILVIE: Okay.</p> <p>15 THE COURT REPORTER: And was that Mr. Leavitt or</p> <p>16 Mr. Williams?</p> <p>17 MR. LEAVITT: Mr. Leavitt. Sorry.</p> <p>18 THE COURT REPORTER: That's okay.</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. So is it your understanding -- well, is it your</p> <p>21 understanding that Mr. Lowie contributed -- Mr. Lowie's</p> <p>22 entity contributed \$4 million and the -- that money was</p> <p>23 distributed to the Peccole entity?</p> <p>24 A. I do not know -- I do not know if that happened at</p> <p>25 that time.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Okay. Do you know if it happened at any time?</p> <p>2 A. I do not know.</p> <p>3 Q. Well, let's read through Section 2.1 then.</p> <p>4 A. Well, I've read this. So based on what this says,</p> <p>5 it was.</p> <p>6 Q. Okay. That --</p> <p>7 A. That is what it says.</p> <p>8 Q. So the -- the property had a value of -- an agreed</p> <p>9 upon value of \$8 million, and the Peccole Family contributed</p> <p>10 the \$8-million-valued property and Mr. Lowie's entity, in</p> <p>11 exchange for his interest in this company, Queensridge</p> <p>12 Towers LLC, paid the Peccole Family \$4 million?</p> <p>13 A. Based on what this document says, that's what it</p> <p>14 looks like it says.</p> <p>15 Q. Okay. And in terms of interest in the -- in the</p> <p>16 company Queensridge Towers LLC, the property member received</p> <p>17 40 shares of interest, the investment member 30 shares, and</p> <p>18 the construction member 30 shares, correct?</p> <p>19 A. I think that's what this says.</p> <p>20 Q. Okay. Do you have any reason to believe that</p> <p>21 that's not accurate?</p> <p>22 A. I do not.</p> <p>23 Q. So -- and the purpose of creating Queensridge</p> <p>24 Towers LLC was to develop the Queensridge Towers, correct?</p> <p>25 A. That is correct, as far as I know.</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. OGILVIE: Let me direct your attention to what 2 will be marked as Exhibit 10. 3 (Defendant's Exhibit 10 was marked 4 for identification.) 5 BY MR. OGILVIE: 6 Q. Exhibit 10 is entitled "Option to Purchase Real 7 Property." It is dated either the 4th or the 11th, I think 8 it's the 4th, day of August, 2004, between Hualapai Commons 9 Limited and EHC Hualapai LLC. 10 Who is Hualapai or what is Hualapai Commons 11 Limited LLC? 12 A. Hualapai Commons Limited LLC is a Peccole entity 13 that owns the shopping center on the corner of Hualapai and 14 Charleston. 15 Q. Okay. Do you have an understanding of what EHC 16 Hualapai LLC is? 17 A. I believe it is Mr. Lowie's entity that he ended 18 up using to purchase the end cap. 19 Q. Okay. And when you refer to the end cap, are you 20 referring to the portion of -- I can't remember which 21 shopping center. Hualapai -- 22 A. Hualapai Commons. 23 Q. Hualapai Commons, the little gray building that -- 24 that you identified on Exhibit 3? 25 A. Yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. This is the property located at 9755 West 2 Charleston Boulevard? 3 A. I apologize. I don't know the address off the top 4 of my head, but it -- that sounds correct. 5 Q. Okay. Let's go back to Exhibit 3 so we make sure 6 we're -- we have an understanding of what we're referring 7 to. Three -- 8 A. Yeah, it's between Home Depot and the rest of the 9 shopping center. 10 Q. The grayer roofed building between Home Depot on 11 the right, which is white, big white roof, and the little 12 bit smaller white roofed building on the left, there is a -- 13 again, a grayer shade building, roofed building. And that's 14 the -- what you're referring to as the end cap? 15 A. Yes. 16 Q. And that was the subject of this option to 17 purchase real property that is Exhibit 10? 18 A. Yes. 19 Q. Describe what this transaction involved. 20 A. When we were doing -- Yohan had used -- excuse me. 21 Mr. Lowie had used the end cap as a sales showroom to show 22 potential buyers of tower units what their finishes would 23 look like. So he had taken and put a lot of money into 24 that -- that showroom, and, consequently, I assume, wanted 25 to buy it. We could not sell it easily at the time. We had</p>
<p style="text-align: right;">Page 60</p> <p>1 a loan on the property, as depicted on Item D of this option 2 to purchase real property agreement, and it had not become a 3 legal parcel, as stated in Item E of this agreement. And 4 those two things needed to be resolved before he could buy 5 it and we could condominiumize it and sell him that portion 6 of the shopping center. And so we entered into this 7 agreement so that he had some level of reliance that if he 8 continued to put money into that building he would be able 9 to own the building at some point. 10 Q. Okay. Under Section 2, "Purchase Price," at the 11 bottom of that paragraph, it says, "By way of illustration, 12 if 4 million of such distributions are made, then the sum 13 due from the buyer in respect of the purchase price for the 14 property under the option is only \$100, whereas if 15 \$1 million of such distributions are made, then such sum due 16 in respect of the purchase price is \$1,500,100." 17 Can you explain what was meant by that? 18 A. Actually, no, I can't. 19 As far as I understood it, there was -- this was a 20 complicated deal. We were selling him the end cap, and we 21 were anticipating that when they developed Phase II of 22 Queensridge Towers they had to relocate our golf course 23 clubhouse, and so it was somewhat of a "once you relocate 24 our golf course clubhouse, then we'll consummate the sale of 25 the end cap."</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. LEAVITT: And my same objection here, George. 2 This is Jim Leavitt again. Documents speak for themselves. 3 BY MR. OGILVIE: 4 Q. Okay. So Phase II of Queensridge Towers, that -- 5 that was originally anticipated to be an additional two 6 towers, correct? 7 A. That is my understanding, yes. 8 Q. Okay. And then -- and so if Phase II of 9 Queensridge Towers was built, it would require the 10 demolition and, I guess, disappearance of the existing 11 Badlands clubhouse, correct? 12 A. That is correct. 13 Q. And there was an agreement by which Queensridge 14 Towers was required to incorporate a new clubhouse in one of 15 the two towers of Phase II, correct? 16 A. I don't think that that -- that had been talked 17 about. I don't think that that was necessarily the 18 agreement. I think the agreement was they would do that 19 and/or replace our clubhouse somehow with a certain amount 20 of money, as -- as discussed here. 21 Q. Okay. So with that -- with your -- with that 22 testimony, this document, "Option to Purchase Real 23 Property," was the vehicle through which the Peccole Family 24 received assurances from Mr. Lowie's entity that, in fact, 25 that would occur, correct?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Yes. That's my understanding, yes. 2 (Defendant's Exhibit 11 was marked 3 for identification.) 4 BY MR. OGILVIE: 5 Q. Let me direct your attention to what's been marked 6 as Exhibit 11, which is identified as "Badlands Golf Course 7 Clubhouse Improvements Agreements" -- or agreement singular. 8 This is entered into by and between Fore Stars 9 Limited and Queensridge Towers LLC, on September 6th, 2005. 10 Are you familiar with this document? 11 A. Hold on. Okay. Yes, I am familiar with this 12 document. 13 Q. Okay. Fore Stars is, at this time, in 14 September 2005, a Peccole-Nevada entity, correct? 15 A. Yes. 16 Q. And Queensridge Towers is the entity that was 17 formed by the operating agreement that we went through as 18 Exhibit 9, correct? 19 A. Yes. That's what we read, yeah. 20 Q. Formed between the Peccole-Nevada entity and 21 Mr. Lowie's entity, correct? 22 A. Yep. 23 Q. Okay. In Recital A it says, "This agreement is 24 being made in advance of the closing of that certain 25 securities redemption agreement, by and among the Towers,"</p>	<p style="text-align: right;">Page 63</p> <p>1 which is defined above as Queensridge Towers LLC, "and 2 Queensridge Highrise LLC." 3 Are you familiar with a securities redemption 4 agreement between Queensridge -- Queensridge Towers LLC and 5 Queensridge Highrise LLC? 6 A. I'm not. I'm not familiar with it, but it -- 7 I'm -- I'm -- I'm under the impression that there was some 8 kind of -- of agreement that happened so that IDB could 9 ultimately buy -- buy into the towers. 10 Q. Okay. Recital C says, "Highrise has agreed to 11 have its securities redeemed by the Towers." 12 Is that what you were just stating was your 13 understanding? 14 A. Yes. 15 Q. Okay. "Highrise has agreed to have its securities 16 redeemed by the Towers, in exchange for the items and 17 consideration listed in Article 1 . . . including . . . The 18 transfer of approximately 5.13 acres from the company to 19 towers." 20 A. And that's the land where I believe the golf 21 course clubhouse was sitting. 22 Q. Okay. And then -- 23 MS. HAM: So can I just -- 24 MR. OGILVIE: Yes, go ahead. 25 MS. HAM: I'd like to put -- I'm sorry. I'd like</p>
<p style="text-align: right;">Page 64</p> <p>1 to put an objection on the record. 2 Can you hear me? Thank you. 3 As the documents speak for themselves. And I'm 4 just going to make that an ongoing objection so I don't 5 interrupt again on behalf of -- 6 MR. OGILVIE: Thank you. 7 Q (By Mr. Ogilvie) Recital D says, "Towers shall pay 8 an amount not to exceed \$4 million." And then allocated as 9 follows: A million dollars -- I'm sorry. 10 "Allocated as follows: (i) for the costs and 11 expenses related to the construction of the new golf course 12 clubhouse . . . in an amount not to exceed \$3,150,000; and 13 (ii) the payment of the reconfiguration costs in an amount 14 not to exceed \$850,000." 15 Did Queensridge Towers ever construct the new 16 clubhouse? 17 A. No, not while we owned the club- -- not while we 18 owned the golf course. 19 Q. Okay. And when you say "not while we owned the 20 golf course," as of March 2015, Queensridge Towers had not 21 constructed a new clubhouse, correct? 22 A. That is correct. 23 Q. Did Queensridge Towers ever pay the 24 reconfiguration cost reflected or referenced in Recital D? 25 A. I believe they did. I'm not 100 percent positive.</p>	<p style="text-align: right;">Page 65</p> <p>1 I'd have to go back and look, but I think they did. And 2 this was -- this -- this improvements agreement, all of this 3 was kind of resolved later on when IDB ended up releasing 4 our four units, and we kind of settled everything and 5 kept -- kept the land. 6 Q. Okay. Explain that. 7 A. Later on while I was there, part of this -- part 8 of these agreements, we were owed four units in Queensridge 9 Towers as part of the compensation on the overall big 10 hundred-million-dollar sale, and they didn't have to deliver 11 those units. And I can't remember the exact time period in 12 which they did. I think it was when the towers were 13 80 percent sold. And they had not done that. We did get 14 into a -- a lawsuit with IDB over that. And IDB ended up 15 releasing those units to us and we kept the golf course 16 clubhouse property in lieu of them building this. And 17 because all of that got resolved, we were able to go ahead 18 and release Yohan's end cap. So it's -- it's kind of a -- I 19 don't know how to describe it -- a complicated transaction. 20 Q. Okay. Moving to Section 2 of Exhibit 11, 21 entitled -- the paragraph entitled "Lease," says, 22 "Simultaneous with the execution of this agreement, Towers 23 shall execute a lease with the company for the sum of \$1 per 24 year to permit the company to continue to operate the 25 current golf course clubhouse that is located on a portion</p>

<p style="text-align: right;">Page 66</p> <p>1 of the land included in the lot line adjustment, a form of</p> <p>2 which is attached hereto as Exhibit 2(a)."</p> <p>3 Is it your understanding that as part of this</p> <p>4 improvement agreement that the Peccole Family entity, or</p> <p>5 Fore Stars --</p> <p>6 A. Fore Stars.</p> <p>7 Q. I'm sorry?</p> <p>8 A. You're correct, Fore Stars.</p> <p>9 Q. -- Fore Stars was allowed to lease the current</p> <p>10 Badlands clubhouse for a dollar per year?</p> <p>11 A. That is correct, and we did pay the dollar a year.</p> <p>12 Q. Okay. And it further says, "The lease will be for</p> <p>13 an initial term of ten years and with five additional</p> <p>14 ten-year options."</p> <p>15 Is that consistent with your understanding?</p> <p>16 A. It is consistent with how I understood it.</p> <p>17 Q. Moving on to Section 3, the "Pledge of Office</p> <p>18 Collateral." It says, "A condition to the execution of this</p> <p>19 agreement and to cause the lot line adjustment to be</p> <p>20 recorded is the receipt of the office collateral as</p> <p>21 described in this Section 3."</p> <p>22 And is it your understanding that this paragraph</p> <p>23 involves the end cap, which was subject of the option to</p> <p>24 purchase real property that is Exhibit 10?</p> <p>25 A. That is my understanding.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Now, turning to the last page of Exhibit 11, it is</p> <p>2 an unsigned letter, which is redacted. Last sentence of</p> <p>3 which says -- well, the letter talks about the Badlands Golf</p> <p>4 Course Clubhouse Improvements Agreement, dated</p> <p>5 September 14th, 2005, which we've already gone through as</p> <p>6 exhibit -- oh, it is Exhibit 11. Okay.</p> <p>7 "This letter will confirm Executive Home</p> <p>8 Builder's, Inc." --</p> <p>9 Executive Home Builders, Inc. is Yohan Lowie</p> <p>10 entity, correct?</p> <p>11 A. That's my understanding, yes.</p> <p>12 Q. Okay. It says --</p> <p>13 A. It says he's the chief executive officer, I think,</p> <p>14 here.</p> <p>15 Q. Okay. "Agrees to pledge as collateral all of its</p> <p>16 rights to purchase its current corporate offices located at</p> <p>17 9755 West Charleston Boulevard."</p> <p>18 Does that address refresh your recollection as to</p> <p>19 that was where the end cap was located?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. "On the terms and conditions as outlined in</p> <p>22 the lease with Hualapai Commons Limited, LLC dated on or</p> <p>23 about June 1, 2004."</p> <p>24 Last sentence says, "Both parties agree that the</p> <p>25 pledge of this collateral shall terminate in accordance with</p>
<p style="text-align: right;">Page 68</p> <p>1 the provisions of the Improvements Agreement and the rights</p> <p>2 to purchase this office space shall be reinstated in full."</p> <p>3 Do you know if this was -- this letter was ever</p> <p>4 signed?</p> <p>5 A. I don't know if it was signed, but this letter is</p> <p>6 stating what we've just read on all those other documents.</p> <p>7 Q. Okay. And it's consistent with your understanding</p> <p>8 of the pledge by Mr. Lowie's entity to secure the clubhouse</p> <p>9 improvements agreement and the terms that are stated</p> <p>10 therein?</p> <p>11 A. Yeah, that's my understanding.</p> <p>12 Q. Okay. So let's turn to something that you</p> <p>13 referenced a little earlier, and that was the buyout by IDB</p> <p>14 of the Peccole Family's interest in Queensridge Towers, so</p> <p>15 let me direct your attention to what's being marked as</p> <p>16 Exhibit 12.</p> <p>17 (Defendant's Exhibit 12 was marked</p> <p>18 for identification.)</p> <p>19 MR. OGILVIE: And while we're at it, why don't we</p> <p>20 mark Exhibit 13, also.</p> <p>21 (Defendant's Exhibit 13 was marked</p> <p>22 for identification.)</p> <p>23 MR. LEAVITT: This is Jim Leavitt, George.</p> <p>24 Which one is Exhibit 12 and which one is Exhibit</p> <p>25 13?</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. OGILVIE: Exhibit 12 is the "Securities</p> <p>2 Redemption Agreement." Exhibit 13 is the "Securities</p> <p>3 Purchase Agreement." Now, not to be confused with</p> <p>4 additional documents with the same names, but those will be</p> <p>5 marked as Exhibits 14 and 15 and then Exhibit 16 and 17, but</p> <p>6 we'll get to those.</p> <p>7 Q (By Mr. Ogilvie) So directing your attention to</p> <p>8 Exhibit 12, the Securities Redemption Agreement between</p> <p>9 Queensridge Towers LLC and Queensridge Highrise LLC.</p> <p>10 Again, Queensridge Towers is the entity formed by</p> <p>11 the Peccoles and Mr. Lowie for the development of</p> <p>12 Queensridge Towers, correct?</p> <p>13 A. That's my understanding.</p> <p>14 Q. And Queensridge Highrise is the Peccole entity</p> <p>15 that was formed or that was part of that formation, correct?</p> <p>16 A. It was -- it was the entity that was formed to be</p> <p>17 part of that, yes.</p> <p>18 Q. Okay. So in this document "Securities Redemption</p> <p>19 Agreement," Queensridge Towers, the development company of</p> <p>20 the towers is identified as "the company" and Queensridge</p> <p>21 Highrise LLC, the Peccole entity, is the -- is identified as</p> <p>22 "the seller" in this document.</p> <p>23 Is it your understanding that it was through this</p> <p>24 document that the Peccole entity, Queensridge --</p> <p>25 Queensridge -- Queensridge Highrise, agreed to sell its</p>

<p style="text-align: right;">Page 70</p> <p>1 interest in Queensridge Towers?</p> <p>2 A. That transaction was really complicated and large.</p> <p>3 I'm not sure the mechanism in which we -- we did it. But I</p> <p>4 think Queensridge Highrise had to go away so that IDB could</p> <p>5 then either buy into Queensridge Towers and/or Queensridge</p> <p>6 Towers was able to somehow merge with IDB. And there's</p> <p>7 other documents that talk to that that I don't -- I don't</p> <p>8 have in front of me. And I wasn't party to those documents.</p> <p>9 I came right after that.</p> <p>10 Q. Okay. So let me refer you then to Exhibit 13,</p> <p>11 which is the "Securities Purchase Agreement," which</p> <p>12 addresses the issues that you -- that you were just raising.</p> <p>13 The Securities Purchase Agreement, first paragraph</p> <p>14 says that it "is entered into in Las Vegas, Nevada and is</p> <p>15 made as of September 14th, 2005, by and among IDB Group USA</p> <p>16 Investments Inc., a Delaware corporation." I don't know if</p> <p>17 it's Lyton or "Lyton US Partnership, a Delaware corporation</p> <p>18 [sic], and Queensridge Towers LLC."</p> <p>19 This is the document by which IDB and, I'm going</p> <p>20 to say, Lyton purchased its interest in Queensridge Towers</p> <p>21 LLC, which funded the buyout of the Peccole entity,</p> <p>22 Queensridge Highrise LLC, correct?</p> <p>23 MR. WILLIAMS: Objection; vague.</p> <p>24 THE COURT REPORTER: Is that Mr. Williams or</p> <p>25 Mr. Leavitt?</p>	<p style="text-align: right;">Page 71</p> <p>1 MR. OGILVIE: Williams.</p> <p>2 MR. WILLIAMS: Mr. Williams.</p> <p>3 THE WITNESS: Again, I would have to go back.</p> <p>4 There were several things that were being sold and purchased</p> <p>5 at the same time.</p> <p>6 BY MR. OGILVIE:</p> <p>7 Q. Okay. We're --</p> <p>8 A. And this --</p> <p>9 Q. I'm sorry. Let me just interrupt you.</p> <p>10 We're going to get to those other things. I just</p> <p>11 want to focus on this particular --</p> <p>12 A. This document states that IDB is purchasing into</p> <p>13 Queensridge Towers LLC. That's what it states, so I'm fine</p> <p>14 with that.</p> <p>15 Q. Okay. And the purchase -- the consideration that</p> <p>16 IDB and Lyton is -- are paying is set forth in Section 2, on</p> <p>17 the first page, of \$20 million each for a total of forty --</p> <p>18 \$40 million, correct?</p> <p>19 A. That is what it says.</p> <p>20 Q. Okay. Is it your understanding that those two</p> <p>21 entities purchased their interest in Queensridge --</p> <p>22 Queensridge Towers LLC through this document for</p> <p>23 \$40 million, correct?</p> <p>24 A. Could -- could you do me a favor and scroll down</p> <p>25 to the signature pages?</p>
<p style="text-align: right;">Page 72</p> <p>1 Yeah. I don't think that we were party to these.</p> <p>2 Q. No. You weren't.</p> <p>3 A. Okay. So I will say that it looks like from the</p> <p>4 document that's what it says.</p> <p>5 Q. Okay. Now, this document is dated the exact same</p> <p>6 day as the Exhibit 12, which is the Securities Redemption</p> <p>7 Agreement, which is the document that -- or through which</p> <p>8 the Peccole entity, Queensridge -- Queensridge Highrise LLC,</p> <p>9 sold its interest in Queensridge Towers on the very same day</p> <p>10 that IDB and Lyton purchased their interest, correct?</p> <p>11 A. That -- the dates -- the dates are the same.</p> <p>12 Q. Okay. Is it your in- -- is it your understanding</p> <p>13 that your interest, "your" being the Peccole Family entity,</p> <p>14 Queensridge Highrise LLC, was being purchased -- or its</p> <p>15 interest -- its interest in Queensridge Towers was being</p> <p>16 purchased and funded by the \$40 million consideration paid</p> <p>17 by IDB and Lyton under the Securities Purchase Agreement</p> <p>18 that is Exhibit 13?</p> <p>19 A. Are you referencing or referring just to</p> <p>20 Queensridge Highrise?</p> <p>21 Q. Yes.</p> <p>22 A. Probably. That would be my assumption, yes.</p> <p>23 Q. Okay. So let's look at the purchase price of the</p> <p>24 Peccole entity's interest in Queensridge Towers, which is</p> <p>25 page 2 of the Securities Redemption Agreement, or Exhibit --</p>	<p style="text-align: right;">Page 73</p> <p>1 Exhibit 12.</p> <p>2 The document says in Section 1.1 that the</p> <p>3 aggregate purchase price of the Peccole entity Queensridge</p> <p>4 Highrise LLC's interest in Queensridge Towers is</p> <p>5 \$28,387,167, correct?</p> <p>6 A. That's what it says.</p> <p>7 Q. And then it -- that Section 1.1 breaks out how</p> <p>8 that purchase price is arrived at. And it references in the</p> <p>9 following sentence the four condominium units in Queensridge</p> <p>10 Towers that you referenced earlier in your testimony, and it</p> <p>11 set a value for those -- for those four units at \$5,387,167,</p> <p>12 correct?</p> <p>13 A. That's what it says, yeah.</p> <p>14 Q. So all but \$23 million of the purchase price is</p> <p>15 derived through the assignment of those condominium units,</p> <p>16 correct?</p> <p>17 A. You broke up. Could you restate that sentence?</p> <p>18 Q. Doesn't matter.</p> <p>19 What I don't understand is the aggregate purchase</p> <p>20 price of \$28,387,167 set forth in the first sentence and the</p> <p>21 total of the value broken out in the second sentence, which</p> <p>22 allocates \$5,387,167 to the four condominium units, and then</p> <p>23 a cash payment of \$24 million. That adds up to \$29,387,167,</p> <p>24 as opposed to what's identified as the aggregate purchase</p> <p>25 price in par- -- in Sentence 1 \$28,387,167.</p>

<p style="text-align: right;">Page 74</p> <p>1 Can you clarify that reconciliation?</p> <p>2 A. I cannot. Sounds like somebody should give me</p> <p>3 another million dollars.</p> <p>4 Q. Okay.</p> <p>5 MR. WILLIAMS: That's what it sounds like.</p> <p>6 BY MR. OGILVIE:</p> <p>7 Q. Okay. In any event, the value associated and</p> <p>8 agreed upon between the parties for the four units was the</p> <p>9 \$5,387,167 that is set forth in paragraph -- or in Sentence</p> <p>10 2 of Section 1.1, correct?</p> <p>11 A. That's what it says, yeah.</p> <p>12 Q. Now, Section 1.4, on page 4 of Exhibit 12, talks</p> <p>13 about the lot line adjustment and references the golf course</p> <p>14 improvement -- Golf Course Clubhouse Improvement Agreement,</p> <p>15 correct?</p> <p>16 A. Yeah. That's what it says.</p> <p>17 Q. Okay.</p> <p>18 A. This follows the last -- the other documents that</p> <p>19 we've gone through.</p> <p>20 Q. Right.</p> <p>21 So it's all an interrelated transaction, that --</p> <p>22 that's what I was getting at, correct?</p> <p>23 A. Yes. That's what it looks like, all interrelated.</p> <p>24 That's -- all those documents match up to this.</p> <p>25 Q. And then specifically at Section 1.7, it kind of</p>	<p style="text-align: right;">Page 75</p> <p>1 wraps this -- it wraps that up in memorializing the fact</p> <p>2 that the last sentence of Section 1.7 says, "The term</p> <p>3 'closing' as used in this agreement shall assume that the</p> <p>4 proposed transaction by and among the company," and the --</p> <p>5 again, the company is Queensridge Towers LLC, the company</p> <p>6 developing the towers, "IDB Group USA Investments, a</p> <p>7 Delaware Corporation, and Lyton US Partnership, a Delaware</p> <p>8 general partnership, (the 'Israeli Transaction') is deemed</p> <p>9 to have occurred simultaneously with the transactions</p> <p>10 contemplated herein and shall not trigger the rights granted</p> <p>11 to the seller," the seller being the Peccole entity,</p> <p>12 Queensridge Highrise LLC, "as it relates to a change of</p> <p>13 control."</p> <p>14 Was it your understanding that if the parties --</p> <p>15 if the parties to the Securities Purchase Agreement, which</p> <p>16 is Exhibit 13, the parties being Queensridge Towers LLC, IDB</p> <p>17 Group, and Lyton Partnership, didn't close on the</p> <p>18 transaction reflected in the Securities Purchase Agreement,</p> <p>19 which is Exhibit 13, then Queensridge Towers did not have</p> <p>20 any obligation to close on this Securities Redemption</p> <p>21 Agreement, by which it was purchasing the Peccole entity's</p> <p>22 interest in Queensridge Towers for 28- or \$29,387,167?</p> <p>23 A. For some reason, I am not following what you're --</p> <p>24 what you're saying. Say it one more time.</p> <p>25 Q. Okay. I read -- I read to you the last sentence</p>
<p style="text-align: right;">Page 76</p> <p>1 of Section 7 --</p> <p>2 A. This has to close. I got that. I read the last</p> <p>3 sentence, too.</p> <p>4 Q. Okay. My question is: Is it your understanding</p> <p>5 that --</p> <p>6 A. My understanding is that if this doesn't happen,</p> <p>7 then nothing -- it all happens at once or it doesn't happen.</p> <p>8 Q. Okay.</p> <p>9 A. Is that --</p> <p>10 Q. When you say "it all happens at once," meaning --</p> <p>11 A. Both.</p> <p>12 Q. -- IDB and Lyton's purchase of an interest in</p> <p>13 Queensridge Towers LLC for \$40 million has to happen at the</p> <p>14 same time that --</p> <p>15 A. Yes, that's my understanding.</p> <p>16 Q. -- Queensridge Towers is redeeming the Peccole's</p> <p>17 interest in Queensridge Towers for 28- or \$29,387,167?</p> <p>18 A. Based on this document, that's my understanding,</p> <p>19 yes.</p> <p>20 Q. Well, I -- I'm just -- do you have any</p> <p>21 understanding independent of this that it -- that would be</p> <p>22 inconsistent with that?</p> <p>23 A. I do not.</p> <p>24 Q. It references "the Israeli transaction."</p> <p>25 Do you have an understanding that IDB and Lyton</p>	<p style="text-align: right;">Page 77</p> <p>1 were Israeli-owned entities and that's why it's being</p> <p>2 referred to as the Israeli tran- -- the Securities Purchase</p> <p>3 Agreement, by which IDB and Lyton entered in -- or purchased</p> <p>4 their interest in Queensridge Towers as "the Israeli</p> <p>5 transaction"?</p> <p>6 A. Yes. They were from Israel, and that's my</p> <p>7 understanding why it was quoted "Israeli transaction."</p> <p>8 Q. Okay.</p> <p>9 (Defendant's Exhibits 14 and 15</p> <p>10 were marked for identification.)</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. So I'm going to be referencing now two additional</p> <p>13 documents that are both named the same as Exhibits 12 and</p> <p>14 13. These will be Exhibits 14 and 15.</p> <p>15 Exhibit 14 being a Securities Redemption</p> <p>16 Agreement, and Exhibit 15 being a Securities Purchase</p> <p>17 Agreement.</p> <p>18 I should say it's not exactly identified as the</p> <p>19 same as Exhibit 13. Exhibit 15 -- Exhibit 13 was</p> <p>20 "Securities Purchase Agreement (QT)," presumably for</p> <p>21 Queens -- Queensridge Towers.</p> <p>22 Exhibit 15 is identified as "Securities Purchase</p> <p>23 Agreement (GW)," presumably relating to -- is it Great Wash?</p> <p>24 Great Wash Park, yes.</p> <p>25 Okay. Directing your attention to Exhibit 14,</p>

<p style="text-align: right;">Page 78</p> <p>1 Securities Redemption Agreement. You said that there were 2 other transactions, not just this purchase of the Peccole's 3 interest in Queensridge Towers. 4 This document reflects the purchase of the 5 Peccole's interest in Great Wash Park; is that correct? 6 A. That's what this document says. 7 Q. Okay. So Great Wash Park was the owner of the 8 property that -- where -- or on which Tivoli Village was 9 ultimately developed; is that correct? 10 A. Yes, that's my understanding. 11 Q. Okay. And Queensridge Wash LLC was a Peccole 12 entity, correct? 13 A. I'm sorry, say that again. Queensridge what, Wash 14 LLC? 15 Q. Yes. Let's go to the signature page. 16 A. My understanding is that's a Peccole entity. 17 Q. Okay. And this document reflects the transaction 18 by which Queens -- Queensridge -- Queensridge Wash LLC, in 19 other words the Peccole entity, was selling its interest in 20 Great Wash Park back to the company, correct? 21 A. Yes, that's what it looks like. 22 Q. Well, yeah. Let's look at some of the recitals 23 then. 24 It says "Whereas, the company," and the company is 25 identified as --</p>	<p style="text-align: right;">Page 79</p> <p>1 A. I'm fine to look at these recitals, but if it 2 states it on the document, I'm fine with saying it states it 3 on the document. 4 Q. Okay. But my question is going to be, is it -- 5 what your understanding was -- 6 A. Okay. 7 Q. -- and whether or not these documents reflect 8 anything that's inconsistent with your understanding. 9 A. Okay. 10 Q. So let's just go through the recitals. 11 It says, "the company is the owner of 12 approximately 28.5 acres of land," to be known -- "and 13 planned to be developed a mix-used commercial and 14 residential project to be known as 'The Village at 15 Queensridge.'" 16 It ultimately became Tivoli Village, correct? 17 A. That's my understanding, yes. 18 Q. Okay. And the company is -- is the company that 19 is identified in first -- the first paragraph as Great Wash 20 Park LLC. 21 So the company owns 28.5 acres and intends to 22 develop what has become Tivoli Village, correct? 23 A. Um-hmm. 24 Q. Is that a yes? 25 A. Yes.</p>
<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. And the seller, which is the Peccole 2 entity, is the owner of 40 shares of Great Wash Park, and 3 identifies the ownership of -- of the seller's interest. 4 And, essentially, if we go down to Section 1.1, 5 the purchase price, the Peccole entity Queensridge Wash LLC, 6 is selling back its interest in Great Wash Park LLC for 7 \$30 million, correct? 8 A. That's what it says. 9 Q. Okay. Do you have any understanding -- 10 A. I have no reason to think otherwise. 11 Q. Okay. If we go to Exhibit 15, the Securities 12 Purchase Agreement (GW), it reflects that IDB Group USA 13 Investments and Lyton US Partnership are purchasing for the 14 sum of \$30 million, in Section 2, 15 from Lyton and 15 from 15 IDB. An interest in Great Wash Park -- I'm trying to find 16 the amount of the interest. Where is that? 17 It doesn't identify what percentage of the -- of 18 Great Wash Park LLC that IDB and Lyton is purchasing, but 19 it's -- they are purchasing for \$15 million each for an 20 aggregate amount of \$30 million, which is the exact amount 21 for which the Peccole entity, Queensridge -- Queensridge 22 Wash LLC, was selling its interest in Great Wash Park LLC on 23 the exact same day, correct? 24 A. Yeah. That's what it says, yeah. 25 Q. Do you have any understanding contrary to --</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I do not. 2 Q. Okay. And again, this transaction was occurring 3 on the same date as the buyout of the Peccole entity's 4 interest in Queensridge Towers, correct? 5 A. Yeah, those are the -- those are the same dates. 6 Q. And Exhibit 14, the Securities Redemption 7 Agreement, has the same exact condition at the last page 8 of -- or last sentence of Paragraph 1.3. It says, "The term 9 'closing' as used in this agreement shall assume that the 10 proposed transaction by and among the company," company 11 being Great Wash Park LLC, "IDB Group Investments Inc., a 12 Delaware corporation, and Lyton US Partnership, a Delaware 13 partnership," again defining them -- defining it as "the 14 'Israeli Transaction,' is deemed to have occurred 15 simultaneously with the transactions contemplated herein and 16 shall not trigger the rights granted to the seller as it 17 relates to a change of control." 18 Is it your understanding that these two 19 transactions were tied to each other and the condition 20 placed on -- in the redemption of -- or the buyout of the 21 Peccole entity's interest in Great Wash Park was contingent 22 upon the closing of the \$30 million purchase by IDB and 23 Lyton of an interest in Great Wash Park? 24 A. My understanding was that these all closed 25 simultaneously and they all kind of worked together, yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Well, and not only worked together but were</p> <p>2 conditioned upon each other; is that correct?</p> <p>3 A. That is what it says, yeah.</p> <p>4 Q. Well, do you have any understanding any different</p> <p>5 than that?</p> <p>6 A. I do not.</p> <p>7 (Defendant's Exhibits 16 and 17</p> <p>8 were marked for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Let me direct your attention to what's been marked</p> <p>11 as Exhibits 16 and 17. Exhibit 16, being a "Securities</p> <p>12 Redemption Agreement." Exhibit 17 being a "Securities</p> <p>13 Purchase Agreement (SH)."</p> <p>14 First of all, to Exhibit 16, there is an entity</p> <p>15 known as "Sahara Hualapai LLC," and that is identified in</p> <p>16 this document as "the company."</p> <p>17 Is it your understanding that prior to this</p> <p>18 agreement, that is Exhibit 16, that a Peccole entity and a</p> <p>19 Lowie entity owned interests in an entity known as "Sahara</p> <p>20 Hualapai LLC"?</p> <p>21 A. No, I don't -- I don't believe that we owned</p> <p>22 interest together in that. And if we did, it was for like a</p> <p>23 few days until this transaction occurred so they could all</p> <p>24 be securities agreements, would be what I suspected. I</p> <p>25 don't think that it was -- we didn't -- I don't believe we</p>	<p style="text-align: right;">Page 83</p> <p>1 owned the property with Yohan for any significant amount of</p> <p>2 time.</p> <p>3 Q. Okay. So if we turn to the last page of Exhibit</p> <p>4 16, the signature page, it has an entity, Sahara -- Sahara</p> <p>5 Hualapai LLC, which is managed by Executive Homes Inc.,</p> <p>6 which is a Lowie --</p> <p>7 A. I don't remember being a member of Sahara Hualapai</p> <p>8 LLC. I do know that we owned Sahara Commons LTD.</p> <p>9 Q. Okay. Well, okay. So let's go back to the</p> <p>10 recitals, because that will maybe refresh your recollection.</p> <p>11 First recital says, "the company," which is Sahara</p> <p>12 Hualapai LLC, "is the owner of approximately 18 acres of</p> <p>13 land located on the northeast corner of West Sahara Avenue</p> <p>14 and Hualapai Way in Clark County."</p> <p>15 And then the next recital says, "Seller," the</p> <p>16 seller being Sahara --</p> <p>17 A. Right. The recitals lead me back down to what I</p> <p>18 said earlier. I believe that it was -- we were -- we were</p> <p>19 doing this as we were working on the overall global sale,</p> <p>20 and it was probably to make everything securities agreement,</p> <p>21 so we didn't have to do asset purchase and sale agreements.</p> <p>22 Q. Okay. So is it your understanding that the second</p> <p>23 recital is accurate, that the Peccole entity, Sahara Commons</p> <p>24 Limited, owned approximately -- or owned 49 percent of</p> <p>25 Sahara Hualapai LLC?</p>
<p style="text-align: right;">Page 84</p> <p>1 A. Based on this document, yes.</p> <p>2 Q. Okay. And the document reflects that it was</p> <p>3 selling -- it was allowing its interest in Sahara Hualapai</p> <p>4 LLC to be purchased for a total of \$20 million as set forth</p> <p>5 in Section 1.1?</p> <p>6 A. That's what it says.</p> <p>7 Q. Okay. And if we turn to Exhibit 17, Exhibit 17 is</p> <p>8 an agreement between IDB Group USA Investments, Lyton US</p> <p>9 Partnership, and Sahara Hualapai LLC. It's dated, again,</p> <p>10 September 14th, 2005, which is the same date on which the</p> <p>11 Peccoles were allowing their interest in Sahara Hualapai</p> <p>12 LLC, Great Wash Park LLC, and Queensridge Towers LLC to be</p> <p>13 bought out, correct?</p> <p>14 A. Yeah, that's what it says.</p> <p>15 Q. Okay. And in Section 2 of Exhibit 17, it reflects</p> <p>16 that IDB and Lyton were paying \$10 million each for an</p> <p>17 aggregate of \$20 million for an interest in Sahara Hualapai</p> <p>18 LLC, correct?</p> <p>19 A. Yep --</p> <p>20 Q. And if we --</p> <p>21 A. -- that's what it says.</p> <p>22 Q. If we go back to Exhibit 16, specifically</p> <p>23 Section 1.3, on the top of page 3, it again has --</p> <p>24 A. The same closing language as all the others.</p> <p>25 Q. Which is consistent with your understanding --</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Concurrent closings.</p> <p>2 THE COURT REPORTER: I'm sorry, what closing?</p> <p>3 THE WITNESS: Concurrent.</p> <p>4 BY MR. OGILVIE:</p> <p>5 Q. Okay. Not only concurrent but conditional, such</p> <p>6 that the Peccole's interest in Sahara Hualapai LLC would not</p> <p>7 be purchased without the closing of the transaction for IDB</p> <p>8 and Lyton's interest in Sahara Hualapai LLC, correct?</p> <p>9 A. Yep. That's what I understand.</p> <p>10 Q. Well, okay. Chris, reminded me that it's not</p> <p>11 exactly the same because there's some other parties included</p> <p>12 in the last sentence of the closing section of the</p> <p>13 security --</p> <p>14 A. That's why I referred to earlier, is that they</p> <p>15 were a little bit different on some of the pieces.</p> <p>16 Q. Okay. So in addition to the closing of the</p> <p>17 Securities Purchase Agreement that is Exhibit 17, there was</p> <p>18 also the requirement that a proposed transaction related to</p> <p>19 entities controlled by the Wyle Family, Meshulam Riklis, and</p> <p>20 the Leor Rozen also close as a condition for Peccole's</p> <p>21 interest to be purchased out of Sahara Hualapai LLC,</p> <p>22 correct?</p> <p>23 A. Yes. I believe -- to make it -- to try to make it</p> <p>24 simpler, I think that the idea from our family was we either</p> <p>25 close everything or we don't close. So whatever parties</p>

<p style="text-align: right;">Page 86</p> <p>1 they want to bring into individual pieces of property, we 2 didn't really care. We were getting the purchase price we 3 had agreed to, and we just needed to make sure that they all 4 closed. We didn't want to end up getting rid of one piece 5 of property here but then the bigger pieces didn't get sold. 6 Q. Okay. So if we -- and these were the only three 7 transactions that -- that you were entering into at this 8 time with Yohan Lowie related entities, correct? 9 A. No. I thought there was one more at Fort Apache 10 Commons. I could be wrong on timing, but I think it was 11 about the same time. 12 Q. Okay. As it relates to these three 13 transactions -- and when I say "these three transactions," 14 it's the buyout of the Peccole's interest in Sahara Hualapai 15 LLC, Great Wash Park LLC, and Queensridge Towers LLC -- the 16 total purchase price of the Peccole interest in those three 17 entities was \$90 million? 18 A. Yeah. I think you're missing one. I think 19 there's one more for Fort Apache Commons or Fort Apache 20 Park. I can't remember the names. There's a bunch of 21 different Fort Apaches, but -- 22 Q. Okay. 23 A. -- that Fort Apache Commons shopping center on the 24 corner of Charleston and Fort Apache, that -- our interest 25 got bought out of that at about the same time, in the same</p>	<p style="text-align: right;">Page 87</p> <p>1 way. 2 Q. So "in the same way," meaning through a securities 3 redemption agreement? 4 A. Yeah, it was -- I believe it was through a 5 securities redemption agreement. 6 Q. And a related securities purchase agreement 7 involving IDB and Lyton? 8 A. I do not know if IDB was party to that. That's 9 one of the ones I do not think IDB was party to, nor was 10 Lyton, I don't believe. 11 Q. Okay. What was the purchase -- what was the 12 purchase price of the Peccole -- 13 A. I couldn't tell you offhand. I -- my guess is it 14 rounded us out to the \$100 million approximately. 15 MR. OGILVIE: Okay. So let's look at the three 16 securities redemption agreements that we have been provided 17 with. 18 And, Elizabeth, I can represent to you that we 19 have not received a securities redemption agreement related 20 to this -- I think you described it Mr. Bayne as Fort Apache 21 Commons. And we would ask that that document be produced. 22 And -- 23 THE WITNESS: And it may not -- it may not be a 24 securities redemption agreement. It might be a purchase and 25 sale agreement, because I don't believe IDB was party to</p>
<p style="text-align: right;">Page 88</p> <p>1 that transaction. 2 MR. OGILVIE: Okay. Well, I would request that we 3 be provided with any and all documents related to that 4 buyout of the Peccole's interest in -- is it -- did you say 5 Fort Apache Commons? 6 THE WITNESS: Fort Apache Commons was the name of 7 the shopping center. And, again, my timing on that might be 8 off. It might not have happened exactly at the same time. 9 I don't think it was a concurrent closing on that one, but I 10 know it happened around the same time. 11 MR. OGILVIE: Okay. 12 MR. WILLIAMS: Let me look -- this is Butch 13 Williams. Let me look back at your subpoena, George, and 14 see if you've got that. Okay? 15 MR. OGILVIE: Well, I wasn't making that request 16 of you, Butch. I was making that of 180 Land. 17 MR. WILLIAMS: Oh, I see. All right. Thank you. 18 BY MR. OGILVIE: 19 Q. Okay. If we look at the three securities 20 redemption agreements that we do have, which are 21 Exhibits 12, 14, and 16, it appears that the total purchase 22 price is -- how does that add up to 90? -- 28 million -- 28- 23 or \$29,387 -- 387,167 for Queensridge Towers, \$30 million 24 for Great Wash Park, and \$20 million for Sahara Hualapai, so 25 20 and 30 is 50 and 28 million, so it's \$78,387,167.</p>	<p style="text-align: right;">Page 89</p> <p>1 So you believe that there was another transaction 2 that rounded the related transactions up to an even 3 \$100 million? 4 A. I'd -- yeah, I'd have to go back and look at the 5 -- all those docs -- let me see. I'd have to go back and 6 look at the docs. But yes, my understanding is there is -- 7 there was another -- another transaction with Fort Apache 8 Commons. I just don't remember the amount. 9 MR. OGILVIE: Okay. It's 11:45, and I'm just 10 about to move on to a different set of topics. Why don't we 11 break for lunch. 12 How long do you guys want to break for lunch? 13 MR. WILLIAMS: How are you doing with regard to 14 staying within the seven hours, George? 15 MR. OGILVIE: I am dead on it, Butch. 16 MR. WILLIAMS: Okay. So then you tell me how long 17 you want to break for lunch, and we'll break for lunch for 18 that amount of time. 19 MR. LEAVITT: This is Jim Leavitt. Just keeping a 20 heads-up that we're going to have some questions also. 21 Well, may have some questions also for Billy, if you want to 22 wrap up today to not have to come back. 23 MR. OGILVIE: Well . . . 24 MR. WILLIAMS: What do you think, 45 minutes? 25 MR. OGILVIE: Forty-five minutes for lunch?</p>

<p style="text-align: right;">Page 90</p> <p>1 MR. WILLIAMS: Is that good?</p> <p>2 MR. OGILVIE: Yeah.</p> <p>3 What's good for you?</p> <p>4 THE COURT REPORTER: That's fine.</p> <p>5 MR. OGILVIE: Okay. Forty-five minutes.</p> <p>6 (Off the record.)</p> <p>7 (Defendant's Exhibit 18 was marked</p> <p>8 for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Okay. Mr. Bayne, I apologize. There was one</p> <p>11 thing I skipped over on the clubhouse improvements</p> <p>12 agreement, so if we could go back to Exhibit 11. The</p> <p>13 Recital C discusses the transfer from the Peccoles of</p> <p>14 approximately 5.13 acres from Fore Stars to Queensridge</p> <p>15 Towers LLC.</p> <p>16 Do you recall that transaction?</p> <p>17 A. Yeah. I think we talked about this.</p> <p>18 Isn't this the clubhouse?</p> <p>19 Q. Yeah, it is. But I don't -- well, maybe -- maybe</p> <p>20 your memory is better than mine. I don't -- I didn't -- I</p> <p>21 don't -- I don't recall --</p> <p>22 A. If you didn't have brain damage, I'm sure your</p> <p>23 memory is better than mine.</p> <p>24 Q. I don't -- I don't recall the -- addressing the</p> <p>25 transfer of the 5.13 acres, but anyway I just want to</p>	<p style="text-align: right;">Page 91</p> <p>1 identify that acreage. So we're going to go to what's been</p> <p>2 marked as Exhibit 18, which is a 2005 boundary line</p> <p>3 adjustment.</p> <p>4 A. This was probably done for the towers, yeah.</p> <p>5 Q. Okay.</p> <p>6 A. Very familiar with this one.</p> <p>7 Q. Okay. What can you tell me about this?</p> <p>8 A. That was the boundary line adjustment that that</p> <p>9 cut into, and that's -- that's why we had to move the</p> <p>10 clubhouse.</p> <p>11 Is this the '18 or the '05?</p> <p>12 Q. This is '05.</p> <p>13 A. Yeah. This is -- this is where -- that's where</p> <p>14 the second phase of the towers would have gone over to, and</p> <p>15 we were left with basically the parking lot, and the</p> <p>16 clubhouse had to be relocated.</p> <p>17 Q. Okay. You didn't actually relocate the clubhouse?</p> <p>18 That -- it would be if -- if -- if Queensridge Towers --</p> <p>19 A. We did not relocate the clubhouse.</p> <p>20 Q. If -- if --</p> <p>21 A. That was -- that was if everything happened.</p> <p>22 Q. If Queensridge Towers elected the option to build</p> <p>23 the second tower and provide you with up to 3.15 million for</p> <p>24 a new clubhouse, that's when you would have to move the</p> <p>25 clubhouse, right?</p>
<p style="text-align: right;">Page 92</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. And --</p> <p>3 A. As far as I know.</p> <p>4 Q. I'm sorry?</p> <p>5 A. As far as I know, that's correct. That's how we</p> <p>6 understood it.</p> <p>7 Q. Okay. And I'm directing your attention to the</p> <p>8 third page of Exhibit 18, which is Bates No. CLV305598.</p> <p>9 What does this reflect?</p> <p>10 A. Well, this reflects what you just showed me. This</p> <p>11 is -- this is -- that's -- Parcel 2 is the new parking</p> <p>12 lot -- well, not the new parking lot. That's the parking</p> <p>13 lot for Badlands. Transfer Area 2 is the ingress/egress</p> <p>14 into Badlands Golf Course Clubhouse. Transfer Area 1 is the</p> <p>15 portion of Fore Stars that was being transferred to the</p> <p>16 second phase of the towers.</p> <p>17 Q. Okay. So that is part of the 5.13 acres, correct?</p> <p>18 A. Yeah. It might even say it right there.</p> <p>19 I don't see it. It might be on a table. Yeah.</p> <p>20 Yeah. There you go.</p> <p>21 Add those up, 4.66 plus the .48, gets you to the</p> <p>22 5.13, I think, or somewhere around that.</p> <p>23 Q. Okay. Area 1, Area 2, and Area 3 of the transfer</p> <p>24 areas add up to the 5.13 acres, roughly?</p> <p>25 A. Roughly.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. That was identified as the property that was being</p> <p>2 transferred by Fore Stars to Queensridge Towers LLC,</p> <p>3 correct?</p> <p>4 A. Yes. That's -- yep, that's what we understood.</p> <p>5 MR. OGILVIE: Okay. Let me move forward to some</p> <p>6 litigation that was instituted by BGC Holdings LLC against</p> <p>7 Fore Stars, and direct your attention to what's going to be</p> <p>8 marked as Exhibit 19.</p> <p>9 (Defendant's Exhibit 19 was marked</p> <p>10 for identification.)</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. Exhibit 19 is a complaint, BGC Holdings LLC versus</p> <p>13 Fore Stars, filed on August 22nd, 2007.</p> <p>14 At this point, are you the CEO of --</p> <p>15 A. I'm not the CEO. At this point, I'm a director on</p> <p>16 the board and I'm working every day at Peccole with</p> <p>17 different things.</p> <p>18 Q. Okay. Are you familiar with this lawsuit?</p> <p>19 A. I am.</p> <p>20 Q. What were the circumstances that gave rise to this</p> <p>21 lawsuit?</p> <p>22 A. Post the sale, the big sale, we had taken over --</p> <p>23 Q. I'm sorry, let me just clarify.</p> <p>24 When you talk about "the big sale," are you</p> <p>25 referring to the transactions that we went through earlier</p>

<p style="text-align: right;">Page 94</p> <p>1 in September of 2005?</p> <p>2 A. Yep.</p> <p>3 Q. Okay.</p> <p>4 A. So post --</p> <p>5 MS. HAM: I'd like to just -- sorry. Sorry.</p> <p>6 Sorry. Apologies. I just wanted to ensure that my</p> <p>7 objections are continuing on the record for the documents</p> <p>8 speak for themselves.</p> <p>9 MR. OGILVIE: Okay. Thank you.</p> <p>10 THE WITNESS: So post the big sale, we -- we took</p> <p>11 over operations of the golf course. The golf course was</p> <p>12 kind of -- kind of a losing venture for us, and we were</p> <p>13 trying to figure out how to make the golf course make money.</p> <p>14 Every year it was getting worse. I think the first couple</p> <p>15 of years we were kind of basically at a breakeven, and then</p> <p>16 it started to get worse and worse and worse.</p> <p>17 But at this early state, we talked to Hyatt and</p> <p>18 were contemplating having them come in and redo a bigger</p> <p>19 clubhouse for us and -- a clubhouse hotel and put the</p> <p>20 parking underneath or in a garage on that little piece -- if</p> <p>21 you go back to that other map, that little kind of</p> <p>22 light-bulby-looking piece. And then they were going to</p> <p>23 build casitas throughout the golf course where customers</p> <p>24 or -- their customers could stay, and we had started those</p> <p>25 conversations.</p>	<p style="text-align: right;">Page 95</p> <p>1 I believe Clyde Spitze was at a couple of those</p> <p>2 meetings as well at Bad- -- we met at the Badlands Golf</p> <p>3 Course Country Club at the restaurant in there. And we --</p> <p>4 we talked several -- talked to Hyatt several times. And</p> <p>5 then afterwards, at some point, Mr. Lowie -- he might have</p> <p>6 even walked -- walked through the middle of one of those</p> <p>7 meetings. I can't remember. But anyways, he found out, was</p> <p>8 upset, didn't feel that we had the -- the ability to do what</p> <p>9 we were contemplating doing, and then brought forth the</p> <p>10 lawsuit.</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. Do you have an understanding as to why he had that</p> <p>13 belief?</p> <p>14 A. After doing a little bit of research and</p> <p>15 understanding the situation more, I think it was because</p> <p>16 there was a -- there was a conversation, at some point,</p> <p>17 between him and other members of my family about, at some</p> <p>18 point, he would want to potentially buy the golf course.</p> <p>19 And so I felt -- I think he felt like we were not being</p> <p>20 honorable to that conversation.</p> <p>21 Q. Okay. So let me -- let me just take a slight</p> <p>22 detour and -- and discuss this negotiation with Hyatt, or</p> <p>23 the background of the negotiation with Hyatt.</p> <p>24 It was -- or was it -- was it Peccole -- the</p> <p>25 Peccole Family's understanding that it had an ability to</p>
<p style="text-align: right;">Page 96</p> <p>1 develop the golf course?</p> <p>2 A. We've always had the understanding that we could</p> <p>3 develop on the golf course. It was -- it's never been our</p> <p>4 intent to get rid of the golf course. So there was never a</p> <p>5 point in our family where we discussed just turning the golf</p> <p>6 course completely off and doing away with the golf course.</p> <p>7 But it always has been our intent -- we need to enhance the</p> <p>8 golf course and figure out a way for it to become a</p> <p>9 financially viable operation, whether that means adding a</p> <p>10 tennis club, whether that means adding a larger clubhouse</p> <p>11 that can support weddings and venues, whether that means</p> <p>12 adding a few lots here and there where we can carve out some</p> <p>13 lots onto the golf course. Those were all things that we</p> <p>14 had contemplated and talked about over the years.</p> <p>15 Q. Okay.</p> <p>16 A. But never talked about not having a golf course.</p> <p>17 (Defendant's Exhibit 20 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. Let me direct your attention to what's been marked</p> <p>21 as Exhibit 20. Exhibit 20 is a Planning & Development</p> <p>22 Department -- City of Las Vegas Planning & Development</p> <p>23 Department Application/Petition Form that the -- I'm just</p> <p>24 going to go through it top to bottom.</p> <p>25 The application/petition for a general plan</p>	<p style="text-align: right;">Page 97</p> <p>1 amendment; project address, southwest corner of Rampart and</p> <p>2 Alta Drive; project name was Townhomes at Rampart and Alta.</p> <p>3 Are you familiar with that proposed project,</p> <p>4 Townhomes at Rampart and Alta?</p> <p>5 A. I am not. But at the time we were doing the</p> <p>6 tower -- based on that date of August 31st, 2005, we were</p> <p>7 working on the tower. And before the tower project with</p> <p>8 Mr. Lowie, we were working on a timeshare project. And this</p> <p>9 was probably having to do with some aspect of one of those.</p> <p>10 Q. Okay.</p> <p>11 (Defendant's Exhibit 21 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. OGILVIE:</p> <p>14 Q. Let me direct your attention to what's been marked</p> <p>15 as Exhibit 21, which is a site plan/landscape plan for a</p> <p>16 project known, or described down at the bottom left-hand</p> <p>17 corner, of "Townhomes at Rampart and Alta." It's a JMA</p> <p>18 schematic that has some plan development at the southwest</p> <p>19 corner of Alta and Rampart.</p> <p>20 Are you familiar with this project?</p> <p>21 A. I'm not. This is the first time I've ever seen</p> <p>22 this. But, again, this -- this would be consistent with</p> <p>23 what our intent with the golf course was.</p> <p>24 Q. Which -- what intent is that specifically?</p> <p>25 A. To make it a financially feasible venture and to</p>

<p style="text-align: right;">Page 98</p> <p>1 develop where we could in a way that kept the golf course 2 and allowed us to figure out how to make money on that land. 3 Q. Okay. So, again, Exhibit 21 references Townhomes 4 at Rampart and Alta. And if we go back to the 5 application/petition form, which is Exhibit 20, it 6 references the same project name. And then it is signed by 7 your uncle Larry Miller, right? 8 A. That is what the document showed, yes. 9 Q. And he is signing on behalf of Fore Stars Limited, 10 correct? 11 A. Yes. And that's because, at that point, Fore 12 Stars would have been the fee simple property owner. 13 Q. Okay. And then if we look down at the -- again, 14 up at the top, one, two, three, four, five lines down, it -- 15 there's an indication or a blank for general plan. It says 16 "existing PROS." 17 That is parks, recreation, and open space, 18 correct? 19 A. I don't know what PROS stands for, but that could 20 be. 21 Q. Okay. So there -- this general plan amendment is 22 seeking to amend from PROS to the proposed M-LA; is that 23 correct? 24 MR. LEAVITT: Let me make an objection here. I 25 want to make an objection --</p>	<p style="text-align: right;">Page 99</p> <p>1 MS. HAM: Let me put my objection on the record as 2 to lacks foundation. Thank you. 3 MR. OGILVIE: Well, it's a -- 4 MR. LEAVITT: Sorry. This is Jim Leavitt. 5 MR. OGILVIE: It's a public record. It's self 6 authenticating, but go ahead. 7 MR. LEAVITT: Hold on. Hold on. I'm going to 8 make an objection here that in addition to lacking 9 foundation, it assumes -- assumes facts not in evidence. As 10 you're well aware, this is an issue in the trial. 11 MR. OGILVIE: It -- so -- so -- so first of all, 12 let me -- let me ask this. 13 Can I -- can I limit the objections to one 14 attorney or the other and not both? 15 MR. LEAVITT: Sorry -- 16 MS. HAM: Mr. Ogilvie, I represent Fore Stars, so 17 I'm allowed to present separate objections than Mr. Leavitt, 18 who is here representing 180 Land. 19 BY MR. OGILVIE: 20 Q. Okay. All right. 21 Let me ask you this: Do you recognize your uncle 22 Larry Miller's signature, and is that his signature at the 23 bottom of this page? 24 A. I do recognize his signature, yes. 25</p>
<p style="text-align: right;">Page 100</p> <p>1 Q. And is that his signature? 2 A. Well, I wasn't there when he signed it, but that 3 looks like his signature. 4 Q. Okay. The representative is Moreno & Associates, 5 contact Greg Borgel. 6 Do you know of an individual by the name of Greg 7 Borgel? 8 A. I do know an individual by the name of Greg 9 Borgel. 10 Q. Did he perform land use regulation work for -- on 11 behalf of Fore Stars? 12 A. At about that time, when Clyde stopped, they did 13 use Greg Borgel, and they also used another company. The 14 name will come to me in a second. We used DC Wallace for a 15 few things. Roy Clark I think is his name, I think. 16 Q. Okay. 17 (Defendant's Exhibit 22 was marked 18 for identification.) 19 BY MR. OGILVIE: 20 Q. Let me direct your attention to what's been marked 21 as Exhibit 22. It is an August 31st, 2005 letter from 22 Cherie Guzman at JMA Architecture Studios. It is described 23 as "Queensridge Townhomes, Justification Letter/Project 24 Description," and it indicates that, "We are requesting a 25 general plan amendment for the development of a 34-unit</p>	<p style="text-align: right;">Page 101</p> <p>1 townhome project." It goes on to talk about the project a 2 little bit. The last sentence of the first paragraph says, 3 "The general plan designation is PROS and the site is zoned 4 R-PD7." 5 Do you see that? 6 A. I do. 7 Q. Do you have an understanding whether -- in 8 August 2005, whether the Peccole Family understood that the 9 general plan designation for the Badlands property was PROS? 10 A. Having gone back through our history a little bit 11 and going through some of our documents, I think we had an 12 understanding that it was -- the general plan was PROS 13 because we would often go in when we got tax bills, and the 14 tax bills would come in, and then we would go ahead and -- 15 and fight to get the tax bills reduced because it was under 16 a general plan designation of PROS. So I would say we did 17 understand that. 18 Q. Okay. 19 MR. LEAVITT: And just to lodge a continuing 20 objection on that, George. Lacks foundation and also calls 21 for a legal conclusion. 22 MR. OGILVIE: Duly noted. 23 THE COURT REPORTER: Was that Mr. Leavitt? 24 MR. OGILVIE: Yes, that was Mr. Leavitt. 25 (Defendant's Exhibit 23 was marked</p>

<p style="text-align: right;">Page 102</p> <p>1 for identification.)</p> <p>2 BY MR. OGILVIE:</p> <p>3 Q. Mr. Bayne, let me direct your attention to what's</p> <p>4 been marked as Exhibit 23. It is a September 1st, 2005</p> <p>5 letter from Cherie Guzman, again from Cherie Guzman at JMA</p> <p>6 Architecture Studios, to the City of Las Vegas. This is</p> <p>7 essentially a request for abeyance related to the same</p> <p>8 application number, SDR-8632, which you can compare to</p> <p>9 Exhibit 20. It doesn't identify it on Exhibit 22. Exhibit</p> <p>10 20 -- let's see. Same JMA number is on both 2003, 305.</p> <p>11 Same GPA, which is general plan amendment, No. 9069 on both.</p> <p>12 And that is the same as the general plan amendment number on</p> <p>13 Exhibit 20, which is the application itself GPA-9069.</p> <p>14 So in this letter, Exhibit 23, JMA is requesting</p> <p>15 that the hearing on the project, the 32-unit project known</p> <p>16 as "Townhomes at Rampart and Alta," be held until the</p> <p>17 October 6th planning commission meeting.</p> <p>18 You were not involved in this development at all?</p> <p>19 A. No. February '06 is when I came in.</p> <p>20 Q. Okay.</p> <p>21 A. Came back.</p> <p>22 (Defendant's Exhibit 24 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. OGILVIE:</p> <p>25 Q. Let me direct your attention to what's been marked</p>	<p style="text-align: right;">Page 103</p> <p>1 as Exhibit 24, which is a November 10th, 2005 letter from J.</p> <p>2 Bruce Bayne, Vice President, on Peccole Nevada letterhead.</p> <p>3 Was your -- was your dad J. Bruce Bayne?</p> <p>4 A. Yes, that's my father.</p> <p>5 Q. Okay.</p> <p>6 A. And that's his signature.</p> <p>7 Q. Okay. And he was vice president of Peccole Nevada</p> <p>8 in 2005?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. This letter is addressed to Margo Wheeler,</p> <p>11 Director of Planning at City of Las Vegas, and it requests</p> <p>12 the removal of Case Item No. SDR86632, which has an</p> <p>13 additional six in it from the SDR number referenced in the</p> <p>14 other documents which reference SDR-8632. But "Please</p> <p>15 remove the case on Item SDR86632, the condominium project</p> <p>16 located at the southwest corner of Alta and Rampart. This</p> <p>17 request should be made as part of the file that Peccole</p> <p>18 Nevada no longer has further interest in pursuing this item.</p> <p>19 Thank you for your assistance in this matter."</p> <p>20 Let me direct your attention to the next in order,</p> <p>21 which will be Exhibit 25.</p> <p>22 (Defendant's Exhibit 25 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. OGILVIE:</p> <p>25 Q. Exhibit 25 is the November 15th, 2005 letter to</p>
<p style="text-align: right;">Page 104</p> <p>1 the City of Las Vegas from, again, Cherie -- Cherie Guzman</p> <p>2 at JMA Architecture Studios regarding the Townhomes at</p> <p>3 Rampart and Alta. Again, the same GPA number, General Plan</p> <p>4 Amendment No. 9069, in which Ms. Guzman advises the city</p> <p>5 that the applicant would like to withdraw at the general</p> <p>6 plan amendment of PR -- PROS to M-LA in connection with</p> <p>7 SDR-8632 and Zoning Event No. 9006 for the development of</p> <p>8 32 -- of the 32-unit townhome project.</p> <p>9 Do you have any reason to question whether or not</p> <p>10 these documents, Exhibits 20, 21, 22, 23, 24, and 25, which</p> <p>11 are all -- all identify Townhomes at Rampart and Alta are</p> <p>12 not the same project?</p> <p>13 A. I do not have any reason to question that.</p> <p>14 Q. Okay.</p> <p>15 MS. HAM: I'm just going -- I don't know if we</p> <p>16 kept an ongoing foundational -- foundation objection to all</p> <p>17 of the documents that, according to Mr. Bayne's testimony,</p> <p>18 preceded his . . .</p> <p>19 MR. OGILVIE: Okay. So noted. Yeah. That's</p> <p>20 fine.</p> <p>21 Q (By Mr. Ogilvie) So going back to how I started</p> <p>22 this, which was the complaint filed by BGC Holdings LLC</p> <p>23 against Fore Stars. And what prompted that complaint was</p> <p>24 some discussions between Fore Stars and Hyatt to develop</p> <p>25 a -- you indicated, I think it involved a new clubhouse.</p>	<p style="text-align: right;">Page 105</p> <p>1 Did you say that it also involved a new hotel and</p> <p>2 casitas?</p> <p>3 A. It was a non-gaming hotel and casitas, yeah.</p> <p>4 Q. Okay. And where would the casitas have been</p> <p>5 developed?</p> <p>6 A. They would have been spaced out throughout the</p> <p>7 golf course, was what we had talked about.</p> <p>8 Q. Okay. So if we turn to Exhibit 1 of Exhibit 19,</p> <p>9 it is a May 31st, 2007 letter on Executive Home Builders,</p> <p>10 Inc. letterhead to Mr. Larry Miller and Mr. Bruce Bayne at</p> <p>11 Fore Stars Limited. It is entitled -- or it's regarding</p> <p>12 Badlands Golf Course Las Vegas, Nevada. And the first</p> <p>13 sentence says, "This letter of intent, when countersigned by</p> <p>14 Fore Stars Limited, the owner of the real estate and</p> <p>15 business operation known as 'Badlands Golf Course,' will</p> <p>16 confirm the intent of seller," Fore Stars Limited, "and</p> <p>17 Yohan Lowie, or IDB Development Corporation Limited, and/or</p> <p>18 its subsidiary PBC Limited," and then it goes on to describe</p> <p>19 the sale and purchase of the Badlands Golf Course. And we</p> <p>20 go skip down to paragraph 2, has a purchase price of</p> <p>21 \$12 million.</p> <p>22 Are you familiar with the -- a negotiation in 2007</p> <p>23 for the -- for Mr. Lowie's purchase of the golf course for</p> <p>24 \$12 million?</p> <p>25 A. I was not, but I am now.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. Oh.</p> <p>2 A. So before our talk right this second, I became</p> <p>3 familiar with it.</p> <p>4 Q. Okay. So when I asked you before what -- if</p> <p>5 you're aware of the circumstances that gave rise to this</p> <p>6 dispute, at that time you were not aware of this exhibit</p> <p>7 which is described by Mr. Lowie in the letter as a letter of</p> <p>8 intent; is that correct?</p> <p>9 A. That is correct. And then I went back and</p> <p>10 reviewed the complaint and remembered it.</p> <p>11 Q. Okay.</p> <p>12 A. And could you scroll down to the signature line?</p> <p>13 Q. Sure. What -- what page?</p> <p>14 A. I think it's the last page or second-to-last page.</p> <p>15 Q. Of the complaint or the exhibit?</p> <p>16 A. Right here. Yeah. Okay. That's what I wanted to</p> <p>17 see.</p> <p>18 MR. LEAVITT: George, scroll back to that. Yeah.</p> <p>19 MR. OGILVIE: You good?</p> <p>20 MR. LEAVITT: Yes. Thank you, George.</p> <p>21 MR. OGILVIE: You bet.</p> <p>22 Q (By Mr. Ogilvie) This lawsuit was ultimately</p> <p>23 resolved through a settlement agreement.</p> <p>24 Are you aware of that?</p> <p>25 A. I'm sorry. Say that one more time.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. The lawsuit was ultimately resolved through a</p> <p>2 settlement agreement between --</p> <p>3 A. That was one of the first things I was out at Sam</p> <p>4 Lionel's office.</p> <p>5 THE COURT REPORTER: I'm sorry, out of who's</p> <p>6 office?</p> <p>7 MR. OGILVIE: Sam Lionel, S-a-m, L-i-o-n-e-l.</p> <p>8 Q (By Mr. Ogilvie) Could you explain what you mean</p> <p>9 by what you -- what you just testified?</p> <p>10 A. Yeah. We went to that office to -- to settle it.</p> <p>11 Mr. Lowie came and I went myself, my father Bruce, my uncle</p> <p>12 Larry. I'm trying to think. Kerry Walters was there as</p> <p>13 well. I think -- I don't remember if -- I don't think Todd</p> <p>14 was there, Todd Davis. I think maybe Frank Pankratz was</p> <p>15 there. There was one other person with Mr. Lowie, but I</p> <p>16 don't remember who. And -- and we -- we kind of hashed this</p> <p>17 out and settled this.</p> <p>18 Our attorney at the time was -- what's his name?</p> <p>19 His office was over in Tivoli for a while. Yeah, maybe.</p> <p>20 Anyways, I guess it's probably not that important. But yes,</p> <p>21 I remember this settlement.</p> <p>22 Q. Matthew Forstadt at Kolesar & Leatham?</p> <p>23 A. Say the name again.</p> <p>24 Q. Matthew Forstadt, F-o-r-s-t-a-d-t.</p> <p>25 A. He was one of them, but he wasn't the one that was</p>
<p style="text-align: right;">Page 108</p> <p>1 doing most of the talking. It was a different man.</p> <p>2 MR. OGILVIE: Okay. Let me direct your attention</p> <p>3 to what's been marked as Exhibit 26.</p> <p>4 (Defendant's Exhibit 26 was marked</p> <p>5 for identification.)</p> <p>6 MR. OGILVIE: Why don't you scroll through it for</p> <p>7 them.</p> <p>8 Q (By Mr. Ogilvie) And I'm going to ask you if you</p> <p>9 recognize this document and if this document is the</p> <p>10 settlement that Fore Stars and Mr. Lowie's entity, BGC</p> <p>11 Holdings LLC, entered into to resolve the lawsuit.</p> <p>12 A. Yes, I do recognize the document, and this is the</p> <p>13 document that resolved the lawsuit.</p> <p>14 Q. So on page 1 of Exhibit 26, the settlement</p> <p>15 agreement, it references in Section 2 a "Restrictive</p> <p>16 Covenant," where it states "Fore Stars has agreed that the</p> <p>17 real property" -- what's that word? Oh, that's "will remain</p> <p>18 a golf course or open space and have no development</p> <p>19 activities upon it, other than" -- and then can you -- could</p> <p>20 you read what it says handwritten?</p> <p>21 A. You have to Zoom in. I was just trying to figure</p> <p>22 out what Sam wrote.</p> <p>23 Q. Does it say --</p> <p>24 A. "Normal and usual course of business activities</p> <p>25 for the golf" something.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Golf course and those activities going back to</p> <p>2 the --</p> <p>3 A. Yeah.</p> <p>4 Q. So if I read it as I think it reads: Fore Stars</p> <p>5 has agreed that the real property, and the real property is</p> <p>6 defined above as -- with parcel numbers, but also with the</p> <p>7 name Badlands Golf Course located at 9119 Alta Drive, will</p> <p>8 remain a golf course or open space and have no development</p> <p>9 activities upon it, other than normal, in the usual course</p> <p>10 of business activities for the golf course and those</p> <p>11 activities expressly permitted by this agreement, unless</p> <p>12 consented to in writing by Queensridge Towers LLC (the</p> <p>13 "Restrictive covenant").</p> <p>14 Did I -- did I read that correctly?</p> <p>15 A. Yeah, I'm -- I'm reading the same thing.</p> <p>16 Q. Okay. And then it -- it has a -- a sunset of the</p> <p>17 restrictive covenant, which will be such time as Phase II of</p> <p>18 the Queensridge Towers Development is completed and all</p> <p>19 units offered to the public for sale are sold and have</p> <p>20 closed escrow.</p> <p>21 So that -- that -- I just -- just want to make</p> <p>22 sure have I your understanding of what that means.</p> <p>23 Phase II of the Queensridge Towers Development are</p> <p>24 the third and fourth towers that were anticipated at this</p> <p>25 time; is that correct?</p>

<p style="text-align: right;">Page 110</p> <p>1 A. That -- that is my understanding, yes.</p> <p>2 Q. So were you privy to the conversations in which</p> <p>3 Mr. Lowie and/or his attorney were making the request --</p> <p>4 making this request in these negotiations?</p> <p>5 A. I don't know how to answer that. I was privy to</p> <p>6 this negotiation at Sam -- Sam Lionel's office. I was in</p> <p>7 the room when it happened.</p> <p>8 Q. Do you have an understanding as to why Mr. Lowie</p> <p>9 was making this request for a restrictive covenant?</p> <p>10 MR. LEAVITT: Just a quick objection, calls for</p> <p>11 state of mind.</p> <p>12 MR. OGILVIE: No, no, it doesn't. The question</p> <p>13 is: Do you have an understanding? That's a yes or no.</p> <p>14 MR. LEAVITT: I'm simply stating an objection.</p> <p>15 You can move on.</p> <p>16 MR. OGILVIE: Okay.</p> <p>17 THE COURT REPORTER: And that was Mr. Leavitt?</p> <p>18 MR. OGILVIE: That was Mr. Leavitt.</p> <p>19 Q (By Mr. Ogilvie) Do you have an understanding of</p> <p>20 why Mr. Lowie was making this request for a restrictive</p> <p>21 covenant?</p> <p>22 A. I think he was worried about us developing on the</p> <p>23 golf course and harming his ability to develop the second</p> <p>24 phase of the towers in a way that would -- that would hurt</p> <p>25 the sales of those towers. He didn't want anything that</p>	<p style="text-align: right;">Page 111</p> <p>1 would damage -- damage that situation for -- for him and</p> <p>2 IDB. That's why -- actually, you'll see later on when he</p> <p>3 gives us the parameters on what we can develop, they</p> <p>4 actually do allow us to develop, just not directly behind</p> <p>5 the towers.</p> <p>6 Q. Okay. And what's the basis of your understanding?</p> <p>7 A. This document.</p> <p>8 Q. Okay. Was -- did Mr. Lowie express that concern?</p> <p>9 A. Yeah. If you go back and read the complaint, they</p> <p>10 express it in the complaint, too, but yes.</p> <p>11 Q. Okay.</p> <p>12 A. Under 4.2, it -- it tells you what we can build,</p> <p>13 so they were clearly okay with us building on the golf</p> <p>14 course. They just didn't want it to hurt the towers, the</p> <p>15 second . . .</p> <p>16 Q. Okay. And you referred to Section 4.2, which says</p> <p>17 that Fore Stars may construct up to 30 single story, one</p> <p>18 bedroom, one bathroom casitas to be used solely for short</p> <p>19 term rental purposes.</p> <p>20 Was that last portion "short term rental</p> <p>21 purposes," did Mr. Lowie express his concern that if they</p> <p>22 were used for sale purposes that that may harm sales in</p> <p>23 Queensridge Towers?</p> <p>24 A. He did not express that to me.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 112</p> <p>1 A. No, not in that meeting.</p> <p>2 The issue was he didn't want us to develop things</p> <p>3 that were taller than the -- than the -- I can't remember</p> <p>4 the word. The -- kind of the first level of the towers, so</p> <p>5 he didn't want us to develop things so tall it would</p> <p>6 obstruct the views and cause people in the towers to be</p> <p>7 upset over their -- their views.</p> <p>8 Q. Is it -- was the word you were looking for the</p> <p>9 "podium"?</p> <p>10 A. Yes. Thank you. The podium level.</p> <p>11 Q. Okay.</p> <p>12 A. And that's why it says here -- and we can develop</p> <p>13 stuff to the west.</p> <p>14 Q. And you're referring to the second sentence, "To</p> <p>15 the extent the casitas are located west of Phase II of</p> <p>16 Queensridge Towers Development, the location, architecture,</p> <p>17 size, color, construction materials and overall design of</p> <p>18 the casitas will not require prior approval of BGC," which</p> <p>19 is Mr. Lowie's entity. But the next sentence says if</p> <p>20 they're located anywhere else on the Badlands Golf Course,</p> <p>21 Mr. Lowie's entity has to be given its prior -- has to give</p> <p>22 its prior written approval, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. If we go back to -- it's the very bottom of the</p> <p>25 first page and continuing onto the second page, it gives an</p>	<p style="text-align: right;">Page 113</p> <p>1 expiration of the restrictive covenant, and that states</p> <p>2 specifically "the restrictive covenant shall expire ten</p> <p>3 years after its -- and I believe it says "delivery to</p> <p>4 Queensridge Towers LLC."</p> <p>5 Did I read that correctly?</p> <p>6 A. That is how I read it, too.</p> <p>7 Q. Okay. So in the sentence before that, Queensridge</p> <p>8 Towers was given the option to record the restrictive</p> <p>9 covenant with the Clark County Recorder's Office, but -- so</p> <p>10 essentially -- oh, I see.</p> <p>11 So it originally -- this originally said that the</p> <p>12 sunset provision was ten years after that recording, but it</p> <p>13 was changed by agreement to delivery --</p> <p>14 A. Once we delivered it to Queensridge Towers.</p> <p>15 Basically, once this was signed.</p> <p>16 Q. Okay. All right. So -- and it was --</p> <p>17 A. And we didn't know and couldn't force them to</p> <p>18 record it.</p> <p>19 Q. Right.</p> <p>20 A. So we just -- we were just -- once it's delivered,</p> <p>21 we're good.</p> <p>22 Q. Okay. So if we look at the signature page again,</p> <p>23 it's executed by both parties on Feb- -- January 28th, 2008.</p> <p>24 A. Right. So that -- that's correct. And then that</p> <p>25 would -- if you followed the -- the math, that would take</p>

<p style="text-align: right;">Page 114</p> <p>1 you to 2018, you still had the restrictive covenant in 2 place. 3 Q. Right. Okay. 4 Unless -- unless Phase II of Queensridge Towers 5 was completed and sold out before January 2018, correct? 6 A. Or if Queensridge Towers allowed you to build 7 something different, either way. 8 Q. Okay. So you either were restricted to building 9 west of Queensridge Towers Phase II or get approval of 10 Queensridge Towers for building casitas, anything east of 11 that demarcation line, or the sunset -- or the restrictive 12 covenant would sunset either upon the completion and sellout 13 of Queensridge Towers Phase II or ten years; is that right? 14 A. Yep, that's right. That's my understanding. 15 Q. There's also a right of first refusal that is 16 Section 3. It talks about BGC Holdings LLC will have a 17 right of first refusal to purchase the Badlands Golf 18 Course -- has a right of first refusal to purchase the 19 Badlands Golf Course until 75 percent of Phase II of 20 Queensridge Towers is completed and 75 -- well, I'm sorry, 21 until Phase II is completed and 75 percent of the units are 22 sold or seven years after this document is executed, which 23 is 2015, correct? 24 A. Yes. Well, no, it was executed in 2008, but seven 25 years post that would have been 2015.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. So the sunset of the right of first refusal 2 is one of those two conditions, the completion of Phase II 3 of Queensridge Towers and sale of 75 percent of its units or 4 seven years after the execution of this document; is that -- 5 A. Yes. Based on this paragraph, that's what that 6 says. 7 Q. Okay. Do you have any reason to believe that's 8 incorrect? 9 A. Nope. 10 (Defendant's Exhibit 27 was marked 11 for identification.) 12 BY MR. OGILVIE: 13 Q. Let me direct your attention to what's been marked 14 as Exhibit 27. It is a document entitled "Restrictive 15 Covenant," that was recorded with Clark County Recorder's 16 Office on March 14th, 2008. 17 Is this the restrictive covenant referenced in the 18 settlement agreement that is Exhibit 26? 19 A. That is my understanding, yes. 20 (Defendant's Exhibit 28 was marked 21 for identification.) 22 BY MR. OGILVIE: 23 Q. Let me direct your attention to what's been marked 24 as Exhibit 28. It is entitled "Settlement Agreement and 25 Mutual Release." This was entered into Queensridge Towers</p>
<p style="text-align: right;">Page 116</p> <p>1 LLC, Queensridge Highrise LLC, and Fore Stars. 2 A. Yeah. It's a different settlement agreement. 3 Q. Right. Yes. 4 A. Okay. 5 Q. It says -- 6 A. I -- I know this one as well. 7 Q. Okay. Good. 8 Were you -- did you participate in the -- 9 A. I -- I did this one. 10 Q. Okay. When you say you did this one, does that 11 mean on behalf of the Peccole -- 12 A. On behalf of Peccole, I negotiated this one with 13 our attorneys. 14 Q. Okay. Good. 15 Let me direct your attention to Section 3, which 16 is "Improvements Agreement Election or Lot Line Adjustment." 17 Can you explain to me what exhibit -- Section 3 is 18 all about? 19 A. Scroll down so I can see it and remind myself of 20 it. 21 Q. Oh, sorry. Do you want to go through the first 22 two pages first? 23 A. Oh, no, I don't need to do that. I just want to 24 look at this real fast. 25 Q. Okay.</p>	<p style="text-align: right;">Page 117</p> <p>1 A. So we agree here that they're going to give us 2 back where our clubhouse is and there's going to be a lot 3 line adjustment, and, thus, they're not going to have to 4 build us a clubhouse. 5 Q. Okay. Now, this references the "Improvements 6 Agreement," the -- yes, the "Improvements Agreement." Is that 7 Badlands Golf Course Clubhouse Improvements Agreement that 8 is Exhibit 11 that we previously went through? 9 A. Yes. That 3 1/2 million and 850,000 or whatever, 10 yes. 11 Q. Okay. By which Fore Stars -- or actually, 12 Highrise -- I'm sorry, Queensridge Highrise LLC transferred 13 the 5.13 acres to Queensridge Towers also, correct? 14 A. That's correct. 15 Q. Okay. 16 A. Now, in this agreement, they transferred the 17 property -- some of the property back. I don't think they 18 transferred all of it. I think we carved out like a 19 little -- they carved out a little bit -- piece. It might 20 even identify it. I think it does. 21 Q. So -- 22 A. And this agreement, I don't think Yohan -- I don't 23 think Mr. Lowie signs this agreement. I don't think he's 24 party to this agreement. 25 Q. Okay. Is it your understanding that at some point</p>

<p style="text-align: right;">Page 118</p> <p>1 Mr. Lowie was no longer a part of I- -- of Queensridge 2 Towers LLC?</p> <p>3 A. That is my understanding.</p> <p>4 Q. Okay. And that IDB Group and Lyton were bought -- 5 bought Mr. Lowie out of Queensridge Towers?</p> <p>6 A. I don't -- I don't know if they -- I don't know 7 how they did their divorce. And Lyton, I've never been very 8 familiar with Lyton. IDB Group, I knew, I knew them. I 9 knew a man named Noam Ziv that kind of ran the IDB Group in 10 Las Vegas. But how -- how him and Mr. Lowie did their 11 breakup, I -- I am not privy to, nor do I -- I know about.</p> <p>12 Q. Okay.</p> <p>13 THE COURT REPORTER: I'm sorry, what was the other 14 name you mentioned?</p> <p>15 THE WITNESS: Noam Ziv, N-o-a-m, Z-i-v.</p> <p>16 THE COURT REPORTER: Thank you.</p> <p>17 BY MR. OGILVIE:</p> <p>18 Q. So if we turn to page 11 of Exhibit 28, the 19 Settlement Agreement and Mutual Release, that is the 20 signature page. It is signed on behalf of Queensridge 21 Towers by Noam Ziv, as you indicated, and Matthew Bunin. 22 And then Queens- -- on behalf of Queensridge Highrise LLC, 23 which is managed by Peccole-Nevada, by your uncle Larry A. 24 Miller as CEO of Peccole-Nevada Corporation; is that 25 correct?</p>	<p style="text-align: right;">Page 119</p> <p>1 A. That is all correct, based on this document, yep.</p> <p>2 Q. Okay. And then on behalf of Fore Stars, by its 3 manager Peccole-Nevada Corporation, by Peccole-Nevada 4 Corporation's CEO Larry Miller, correct?</p> <p>5 A. That is.</p> <p>6 Q. Okay. So I want to go back to Section 3. And in 7 the -- just above the middle of that paragraph, it says 8 "Towers," meaning Queensridge Towers, "and Fore Stars have 9 agreed that at any time between the effective date," the 10 effective date is defined as June 18th, 2013 in the first 11 paragraph, "and 18 months thereafter," defined as the 12 election date, "Towers shall have the option to terminate in 13 full all obligations . . . under the Improvements Agreement 14 as of the election date, including the Improvements 15 Agreements agreement financial obligation, in exchange for 16 the additional golf course property (defined in this Section 17 3) (the option set forth in this sentence referred to as the 18 'termination option.'"</p> <p>19 So at this time, Queensridge Towers is not making 20 an election at -- it's -- it's agreeing to -- the parties 21 are agreeing to an 18-month election period, correct?</p> <p>22 A. Yeah, that's what it says.</p> <p>23 Q. Okay. And the election --</p> <p>24 A. If I remember right, I think Queensridge was in 25 the process of trying to get -- they were -- they were going</p>
<p style="text-align: right;">Page 120</p> <p>1 from two more towers on Phase II to one single tower on 2 Phase II, and they were going back through zoning and 3 planning on that, and so they needed some wiggle room to -- 4 to do that.</p> <p>5 Q. Okay. So this agreement allowed -- allowed 6 Queensridge Towers to terminate the improvement -- the 7 clubhouse improvement agreement by transferring what is 8 described on Exhibit C, which I believe we've already 9 discussed in a prior document; is that correct?</p> <p>10 A. Yeah.</p> <p>11 Q. So let's turn to Exhibit C real quick.</p> <p>12 There's a legal description and then there is a 13 boundary line adjustment, which we went through as, whatever 14 the prior exhibit was, Exhibit 18.</p> <p>15 A. Yeah.</p> <p>16 Q. Right. There we go.</p> <p>17 At page Bates No. LO 21130, it has this record of 18 survey boundary line adjustment. And, again, it is if -- if 19 Queensridge Towers transfers to Fore Stars Transfer Areas 1, 20 2, and 3 -- oh, I'm sorry. It's not 1, 2, and 3.</p> <p>21 A. No. No. No.</p> <p>22 Q. Not --</p> <p>23 A. It's just one transfer area.</p> <p>24 Q. Just -- just -- yes. Just transfer area --</p> <p>25 A. Yeah, there's a transfer area.</p>	<p style="text-align: right;">Page 121</p> <p>1 And see where it says "adjusted parcel boundary 2 line?"</p> <p>3 Q. Yeah.</p> <p>4 A. We slid that over like 12 feet.</p> <p>5 Q. Okay. Okay. So that -- I believe that's Transfer 6 Area 1, but -- can we go down?</p> <p>7 A. No. It's just transfer area.</p> <p>8 Q. Oh.</p> <p>9 A. Because it doesn't correlate into the old one that 10 you saw before.</p> <p>11 Q. Okay.</p> <p>12 A. It's a little different.</p> <p>13 Q. Okay. Okay. So it's -- it's -- it is the only 14 area in the legend that is defined as "transfer area." 15 And --</p> <p>16 A. That's correct.</p> <p>17 Q. And that -- that transfer area is where the 18 clubhouse was located, correct?</p> <p>19 A. That -- that is, yeah.</p> <p>20 Q. Okay.</p> <p>21 A. Approximately. The clubhouse sits -- sits between 22 the transfer area and Parcel 2. It sits on that border. 23 See where it says "Parcel 2"?</p> <p>24 Q. Yes.</p> <p>25 A. And then you see the transfer area, that line that</p>

<p style="text-align: right;">Page 122</p> <p>1 surrounds the transfer area? The clubhouse sits actually</p> <p>2 between the two.</p> <p>3 Q. Okay.</p> <p>4 A. Yeah. It's on top of that line.</p> <p>5 Q. Oh, so at this time, Fore Stars still owned Parcel</p> <p>6 2, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. It never -- that -- Parcel 2 was never</p> <p>9 transferred out of Fore Stars' possession?</p> <p>10 A. Up to this point, Parcel 2 has never been</p> <p>11 transferred out of Fore Stars.</p> <p>12 Q. Okay. Good.</p> <p>13 Okay. So let me direct your attention to Exhibit</p> <p>14 H of Exhibit 28.</p> <p>15 A. Of 28.</p> <p>16 Q. Exhibit H is "Form of Release Letter to Executive</p> <p>17 Home Builders, Inc." from Fore Stars Limited, care of</p> <p>18 Peccole-Nevada Corporation, addressed to Yohan Lowie and</p> <p>19 Vickie DeHart at Executive Home Builders, Inc. And it says,</p> <p>20 "Dear Yohan and Vickie: Reference is made to that certain</p> <p>21 Badlands Golf Course Clubhouse Improvements Agreement dated</p> <p>22 as of September 6, 2005," which was Exhibit 11 that we've</p> <p>23 already gone through.</p> <p>24 Second paragraph says, "As you are aware, in</p> <p>25 connection with the Improvements Agreement, and to secure</p>	<p style="text-align: right;">Page 123</p> <p>1 Queensridge Towers' obligation to perform the construction</p> <p>2 obligations and pay the new golf course clubhouse costs (as</p> <p>3 such terms are defined in the Improvements Agreement) as</p> <p>4 required thereunder, Executive Home Builders granted a</p> <p>5 pledge in favor of Fore Stars with respect to EHB's interest</p> <p>6 in certain corporate offices located at 9755 West Charleston</p> <p>7 Boulevard, Las Vegas, Nevada (the 'Office Collateral'),</p> <p>8 which pledge may be terminated in accordance with Section 3</p> <p>9 of the Improvements Agreement."</p> <p>10 Third paragraph: "This is letter hereby confirms</p> <p>11 that, pursuant to Section 3 of the Improvements Agreement</p> <p>12 EHB's pledge of office collateral is hereby released, deemed</p> <p>13 terminated in full and of no further force or effect.</p> <p>14 Notwithstanding the foregoing release, all other agreements</p> <p>15 that exist between Hualapai Commons Limited, LLC,</p> <p>16 Peccole-Nevada Corporation and EHB with respect to the</p> <p>17 actual transfer of ownership of the office collateral are</p> <p>18 not altered or modified by this letter, including the</p> <p>19 understanding that until the existing debt covering the</p> <p>20 office collateral is paid in full, the title of the property</p> <p>21 cannot transfer."</p> <p>22 Can you explain to me what that last paragraph</p> <p>23 means?</p> <p>24 A. Yeah. If you go, actually, to -- back to the</p> <p>25 other agreement we were just looking at, there's a paragraph</p>
<p style="text-align: right;">Page 124</p> <p>1 underneath where we were looking that explains it to you, if</p> <p>2 you want to know specifically. If you want my impression of</p> <p>3 this letter right here --</p> <p>4 Q. Yep. Okay. Go ahead.</p> <p>5 A. So do you -- back in the office collateral</p> <p>6 agreement, there was the stipulation that we wouldn't</p> <p>7 transfer collateral until we had the loan released from the</p> <p>8 loan and we were able to do a commercial subdivision and</p> <p>9 condominiumize out the end cap. So what this is saying is</p> <p>10 that those aren't being waived. We still have to be able to</p> <p>11 do those.</p> <p>12 Q. Okay.</p> <p>13 A. But we're releasing it as collateral as it relates</p> <p>14 to Queensridge Towers and that transaction. It's no longer</p> <p>15 part of us getting a new clubhouse.</p> <p>16 Q. So you're releasing Yohan Lowie from the</p> <p>17 collateral that he pledged for Queensridge Towers commitment</p> <p>18 relative to build Fore Stars a new clubhouse?</p> <p>19 A. That's -- that's my understanding, yes.</p> <p>20 Q. Okay.</p> <p>21 A. And we had to do this letter because, again,</p> <p>22 Mr. Lowie wasn't really a party to the Queensridge Towers</p> <p>23 transaction, as it relates to transferring the units,</p> <p>24 because he was no longer with Queensridge Towers.</p> <p>25 Q. Got it.</p>	<p style="text-align: right;">Page 125</p> <p>1 (Defendant's Exhibit 29 was marked</p> <p>2 for identification.)</p> <p>3 BY MR. OGILVIE:</p> <p>4 Q. Let me direct your attention to what's been marked</p> <p>5 as Exhibit 29. It is a "Lot Line Adjustment Agreement,"</p> <p>6 dated November 14th, 2014.</p> <p>7 A. This is a culmination of that lot line adjustment</p> <p>8 referenced earlier.</p> <p>9 Q. And this -- this is the document by which</p> <p>10 Queensridge Towers transferred that two-point-something</p> <p>11 acres to -- back to Fore Stars to satisfy its obligation</p> <p>12 under the clubhouse improvements agreement; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. So after this document is signed,</p> <p>15 Queensridge Towers no longer has any obligation to Fore</p> <p>16 Stars relative to building it a new clubhouse, correct?</p> <p>17 A. Yep.</p> <p>18 Q. And --</p> <p>19 A. That's what it says.</p> <p>20 Q. I'm sorry?</p> <p>21 A. That's what it says.</p> <p>22 MR. OGILVIE: Give me just a second. This is off</p> <p>23 the record.</p> <p>24 (Off the record.)</p> <p>25 MR. OGILVIE: Okay. Back on the record.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q (By Mr. Ogilvie) You with us?</p> <p>2 A. Yeah, we're with you. Sorry.</p> <p>3 Q. Okay. So if -- if Fore Stars and Queensridge</p> <p>4 Towers LLC had not entered into the "Settlement Agreement</p> <p>5 Mutual Release," which is Exhibit 28, and the "Lot Line</p> <p>6 Adjustment Agreement," which is Exhibit 29, in accordance</p> <p>7 with the "Badlands Golf Course Club" -- "Golf Course</p> <p>8 Clubhouse Improvements Agreement," which is Exhibit 11,</p> <p>9 clubhouse -- or the Queensridge Towers would either be</p> <p>10 obligated to build a clubhouse, a new clubhouse, not to</p> <p>11 exceed 3 -- \$3,150,000 or transfer this property; is that</p> <p>12 correct?</p> <p>13 A. Or transfer this property? I'm not sure what</p> <p>14 "this property" is.</p> <p>15 I think it's the improvement, the 5.13, the three</p> <p>16 trans free parcels, going back to Document 11.</p> <p>17 Q. Okay.</p> <p>18 A. Yes. I thi- -- I believe that's correct.</p> <p>19 Q. So if it didn't -- if Queensridge Towers did not</p> <p>20 build the clubhouse or a clubhouse, a new clubhouse, for an</p> <p>21 amount not to exceed \$3,150,000, or transfer the property to</p> <p>22 Fore Stars, it would owe Fore Stars, what, \$3,150,000?</p> <p>23 A. Add up -- well, you have to go back.</p> <p>24 So if they -- if they -- if they transferred the</p> <p>25 property to Fore Stars, they wouldn't owe us the money.</p>	<p style="text-align: right;">Page 127</p> <p>1 That's how it ended.</p> <p>2 Q. Right.</p> <p>3 A. Okay. So if they didn't transfer the prop- -- the</p> <p>4 property, then they would have had to give us \$3.15 million.</p> <p>5 And then based on our settlement with BGC, they would have</p> <p>6 had to identify where I could build a clubhouse.</p> <p>7 Q. Okay. Okay. So it was either \$3.15 million and</p> <p>8 identify some place to build a clubhouse or transfer the</p> <p>9 property that is the subject of the Lot Line Adjustment</p> <p>10 Agreement that is Exhibit 29, correct?</p> <p>11 A. Yeah. I think we're -- yes. We're -- we're</p> <p>12 talking about kind of three different documents and three</p> <p>13 different time periods, but I think that's the end, yes.</p> <p>14 Q. Okay. So let me move on to a new topic.</p> <p>15 At some point in 2014, Fore Stars -- well,</p> <p>16 Peccole-Nevada Corporation and -- well, I guess Fore Stars</p> <p>17 is the entity, began negotiating for the sale of certain</p> <p>18 assets, essentially all of the assets of Fore Stars, the</p> <p>19 golf course, personal property, correct?</p> <p>20 A. Okay. So in 2014, we decided to take the golf</p> <p>21 course out to market.</p> <p>22 Q. Okay. So why don't you tell me -- tell me how</p> <p>23 that went.</p> <p>24 A. Me and my CFO got together, and we tried to figure</p> <p>25 out what we could do and how we could try to make the golf</p>
<p style="text-align: right;">Page 128</p> <p>1 course make money. We knew that the 2018 sunset was coming</p> <p>2 up in a few years. We also knew that the golf course was</p> <p>3 losing about a half a million dollars a year, and it just</p> <p>4 didn't make sense to keep carrying it. We also had done</p> <p>5 some research and found out that developing on the golf</p> <p>6 course, for us, unless we wanted to take on a lot of debt,</p> <p>7 just didn't make any sense. And we didn't want to take on a</p> <p>8 lot -- a lot of debt to do the development. So we decided</p> <p>9 we would explore the idea of trying to sell the golf course.</p> <p>10 Q. Okay.</p> <p>11 A. So we had, I don't know, three or four preliminary</p> <p>12 conversations with kind of golf course companies on whether</p> <p>13 or not they would like to buy the golf course.</p> <p>14 Per the BGC settlement, we knew that there was a</p> <p>15 first right of refusal back to Yohan, which he called me</p> <p>16 about, and he said, "Hey, you owe me the first right of</p> <p>17 refusal, so if you go out there and are trying to sell it,</p> <p>18 you have to let me buy it."</p> <p>19 But if you go back and look at the BGC document, I</p> <p>20 had to get an offer first. So the \$12 million number from</p> <p>21 the earlier, the prior first right of refusal, in my mind,</p> <p>22 was moot once I had the BGC document, the settlement</p> <p>23 agreement. So I had to get a bona fide buyer to come in and</p> <p>24 buy the golf course, and then Yohan had seven days to look</p> <p>25 and see if he wanted to buy the golf course for that price</p>	<p style="text-align: right;">Page 129</p> <p>1 or greater.</p> <p>2 Yohan said he wanted to buy the golf course. I</p> <p>3 said I had two or three meetings set up. He said, "No, let</p> <p>4 me buy it." I said, "Make an offer." And that's -- that's</p> <p>5 what happened in 2014, like in July.</p> <p>6 Q. Okay.</p> <p>7 A. June, July, right around there.</p> <p>8 (Defendant's Exhibit 30 was marked</p> <p>9 for identification.)</p> <p>10 BY MR. OGILVIE:</p> <p>11 Q. Let me direct your attention to what's been marked</p> <p>12 as Exhibit 30. It is an e-mail exchange between Yohan Lowie</p> <p>13 and you, dated June 12th, 2014. And then you forwarded</p> <p>14 it -- forwarded it to -- to Larry Miller.</p> <p>15 At the -- at the bottom of the -- or in the middle</p> <p>16 of the page is the first e-mail from Yohan to William Bayne,</p> <p>17 you, which Mr. Lowie says, "Billy, pursuant to our</p> <p>18 conversations, I respectfully submit the attached LOI for</p> <p>19 your consideration. Kindness regards, Yohan." And then it</p> <p>20 indicates that there are two attachments, one of which is a</p> <p>21 PDF that is identified as "Badlands GC LOI Fore Stars</p> <p>22 Limited, June 12th, 2014 PDF." And then -- then you forward</p> <p>23 it to your uncle Larry Miller. Says "check it out. Thanks,</p> <p>24 Billy" -- or "Billy Bayne."</p> <p>25 This -- I mean, as I -- as I reconcile what you</p>

<p style="text-align: right;">Page 130</p> <p>1 were just testifying with, this document, it seems like</p> <p>2 this -- this e-mail came out of blue, as opposed to having</p> <p>3 prior conversations.</p> <p>4 Oh, I take that back. Take it back. Clearly it</p> <p>5 says "pursuant to our conversations."</p> <p>6 So you were expecting this LOI; is that correct?</p> <p>7 A. Yeah. As I -- as I just said, I had talked to a</p> <p>8 couple of people very preliminary, and then Yohan called and</p> <p>9 said, "Hey, I heard you're trying to sell the golf course.</p> <p>10 I have the right to buy it. I want to buy it."</p> <p>11 Q. Okay.</p> <p>12 A. And I said, "My understanding is I got to get an</p> <p>13 offer." He says, "Well, I'll make an offer." So I said,</p> <p>14 "Send the offer over," and that's what this is.</p> <p>15 MR. OGILVIE: Let me direct your attention to</p> <p>16 Exhibit 31.</p> <p>17 (Defendant's Exhibit 31 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. OGILVIE:</p> <p>20 Q. Exhibit 31 is a letter to Mr. Billy Bayne from a</p> <p>21 Yohan Lowie.</p> <p>22 A. This is -- this is the attachment.</p> <p>23 Q. This -- this was what was attached to Exhibit 30?</p> <p>24 A. Okay.</p> <p>25 Q. I'm sorry, I -- this was -- this -- Exhibit 31 is</p>	<p style="text-align: right;">Page 131</p> <p>1 what was the attachment to the e-mail that was Exhibit 30?</p> <p>2 A. Okay. Thank you.</p> <p>3 Q. I'm sorry. Did you hear me?</p> <p>4 A. Yeah. That -- that's fine. I just wondered if</p> <p>5 that's -- if I was correct in stating that.</p> <p>6 MR. LEAVITT: Hold on. Let me enter an objection</p> <p>7 here, George.</p> <p>8 Do you have a question to present to Mr. Bayne</p> <p>9 here? Because I think you're making -- he thinks you're</p> <p>10 making a statement, and I think you're asking a question.</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. We're clearly not communicating.</p> <p>13 I'm asking if -- I'm asking if Exhibit 31 is the</p> <p>14 letter or the LOI that is referenced in Mr. Lowie's e-mail</p> <p>15 that is Exhibit 30.</p> <p>16 A. I don't know. I'd have to click on that and see.</p> <p>17 Q. Well --</p> <p>18 A. I can go back and find it and click on it and see,</p> <p>19 but it looks like the LOI that I got from Yohan.</p> <p>20 Q. Okay. So if we look at Exhibit 30 --</p> <p>21 A. I mean, I'm assuming that's where you got this,</p> <p>22 was you clicked on it.</p> <p>23 Q. No.</p> <p>24 A. Okay.</p> <p>25 Q. If we go to Exhibit 30 and look at the attachments</p>
<p style="text-align: right;">Page 132</p> <p>1 to Mr. Lowie's e-mail to you on June 12th, 2014, it says</p> <p>2 "Badlands GC LOI Fore Stars Limited 061214.1.pdf," right?</p> <p>3 A. Yeah. I'm trying to pull up that e-mail so I can</p> <p>4 click on. I don't know unless I click on it. I've done</p> <p>5 lots of e-mails. Hold on one second.</p> <p>6 Okay. I have -- I have that e-mail. Hold on.</p> <p>7 Yes, that -- that appears to be the e-mail.</p> <p>8 Q. Okay. And then --</p> <p>9 A. Pull that -- pull that -- pull that up again. I</p> <p>10 think it is the correct one.</p> <p>11 Yeah, that looks -- that's it. That's it.</p> <p>12 That's -- that's the attachment.</p> <p>13 Q. So Exhibit 31, the June 12th, 2014 letter of</p> <p>14 intent is what was attached to Exhibit 30, Mr. Lowie's</p> <p>15 June 12th, 2014 e-mail to you?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, in this letter of intent, Exhibit 31,</p> <p>18 Mr. Lowie describes the property to be Fore Stars fee</p> <p>19 interest in the Badlands Golf Course land, including the</p> <p>20 existing clubhouse and parking lot and all of Fore Stars</p> <p>21 right, title, and interest in and to all improvements on the</p> <p>22 land, together with all easements, covenants, water rights</p> <p>23 and all other rights pertaining to the premises. In section</p> <p>24 B -- or sub paragraph B, it talks about personal property</p> <p>25 and assets comprising Badlands Golf Course operations, and</p>	<p style="text-align: right;">Page 133</p> <p>1 then all right, title, and interest to the water rights, and</p> <p>2 he describes water rights and assignment of the water rights</p> <p>3 leased from Allen Nel.</p> <p>4 So essentially, this letter of intent is proposing</p> <p>5 the sale of all of Fore Stars' assets, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. At this time, Fore Stars did not have --</p> <p>8 did not own the 2.37 acres that was trans- -- that</p> <p>9 ultimately was transferred back to Fore Stars by Queensridge</p> <p>10 Towers under the lot line adjustment agreement that resolved</p> <p>11 the clubhouse improvements agreement, correct?</p> <p>12 A. I think that is correct.</p> <p>13 Q. And the purchase price at this time for those</p> <p>14 assets was \$12 million, as reflected in paragraph 2,</p> <p>15 correct?</p> <p>16 A. Correct. That's what it says.</p> <p>17 Q. Okay.</p> <p>18 (Defendant's Exhibit 32 was marked</p> <p>19 for identification.)</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. Directing your attention to what's been marked as</p> <p>22 Exhibit 32. It is a two-part exhibit, the first part being</p> <p>23 an e-mail exchange between Henry Lichtenberger and Yohan</p> <p>24 Lowie and Todd Davis.</p> <p>25 A. Am I allowed to object?</p>

<p style="text-align: right;">Page 134</p> <p>1 MR. WILLIAMS: Yeah, go ahead. What's your --</p> <p>2 THE WITNESS: I'm not sure -- I'm not sure that we</p> <p>3 can review e-mails between my attorney and Yohan's attorney.</p> <p>4 BY MR. OGILVIE:</p> <p>5 Q. Because of attorney-client privilege?</p> <p>6 A. I think, but I don't know. I'm not an attorney.</p> <p>7 Q. Yeah, okay. Duly noted.</p> <p>8 A. Thanks.</p> <p>9 MS. HAM: I'll make the proper objection and</p> <p>10 that's lacks foundation. And I think, again, I would ask</p> <p>11 that any of the -- lacks foundation and the documents speak</p> <p>12 for themselves, but I would ask -- I would ask those to both</p> <p>13 be continuing objections as well. I think -- I think we're</p> <p>14 clear on that for all of these documents. Just wanted to</p> <p>15 note it again for the record.</p> <p>16 MR. OGILVIE: Yeah, we're -- we're clear on the</p> <p>17 documents speaks for themselves, but a lot of these</p> <p>18 documents are clearly authenticated because Mr. Bayne is</p> <p>19 included in the e-mail exchanges or was a party to the --</p> <p>20 the agreements.</p> <p>21 MR. WILLIAMS: All right. Let's move along.</p> <p>22 Let's move along.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. So the first component of Exhibit 32 is the e-mail</p> <p>25 exchanges. The second is a document entitled "Purchase and</p>	<p style="text-align: right;">Page 135</p> <p>1 Sale Agreement," which is a little over 20 pages, maybe 25</p> <p>2 pages long.</p> <p>3 The first e-mail -- who's Henry Lichtenberger?</p> <p>4 A. He's my attorney.</p> <p>5 Q. And he works at Sklar Williams Law Firm?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And he is -- was he charged by you to draft</p> <p>8 a purchase agreement that related to or formalized the</p> <p>9 letter of intent dated June 12th, 2014?</p> <p>10 A. Yes. And -- and Butch pointed out correctly, he's</p> <p>11 actually the company's attorney, not my attorney.</p> <p>12 MR. OGILVIE: Okay. Thank you, Butch.</p> <p>13 MR. WILLIAMS: You're very welcome, sir.</p> <p>14 BY MR. OGILVIE:</p> <p>15 Q. There's an e-mail exchange about preparing a</p> <p>16 draft, and then the -- there's a July 25th, 2014 e-mail from</p> <p>17 Mr. Lichtenberger to Todd Davis and Yohan Lowie that says,</p> <p>18 "Attached is the initial draft of the Badlands Golf Course</p> <p>19 purchase agreement for your review and comment." And then</p> <p>20 there is attached -- the first -- the e-mail exchanges are</p> <p>21 Bates No. LO 5237, 5238. Beginning at 5239 is a purchase</p> <p>22 and sale agreement.</p> <p>23 Do you recall receiving a purchase -- a draft</p> <p>24 purchase and sale agreement in or around -- on or around</p> <p>25 July 25th, 2014 for the sale of Fore Stars' real property</p>
<p style="text-align: right;">Page 136</p> <p>1 and personal property?</p> <p>2 A. Yes, I do. This is -- this is what we -- we went</p> <p>3 through.</p> <p>4 Q. Okay. When you say, "This is what we went</p> <p>5 through," it is the purchase and sale agreement that is</p> <p>6 attached as part of Exhibit 32 and begins at LO 5239?</p> <p>7 A. Yes. I don't know what LO -- oh, there it is down</p> <p>8 at the bottom. Yeah, sorry.</p> <p>9 MS. HAM: Can I just ask a question? I'm sorry,</p> <p>10 because I don't -- I don't have the full documents. When --</p> <p>11 some of these documents that you've referenced were drafts.</p> <p>12 Are these -- is this an executed document?</p> <p>13 MR. OGILVIE: No, this is -- this is a draft.</p> <p>14 MS. HAM: This is still the draft. Okay. Thank</p> <p>15 you.</p> <p>16 BY MR. OGILVIE:</p> <p>17 Q. Okay. And at this time, again, the -- the</p> <p>18 contemplation was the sale of assets rather than the sale of</p> <p>19 the entity; is that right?</p> <p>20 A. At this point, it was the sale of the assets, yes.</p> <p>21 Q. And the assets included the golf course -- as we</p> <p>22 look at paragraph A of the recitals, it includes the golf</p> <p>23 course and the water rights, correct?</p> <p>24 A. Yes, and the personal property for the golf course</p> <p>25 operations.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. Well, let me ask you this: Did you have a</p> <p>2 valuation of the personal property, essentially the</p> <p>3 equipment, that was sold as part of your transaction for the</p> <p>4 sale of Fore Stars?</p> <p>5 MR. WILLIAMS: Objection; vague. Mr. Williams.</p> <p>6 Do you understand the question?</p> <p>7 THE WITNESS: No. I'm not sure what you mean.</p> <p>8 Do you mean, do I have an appraisal on the -- the</p> <p>9 operational property, like the -- the tractors and mowers</p> <p>10 and stuff?</p> <p>11 BY MR. OGILVIE:</p> <p>12 Q. Yeah. Ultimately, we'll get to an executed</p> <p>13 document, purchase and sale agreement, that has various</p> <p>14 items of equipment. I think it's two and a half pages of</p> <p>15 equipment.</p> <p>16 A. We had -- we had Troon prepare us a -- no, it</p> <p>17 wasn't Troon at this point. I think it was Par 4. I had</p> <p>18 Par 4 prepare us a -- what the operational equipment cost</p> <p>19 or -- or what its valuation was, so I believe so, yes.</p> <p>20 Q. Okay. And do you have a recollection as to what</p> <p>21 the valuation of that equipment was?</p> <p>22 A. I don't remember. It wasn't -- it wasn't a very</p> <p>23 significant number. Less -- probably less than 2- or</p> <p>24 \$300,000. I don't remember.</p> <p>25 Q. Okay. Let me -- let me ask you a different</p>

<p style="text-align: right;">Page 138</p> <p>1 question.</p> <p>2 Prior to your receipt of Mr. Lowie's June 12th,</p> <p>3 2014 letter of intent, had the Peccoles ever performed a</p> <p>4 valuation or had an appraisal of the Badlands Golf Course?</p> <p>5 A. We had had an appraisal of the Badlands Golf</p> <p>6 Course when my Aunt Leann passed away.</p> <p>7 Q. What year was that?</p> <p>8 A. Hold on.</p> <p>9 Q. Well, let me ask you this: Was it prior to --</p> <p>10 A. Probably around 2011 or '12. And then we had some</p> <p>11 more estate, an updated valuation, and a -- and a discount</p> <p>12 applied for when her boys owed the IRS, probably in around</p> <p>13 2013.</p> <p>14 Q. So are you referring to two separate appraisals,</p> <p>15 one roughly --</p> <p>16 A. Well, one was an appraisal by an appraiser named</p> <p>17 Keith Harper, and then one was an updated appraisal from</p> <p>18 Keith Harper and then a valuation discount. And I can't</p> <p>19 remember that guy's name, but if you give me a minute I can</p> <p>20 find it.</p> <p>21 MR. LEAVITT: George, what I want to do really</p> <p>22 quick is I want to lodge an objection and just have it</p> <p>23 running, because I know you're going to have a lot of</p> <p>24 questions here, that any questions regarding the sale of the</p> <p>25 property or the acquisition of the property and any</p>	<p style="text-align: right;">Page 139</p> <p>1 valuations related to the acquisition of the property are</p> <p>2 irrelevant to any of the issues in these proceedings,</p> <p>3 particularly for the valuation of the property as they're</p> <p>4 not as of the date of the value, they're not relevant to the</p> <p>5 date of value, therefore would be inadmissible, that they</p> <p>6 lack foundation and all -- that applies to all of the</p> <p>7 issues, but I'll have one additional objection in regards to</p> <p>8 the appraisal reports from 2011, 2012, 2013, as I just heard</p> <p>9 were done for estate purposes, there'd be an eminent domain</p> <p>10 action and (inaudible) proceeding. Those type of appraisals</p> <p>11 are legally inadmissible, No. 1. And No. 2, they're not as</p> <p>12 of the relevant date of valuation. Just with your</p> <p>13 permission, I'll just have that objection running during</p> <p>14 this entire time so I don't have to continue objecting.</p> <p>15 MR. OGILVIE: That's fine.</p> <p>16 MR. LEAVITT: Thank you.</p> <p>17 BY MR. OGILVIE:</p> <p>18 Q. So I'm sorry, Mr. Bayne. I thought you were</p> <p>19 looking on your computer for something. Maybe --</p> <p>20 A. Oh, no, I'm not. What was the last question you</p> <p>21 want me to answer? I was looking up when Leann died, but I</p> <p>22 don't know that you need a date, but I can find one if you</p> <p>23 want.</p> <p>24 Q. Well, I'd like to --</p> <p>25 A. Give me one second.</p>
<p style="text-align: right;">Page 140</p> <p>1 She died 24, February, 2008, so we had the</p> <p>2 appraisals done in probably '10.</p> <p>3 Q. Okay.</p> <p>4 A. '9 or '10.</p> <p>5 Q. Do you have a copy of that appraisal?</p> <p>6 A. I have a copy of the appraisal.</p> <p>7 MR. OGILVIE: I'd ask that you produce it.</p> <p>8 Butch, is that okay?</p> <p>9 MR. WILLIAMS: I'm going to see -- I was just</p> <p>10 getting ready to see if there was going to be an objection.</p> <p>11 MR. LEAVITT: So my first objection -- this is Jim</p> <p>12 Leavitt.</p> <p>13 THE COURT REPORTER: I'm sorry, can you speak up,</p> <p>14 please?</p> <p>15 MR. LEAVITT: Yeah. This is Jim Leavitt. My</p> <p>16 first objection is it's untimely or past the discovery</p> <p>17 deadline in this 34 -- or is going to be past the discovery</p> <p>18 deadline in this 35 acre case. And my -- continuing with my</p> <p>19 same objections that I stated previously.</p> <p>20 MR. OGILVIE: Okay.</p> <p>21 MR. WILLIAMS: So back to answering the question,</p> <p>22 the short answer is if you and Mr. Leavitt or you and</p> <p>23 Ms. Ham work that out, I -- we don't have a reason to not</p> <p>24 produce it other than --</p> <p>25 THE WITNESS: If I produce it, it will be</p>	<p style="text-align: right;">Page 141</p> <p>1 redacted, because it's a whole appraisal for estate tax</p> <p>2 purposes, and I don't -- I don't feel it's appropriate -- I</p> <p>3 mean, as it relates to Fore Stars, I guess I don't care, but</p> <p>4 everything else would be weird.</p> <p>5 BY MR. OGILVIE:</p> <p>6 Q. I'm absolutely fine with that. I don't have any</p> <p>7 interest in a valuation of any other assets in the Peccole</p> <p>8 Holdings other than Fore Stars.</p> <p>9 Is that what you're talking about?</p> <p>10 A. That's what I'm referring to, but I don't -- I</p> <p>11 mean, it's up to . . .</p> <p>12 MR. WILLIAMS: So let me have Billy redact it and</p> <p>13 produce it to me, and then see what you guys work out in the</p> <p>14 next few days. When I say "you guys," excuse me, you and</p> <p>15 Mr. Leavitt or you and Ms. Ham.</p> <p>16 MR. OGILVIE: Well, Jim, you're going to make me</p> <p>17 file a motion to compel?</p> <p>18 MR. LEAVITT: That's not where we're at right now.</p> <p>19 I just -- I'm just lodging an objection, and then we'll --</p> <p>20 we'll discuss it after.</p> <p>21 MR. OGILVIE: Okay.</p> <p>22 MR. WILLIAMS: I don't have a dog in the fight, so</p> <p>23 I -- again, I don't mind producing it. I just -- I don't</p> <p>24 want to get into that battle if there's -- I don't know what</p> <p>25 the objections might be, right. I mean, obviously we don't</p>

<p style="text-align: right;">Page 142</p> <p>1 have -- we don't have a subpoena on it, and so just 2 voluntarily producing it makes me a little uneasy. 3 MR. OGILVIE: Well, okay. 4 MR. WILLIAMS: But why don't you guys talk about 5 it after the deposition and then see if you can work it out, 6 and then I'll have it in my office, I'm sure, by no later 7 than Monday. Billy gives me stuff pretty quickly. 8 BY MR. OGILVIE: 9 Q. Okay. So this appraisal that you believe was 10 conducted on Fore Stars in 2010, I think that's the year you 11 said, do you have a recollection as to the appraised value 12 of Fore Stars? 13 A. Yes, I do. It's \$3.9 million. 14 Q. And then -- 15 A. That did not -- let me clarify. That did not 16 include the operational assets, nor did that include the 17 water rights. 18 Q. Okay. 19 A. That was just for the -- the fee simple property. 20 Q. Okay. And I think you indicated that the -- your 21 recollection of the operational assets, essentially the 22 equipment, was -- was less than 2- or \$300,000? 23 A. Yeah. I don't -- I don't remember the exact 24 number, but it -- it didn't -- it didn't strike me when we 25 got it that it was very much money.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Okay. 2 A. And the water rights have some level of value. 3 There's a lot of water rights, and so you'd have to add that 4 on to get a -- a number based on that -- 5 Q. Understood. 6 A. -- appraisal. 7 Q. Understood. 8 So going back to the draft purchase and sale 9 agreement that is Exhibit 32. At -- on page 2, at paragraph 10 3, the purchase price is \$15 million, which is \$3 million 11 more than the letter of intent of Mr. Lowie's June 12th, 12 2014 letter of intent. 13 Do you have an understanding as to why the 14 \$3 million increase? 15 A. Yeah. I think -- in reading about this in 16 preparation for this and trying to go back and remember all 17 the little things that happened, I think Larry just told me 18 to tack on \$3 million and see if Yohan would be okay with 19 it. 20 Q. Okay. At Section 5.3 of the purchase -- draft 21 purchase sale agreement that is Exhibit 32, it says that one 22 of the deliverables by the seller Fore Stars to the 23 purchaser is a copy of that certain settlement agreement and 24 mutual release dated June 28th, 2013 by and among 25 Queensridge Towers LLC, Queensridge Highrise LLC, and Fore</p>
<p style="text-align: right;">Page 144</p> <p>1 Stars, which agreement covers certain agreements covering 2 the property and obligations, events or decisions that would 3 be triggered after the closing and assumed in full by the 4 purchaser. 5 Is that -- is that referring to simply a copy of 6 the document, or is it a -- is the transaction that is 7 anticipated by that document would be included in the assets 8 purchase? 9 A. So you remember we hadn't finished the lot line 10 adjustment at this stage, and so this is saying that all of 11 that agreement from that lot line adjustment document -- we 12 contemplated finishing that lot line adjustment before we 13 signed this, before this would be executed. And so that 14 adjustment of lot line and all of that stuff from that 15 agreement would be included in this. 16 Q. So essentially you would be assigning that 17 settlement agreement to the purchaser as part of this 18 transaction? 19 A. Correct. Which is at -- at this time remember, 20 too, this is an asset purchase. So it was messy. Because 21 at this stage, they weren't buying -- buying Fore Stars, 22 which was already a party to. 23 Q. Okay. 24 A. Which is part of the reason why it made sense to 25 convert it to a securities agreement later on.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Okay. Moving on to page 5 of this agreement. 2 Section 7.1 says a condition of closing is that Fore Stars 3 is going to terminate the golf course lease that it then had 4 with, at this point, Elite? 5 A. No, with Par 4. 6 Q. Par 4. Okay. 7 And so -- so what I believe this -- this paragraph 8 means is up until the closing date you were going to pay Par 9 4 anything and everything owed to Par 4 under the lease. 10 You would -- 11 A. No. 12 Q. No? 13 A. No. 14 So what this is, is Par 4 in 2000 and -- I don't 15 remember if it was 2012 or 2013 converted over from a 16 management agreement for us. They replaced Troon. So when 17 we bought the golf course back for the \$30 million, we hired 18 Troon. Troon operated it for us for two years or maybe 19 three years. And then we got rid of Troon because they were 20 doing a poor job, and we hired Par 4. And Par 4 managed it 21 for us. So all of the expenses, all of the cost, all of the 22 maintenance was us, and we were losing money a lot. And Par 23 4 ran it for us for a couple of -- of -- I want to say a 24 couple of months. I don't think it was years. I think they 25 ran it for us for eight months or ten months. And then I</p>

<p style="text-align: right;">Page 146</p> <p>1 had a meeting with Paul Jaramillo and Keith, his partner, 2 and they felt that if we lowered the rate per -- rate per 3 play significantly that it would generate a tremendous 4 amount of business and we would be very successful. And I 5 disagreed. I thought that was not going to work out. The 6 math didn't make sense to me. I said to them, "If you feel 7 strongly about it, I'm happy to lease you the golf course." 8 So in 2012 or '13 we entered into a lease with Par 4, and 9 they leased the golf course. So they went from being a 10 manager to having leasehold interest and operating the golf 11 course, and they paid us about \$20,000 a month, I believe 12 was the lease fee.</p> <p>13 Q. Okay.</p> <p>14 A. And so what this does in 7.1, Yohan wanted us to 15 cancel the lease. And so I had to go to Par 4 and get them 16 to agree to cancel the lease.</p> <p>17 Q. Okay.</p> <p>18 A. It was way complicated, yeah.</p> <p>19 Q. So then this -- this contemplates that you're 20 going to cancel the lease, you're going to be responsible 21 for anything and everything related to the lease with Par 4 22 up to the closing date, and -- and so when -- when 23 Mr. Lowie's entity closed on this transaction and obtained 24 the golf course there wouldn't be any lease entanglements, 25 correct?</p>	<p style="text-align: right;">Page 147</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. And then the next section, 7.2, terminates 3 the prior right of first refusal, correct?</p> <p>4 A. That is correct. That's what it says.</p> <p>5 Q. Okay.</p> <p>6 (Defendant's Exhibit 33 was marked 7 for identification.)</p> <p>8 BY MR. OGILVIE:</p> <p>9 Q. Directing your attention to what's been marked as 10 Exhibit 33. It is an August 11th, 2014 e-mail from Henry 11 Lichtenberger to Mr. Lowie, Todd Davis, with CC to you, with 12 attachments including a fully executed assignment and 13 assumption of lease.</p> <p>14 Do you recall what that fully executed assignment 15 and assumption of lease that was attached was?</p> <p>16 A. Hold on. Fully executed assignment and assumption 17 of lease? Assumption of lease?</p> <p>18 I'm not sure what that's referencing. "Fully 19 executed cancellation instructions," that's the unit, yeah. 20 Clubhouse.</p> <p>21 So this is -- this is closing the transaction with 22 IDB. The only thing I can think of is the fully executed 23 assignment and assumption of lease is maybe when we canceled 24 the lease for a dollar a year, and just cleaned up that 25 language, is my guess.</p>
<p style="text-align: right;">Page 148</p> <p>1 Q. Okay. Mr. Lichtenberger's e-mail says, "Billy," 2 presumably --</p> <p>3 A. That's me.</p> <p>4 Q. Okay. "Asked that I forward to you copies of the 5 closing documents with IDB as it relates to the golf 6 course."</p> <p>7 Do you recall Mr. Lichtenberger forwarding copies 8 to Mr. Lowie and Mr. Davis of the closing documents with 9 IDB?</p> <p>10 A. Yes.</p> <p>11 Q. If the sale of the golf course to Mr. Lowie's 12 entity closed before the transaction with IDB closed, what 13 would have happened relative to IDB's obligations to Fore 14 Stars?</p> <p>15 A. Well, again, remember that that's part of why we 16 switched from an asset sale to a securities agreement. That 17 way he had Fore Stars, and that's who the obligations were 18 to.</p> <p>19 Q. Okay. So the obligations would have been to Fore 20 Stars. He wouldn't have any --</p> <p>21 A. I didn't have to pay any assignment assumption 22 agreements. I didn't have to do anything because basically 23 Mr. Lowie would have stepped in, become Four Stars, and all 24 of those agreements contemplating the Queensridge Towers 25 settlement agreement would have --</p>	<p style="text-align: right;">Page 149</p> <p>1 THE COURT REPORTER: I'm sorry, I'm sorry, you 2 have to slow down. You're talking too fast. Can you start 3 over?</p> <p>4 THE WITNESS: Yeah.</p> <p>5 THE COURT REPORTER: "I didn't have to pay any 6 assignment assumption agreements. I didn't have to do 7 anything because basically Mr. Lowie would have stepped in."</p> <p>8 THE WITNESS: He would have stepped in to Fore 9 Stars' position. And by stepping into Fore Stars' position, 10 there was no need for an assignment and assumption 11 agreements, and so it -- it just made it cleaner. That was 12 part of the reason that we -- we contemplated switching. 13 That's not all the reason, but that's -- that's a chunk of 14 it.</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. Was part of the reason also the claim of a first 17 right of refusal by some third-party other than Mr. Lowie's 18 entities?</p> <p>19 A. No. Actually, we settled that before we -- no, 20 that's not why.</p> <p>21 The other part of the reason for switching to a 22 securities agreement was I felt it gave us more protection 23 as we went forward, not knowing how or what Yohan would do 24 from a development standpoint. It was my family's intention 25 to always keep the golf course. And because that was our</p>

<p style="text-align: right;">Page 150</p> <p>1 intention, we weren't very nervous about developing on the 2 golf course. But we didn't know exactly what Yohan would 3 do, and so that was another way to kind of buffer us from -- 4 from what he chose to do.</p> <p>5 Q. When you say "buffer" you, buffer you from what? 6 A. Liability. 7 Q. Okay. 8 A. I didn't want to try to go back in and rep and 9 warranty everything that Fore Stars or my family had ever 10 done or said. It was too complicated and it's too old. And 11 so if I switch it to a securities agreement, he's Fore 12 Stars.</p> <p>13 MR. OGILVIE: Okay. Let's move forward. We 14 jumped ahead a little bit there, but let's move forward with 15 another document, another e-mail. 16 (Defendant's Exhibit 34 was marked 17 for identification.) 18 BY MR. OGILVIE: 19 Q. Exhibit 34 is an e-mail exchange between Henry 20 Lichtenberger, Yohan Lowie, yourself, and Todd Davis. And 21 there's an e-mail -- initial e-mail from Mr. Lichtenberger. 22 It says, "I have received consent from the Peccole Family 23 for the revised purchase terms as it relates to the 24 \$3 million that was initial drafted as a term note." 25 What -- do you have an understanding of what</p>	<p style="text-align: right;">Page 151</p> <p>1 Mr. Lichtenberger is talking about there? 2 A. No, not exactly. I'm trying to remember. I -- I 3 think that we were going to take a portion of the payment in 4 the form of a note until we kind of finished everything on 5 the end cap, but I'm not positive that's correct. 6 Q. Okay. 7 A. I really don't remember this little piece. 8 Q. Okay. 9 A. I'd have to go back and do a lot more research. 10 Q. And then at the top -- or above that, Mr. Davis 11 indicates that he's working on a red line and will 12 hopefully -- will have back to you hopefully by end of day 13 today, which was August 25th, or tomorrow. 14 A. That's what it says, yeah. 15 MR. OGILVIE: Moving on to what's been marked as 16 Exhibit 35. 17 (Defendant's Exhibit 35 was marked 18 for identification.) 19 BY MR. OGILVIE: 20 Q. It is an August 26th, 2014 e-mail from Mr. Davis 21 to Mr. Lichtenberger with Mr. Lowie and you copied, in 22 which -- so that's, what did I say, August 26th, the day 23 following Mr. Davis' e-mail of August 25th, which is 24 exhibit -- part of Exhibit 34. 25 And here Mr. Licht- -- Mr. Davis says, "Henry,</p>
<p style="text-align: right;">Page 152</p> <p>1 attached is a redline draft of the PSA. I am currently 2 sending to Yohan prior to his review." And then attached to 3 that is a redlined copy of the purchase and sale agreement. 4 Do you recall receiving this red lined copy of the 5 purchase and sale agreement? 6 A. I'm sorry. Say that again. 7 Q. Do you recall receiving this? 8 A. Yeah. 9 Q. Okay. And at this time, it's a redline of the 10 asset sale of the golf course and the water rights and the 11 equipment, correct? 12 A. Yeah. This -- this was the other reason we 13 thought about going to the securities agreement. 14 Q. What -- what specifically are you -- 15 A. There's a lot of red. 16 Q. Okay. Okay. On page 2 of the redline draft, at 17 paragraph 3, evidently Mr. Lowie didn't agree with the 18 \$15 million purchase price; is that correct? 19 A. Yes. That's what it's -- that's what the strike 20 is showing, yes. 21 Q. Okay. So he went back to the \$12 million that was 22 referenced in the June 12th, 2014 letter of intent? 23 A. Yes. 24 And if you go back up, there's a stricken portion 25 that describes your \$3 million question that you have. You</p>	<p style="text-align: right;">Page 153</p> <p>1 just skipped it. Right there. 2 "The remaining \$3 million to be paid in the form a 3 deed of trust secured promissory note with full payment due 4 in 14 months from the date of note with annual interest rate 5 of 6 percent with purchaser to deliver" -- 6 THE COURT REPORTER: I'm sorry. I'm sorry. I 7 can't write that fast. 8 THE WITNESS: I'm sorry. I was just reading it 9 for me. I apologize. 10 MR. WILLIAMS: Which section are you reading? 11 BY MR. OGILVIE: 12 Q. You're at 3.1? 13 A. 3.2. That's where that 3 million -- you asked me 14 earlier what it was for, and that -- that's telling you. It 15 was just a note. I'm guessing that it was part of making 16 sure the end cap transferred properly or -- or whatever, but 17 I -- I honestly couldn't -- I can't remember. 18 I apologize to the court reporter. Sometimes when 19 I talk, I talk really fast. 20 THE COURT REPORTER: Thank you. 21 BY MR. OGILVIE: 22 Q. Directing your attention to page 5 of this 23 redlined purchase agreement, specifically Section 7.2. 24 The redline says "Upon the election of Queensridge 25 Towers LLC under Section 3(a) and 3(b) of the settlement</p>

<p style="text-align: right;">Page 154</p> <p>1 agreement and mutual release with Fore Stars Limited, 2 executed June 28, 2013 between Queensridge Towers LLC and 3 Fore Stars Limited," open -- defined as a settlement 4 agreement, "one of the following shall apply." 5 And then it says that if Queensridge Towers elects 6 to satisfy the Improvement Agreement Financial Obligation, 7 that Fore Stars shall pay Mr. Lowie's entity \$1 million 8 within five days of seller's -- of Fore Stars' receipt of 9 the funds from Queensridge Towers, or, B, if Queensridge 10 Towers elects the termination option, then the purchaser 11 shall purchase the additional golf -- additional golf 12 property for \$3 million. 13 So if Queensridge Towers gives you cash, you're 14 going to pay -- 15 A. I'm giving some to Yohan. 16 Q. You're -- the -- this \$12 million purchase price 17 gets reduced to \$11 million, right? 18 A. That's how I read it, yes. 19 And then if -- if we got the property back, he 20 would pay us the additional \$3 million that -- that we had 21 asked for. 22 Q. Which would take it from 12 million to 15 million? 23 A. Yes. 24 Q. Okay. 25</p>	<p style="text-align: right;">Page 155</p> <p>1 (Defendant's Exhibit 36 was marked 2 for identification.) 3 BY MR. OGILVIE: 4 Q. Directing your attention to what has now been 5 marked as Exhibit 36. It is an e-mail exchange between you, 6 Todd Davis, Yohan Lowie, and Harry -- I'm sorry Henry 7 Lichtenberger on August 26th and August 27th, 2014. The 8 last e-mail in this chain is an e-mail from you to your 9 attorney Mr. Lichtenberger with copy to Todd Davis and Yohan 10 Lowie, and it's -- if we look at the first paragraph -- 11 A. I just read -- 12 Q. I'm sorry? 13 A. I just read it. You don't have to read it. 14 Q. Okay. What's this about? 15 A. This letter is just kind of clarifying and trying 16 to not go through all of the Todd's redlines. It's me being 17 lazy. 18 Q. Okay. Tell me what paragraphs 2 and 3 mean. 19 A. Two is if IDB gives us the money instead of the 20 property, we're going to give you anything in addition to 21 the \$3 million. And paragraph 3 is if we go ahead and get 22 the land, that he'll give us the \$3 million for it. And 23 then also paragraph 3 says we don't care how you break up 24 the transactional price between the property and the water 25 rights, provided that it ends up being the full price.</p>
<p style="text-align: right;">Page 156</p> <p>1 Q. Okay. So is it fair to say that Fore Stars or the 2 Peccoles -- the Peccoles were valuing that clubhouse 3 improvement or the land on which the clubhouse improvement 4 was going to be developed at \$3 million? 5 A. No. I think it's fair to say that Peccole was 6 going back to that original agreement, Item 11. And -- and 7 we were using their math. I think it was 3 1/2 million. So 8 if they gave us \$3 1/2 million, we would give Yohan three 9 and -- or we would keep three and then put half a million 10 over to Yohan or whatever the difference was. And -- and 11 depending on how the lot line adjustment was going to 12 happen, we had talked about with IDB at some point they may 13 have to give us a little money to even everything up. And 14 that's -- that's what this is contemplating. 15 Q. Okay. But rough -- but it's either the property 16 or \$3 million, right? 17 A. Yeah, basically. 18 MR. OGILVIE: Okay. Let's take a five-minute 19 break, if we could. 20 (Off the record.) 21 BY MR. OGILVIE: 22 Q. So, Mr. Bayne, let me go back to this appraisal 23 that the family had for estate purposes. 24 You said that there was an appraisal in roughly 25 2010, and then there was something followed up later.</p>	<p style="text-align: right;">Page 157</p> <p>1 What -- and you talked about a discount. What was that? 2 A. So when -- if I say anything you already know, you 3 can tell me to skip it, because I'm not an expert on this. 4 But when a person dies, you have an appraisal on date of 5 death, as per the date of death. And then you have a 6 follow-up appraisal for the IRS. And then we were going to 7 do some -- moving some stuff for Leann's sons in and out of 8 trusts, a step up in basis, and so we were getting a 9 discount. Because she only owns one third of the asset 10 base, there's a discount applied to the overall appraisal 11 for her interest. So it was the discounted -- it's a 12 discounted portion. So the \$3.9 million was the full 13 appraisal, and then Leann had a discounted portion of that 14 as part of her estate. 15 Q. Okay. So it wasn't that the appraisal changed, it 16 was that because she was, for lack of a better word -- 17 A. (Inaudible.) 18 Q. -- lack of a better word, a minority interest 19 holder, there was a minority interest holder discount placed 20 on the 3.9 appraisal? 21 A. That is correct. 22 Q. Okay. Let me -- so in the -- in the last draft of 23 the purchase and sale agreement, we went through Section 24 7.2, and there was the either or, either the million dollars 25 that would be paid to Mr. Lowie's entity or the transfer</p>

<p style="text-align: right;">Page 158</p> <p>1 of -- or the transfer of the property that was transferred 2 by Queensridge Towers to Mr. Lowie for \$3 million. 3 Now I want to -- I'm curious about the -- the 4 million-dollar option. And I have to go back to Exhibit 11, 5 which is the Badlands Golf Course Clubhouse Improvements 6 Agreement that we went through earlier. And I'm not going 7 to spend a lot of time on it. I just want to clarify 8 something. 9 At Recital D it talked about "Tower shall pay an 10 amount not to exceed \$4 million," and then talked about how 11 that was comprised of costs and expenses related to 12 construction of a new clubhouse in an amount not to exceed 13 \$3,150,000 and payment of the reconfiguration costs in an 14 amount not to exceed \$850,000. And I asked -- 15 A. You jogged my memory. Let me make a comment. 16 So \$850,000, you asked me before if we paid that. 17 The answer I gave you was yes and we did. 18 But now that you said that again and now in 19 context, I want to say that we were reimbursed for that 20 from, I think, Queensridge Towers or from -- some entity 21 reimbursed us for that out of pocket, and I don't remember 22 exactly why. 23 Q. Well -- 24 A. But we were -- we were reimbursed for that, so I 25 assume that that million dollars go back to the difference</p>	<p style="text-align: right;">Page 159</p> <p>1 between the total 4 million and the \$3 million. 2 Q. Yes. Well, that was the correlation that I was 3 making, the million dollars was -- was the difference 4 between the three and the four. I just didn't understand 5 the correlation. 6 A. Yeah. That -- that's it. Somehow I think it went 7 back to this. This is -- that's my understanding. 8 Q. Okay. I'm -- I'm sorry. I'm still a little 9 confused as to the correlation. I get that they're 10 connected. And when I say "they," I'm talking about Recital 11 D of the Improvements Agreement and Section 7.2 of the 12 August 26th, 2014 draft of the purchase and sale agreement. 13 I just don't know how -- how they're related. 14 A. Go to the settlement agreement with IDB with 15 Queensridge Towers. I think the answer lies in that 16 settlement agreement. 17 Q. The 2013 settlement agreement? 18 A. Yeah. Let's go in there and look for a second. 19 MR. LEAVITT: What exhibit is this? 20 MR. OGILVIE: Hold on. Give me a second. 21 That is Exhibit 28. 22 THE WITNESS: Okay. Let me look at this for a 23 second. 24 Can you scroll down? All right. Keep going. 25 Okay. Keep going.</p>
<p style="text-align: right;">Page 160</p> <p>1 MR. MOLINA: Are you looking for the definition of 2 the improvements obligation? 3 THE WITNESS: No. I don't think there is one. 4 I'm looking more for -- I don't think it's after this, but 5 go down. Go all the way to the bottom. Let's just make 6 sure there's no addendums or exhibits. I don't think there 7 is, but . . . 8 BY MR. OGILVIE: 9 Q. Well, there's -- there's plenty of exhibits. 10 A. Yeah, but I don't think there's an exhibit that 11 gives me numbers. 12 I -- I can't remember exactly how we came up with 13 that -- that number. It had something to do with this, but 14 I just don't remember what. 15 Q. When you say "that number," you're talking about 16 the million dollars? 17 A. The million dollars, yeah. 18 Q. Okay. But the million dollars would be the 19 difference -- I mean, it's -- I wouldn't -- it isn't the 20 difference. It is equal to the difference between -- 21 A. Yeah. It could be the difference between the 4- 22 and 3 million, which is what I think it is. But I wish it 23 stated it more clearly, and it would help me remember. I 24 just don't remember. And a lot of that was just 25 hypothetical math, what if, what if, what if.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Okay. Let's move forward. 2 A. Yeah, sorry. 3 (Defendant's Exhibit 37 was marked 4 for identification.) 5 BY MR. OGILVIE: 6 Q. Directing your attention to what's been marked as 7 Exhibit 37. It is an e-mail and a new draft of purchase and 8 sale agreement e-mail from Todd Davis to your attorney 9 Mr. Lichtenberger, Frank Pankratz, Mr. Lowie, and you, with 10 the -- the e-mail references an attachment of a PSA redline. 11 A. I remember it. 12 Q. Okay. Now, it says, "Henry, attached is a redline 13 of the PSA with changes incorporated from our meeting." 14 Were you a participant in this meeting that's 15 referenced in this e-mail? 16 A. I was. 17 Q. Okay. And was there -- was the subject of 18 indemnity discussed at that meeting? 19 A. Yes, I'm sure it was. We discussed it a lot. 20 Q. Okay. And tell me about that. 21 A. Because of our complicated relationship, we wanted 22 to make sure that we were indemnified from anything that 23 Mr. Lowie decided to do. 24 Q. And that's "decided to do" in regards to 25 developing the golf course?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. Or -- or operating or managing or -- or anything 2 having to do with the golf course. 3 We just had a long relationship. We -- I can't 4 say it was a bad relationship. I think it was a good 5 relationship. We made a hundred million dollars, so that's 6 good. But it's a complicated relationship. And so we just 7 wanted to be identi- -- indemnified so that we weren't 8 coming back years later and having all of these depositions. 9 Q. Okay. Congratulations. So -- 10 A. I failed at that, apparently, but anyways. 11 Q. In Exhibit 37, I want to direct your attention to 12 a new section, 11.5, which is on page -- 13 A. We're still talking about a purchase agreement, 14 right, or excuse me, an asset agreement? 15 Q. Well, let's confirm that then. Let's go to page 16 1. 1.1 says "Assets." 17 A. Yeah. Okay. I just wanted to make sure it hadn't 18 converted over, yeah. 19 MR. LEAVITT: When can we go to the real 20 agreement? 21 MR. OGILVIE: Just hold your horses. We'll get 22 there. 23 Q (By Mr. Ogilvie) So Section 11.5 talks about 24 settlement agreement -- the 2008 settlement agreement 25 between Fore Stars and BGC Holdings, the settlement</p>	<p style="text-align: right;">Page 163</p> <p>1 agreement of the lawsuit by which, as part of that, Fore 2 Stars gave Mr. Lowie's entity, BGC Holdings, a right of 3 first refusal. And this is talking that this representation 4 and warranty by Mr. Lowie's entity, that the -- that 5 Mr. Lowie is not in default and the restrictive covenant 6 would be deemed terminated in full -- terminated in full and 7 of no further force and effect as of closing. The restrict- 8 -- is this the restrictive covenant or is this the -- or I 9 guess it applies to both, the restrictive covenant and -- 10 A. It does apply to both. 11 Q. Pardon me? 12 THE COURT REPORTER: I'm sorry? 13 THE WITNESS: It does apply to both. 14 BY MR. OGILVIE: 15 Q. Okay. And it says "Henry to revise." 16 What does that mean? 17 A. I think that I kept asking -- I was confused 18 because it was weird to me that we were talking about 19 Mr. Lowie having a first right of refusal when IDB became 20 the owner of Queensridge Towers. And so in some of my 21 negotiations with Noam Ziv, when I was getting back the 22 units and settling up with IDB on the transfer back of the 23 property, it became evident that they did not have the first 24 right of refusal. And that was confusing to me. And so I 25 wanted us to make sure that was all cleaned up and done</p>
<p style="text-align: right;">Page 164</p> <p>1 before we did this document. And so I brought that up in a 2 meeting, and that's -- that's what this is referencing, we 3 need to clean up that and make sure that that's all put to 4 rest, put to bed, IDB doesn't have those documents, how did 5 Yohan get those documents from IDB, how did IDB not have 6 part of BGC Holdings, blah, blah, blah. 7 I don't know. Can you the court reporter type 8 blah, blah, blah? 9 MR. WILLIAMS: Yep. 10 THE WITNESS: Sorry. 11 MR. LEAVITT: She can. 12 BY MR. OGILVIE: 13 Q. Did you learn who ultimately had that right of 14 first refusal? 15 A. It came out in another meeting that I had with 16 Yohan. I had gone up to his office. We were trying to get 17 this resolved. And we went to lunch at Leone Cafe. And at 18 Leone Cafe, it came out that that had been transferred to a 19 man named Assaf Lang or Yang or Lang or something. I can't 20 remember his last name. I'd have to go find it. But that 21 caused us to kind of hit -- we had to hit the pause button 22 while we tried to extinguish the first right of refusal 23 because I was under the impression up to that point that 24 that was Mr. Lowie's. 25 (Defendant's Exhibit 38 was marked</p>	<p style="text-align: right;">Page 165</p> <p>1 for identification.) 2 BY MR. OGILVIE: 3 Q. Wasn't it the right of first refusal the reason 4 that you were in negotiations with Mr. Lowie to begin with? 5 A. It was. 6 Q. Okay. And so at some point in this negotiation, 7 you learned that Mr. Lowie no longer held that right of 8 first refusal, correct? 9 A. That is correct. 10 Q. Okay. 11 A. Around this time period. 12 Q. Let me -- 13 A. Go back in my e-mails. It's like in, I don't 14 know, late September, mid September. 15 Q. Let me direct you to what's been marked as Exhibit 16 38, which is -- the bottom e-mail is dated September 15th, 17 2014, from Mr. Lichtenberger to Todd Davis, you, and Yohan 18 Lowie for review and comment, and there's an attachment. 19 The attachment is the next page. It's a letter from -- an 20 unsigned letter from -- from you to Assaf Lang of BGC 21 Holdings. 22 Is this the individual that you're referring to 23 that you learned -- 24 A. It is. 25 Q. -- that you learned currently -- or held the right</p>

<p style="text-align: right;">Page 166</p> <p>1 of first refusal as of September 15th, 2014?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And in this letter you're explaining that</p> <p>4 you've received an offer for \$12 million with a 35-day</p> <p>5 closing and telling him he's got 7 days to exercise his</p> <p>6 right of refusal, correct?</p> <p>7 A. Per the BGC settlement agreement, yes.</p> <p>8 Q. Okay. Did you learn how Mr. Assaf Lang came into</p> <p>9 control of that right of first refusal?</p> <p>10 A. I did not. I do not know. To this day, I don't</p> <p>11 know.</p> <p>12 Q. Okay. How do you know he owned it?</p> <p>13 A. At one point, Yohan told -- told me at that lunch,</p> <p>14 and my attorney Henry Lichtenberger was there. That's when</p> <p>15 we found out about it. So then we got the -- the address</p> <p>16 and the contact information from Mr. Lowie's group. I can't</p> <p>17 remember who sent it over to us.</p> <p>18 Q. Did Mr. -- so this letter is addressed to Assaf</p> <p>19 Lang, Manager of BGC Holdings LLC, which was, at least,</p> <p>20 Mr. Lowie's entity.</p> <p>21 Did Mr. Lowie explain to you that he had</p> <p>22 transferred his entity to Mr. Assaf Lang?</p> <p>23 A. I did not -- I did not get the particulars. At</p> <p>24 the point that I was demanding that we extinguish his first</p> <p>25 right of refusal, Mr. Lowie went ahead and said that they</p>	<p style="text-align: right;">Page 167</p> <p>1 wanted to discontinue talking about purchasing the golf</p> <p>2 course.</p> <p>3 (Defendant's Exhibit 39 was marked</p> <p>4 for identification.)</p> <p>5 BY MR. OGILVIE:</p> <p>6 Q. Let me direct your attention to what's been marked</p> <p>7 as Exhibit 39. It's a September 24th, 2014 letter from you</p> <p>8 to Assaf Lang, advising him, Mr. Lang, that the offer for</p> <p>9 the sale of Badlands had been withdrawn; and, therefore, he</p> <p>10 no longer had a right of first refusal. If there was</p> <p>11 another offer made during the period of the right of first</p> <p>12 refusal, you would notify him, and he would have his --</p> <p>13 his -- his right, correct?</p> <p>14 A. Yes. And if you look, it says "Mathew Kane (via</p> <p>15 e-mail: mathew.kane@7trustee)."</p> <p>16 If I remember right, there was something that</p> <p>17 happened where Mr. Lang -- or we were notified that Mr. Lang</p> <p>18 had gone into bankruptcy, I think.</p> <p>19 I think he had gone into bankruptcy, and so there</p> <p>20 was a bankruptcy trustee that was appointed that had no</p> <p>21 interest. At some point, there's -- there's probably an</p> <p>22 e-mail that talks about that.</p> <p>23 Q. Okay. We'll get to that.</p> <p>24 A. Why are you making me work my brain if you know</p> <p>25 the answer? I guess you have to. Sorry.</p>
<p style="text-align: right;">Page 168</p> <p>1 Q. Well, you just got a little ahead of me. It was</p> <p>2 the next exhibit.</p> <p>3 So the first sentence says, "Please be advised</p> <p>4 that the offer referenced in my letter dated September 15,</p> <p>5 2014 for the sale of Badlands Golf Course to a third party</p> <p>6 has been withdrawn."</p> <p>7 Had --</p> <p>8 A. Correct.</p> <p>9 Q. Had Mr. Lowie withdrawn his offer to purchase the</p> <p>10 assets of Fore Stars?</p> <p>11 A. Yes. As I just said, that once we sent that</p> <p>12 letter, he withdrew pursuing purchasing the Badlands.</p> <p>13 Q. Do you know why?</p> <p>14 A. Nope.</p> <p>15 Q. Did he send you an e-mail? Did he call you? How</p> <p>16 did he tell you that he was withdrawing his interest?</p> <p>17 A. If I remember right, I think he called me and said</p> <p>18 that he didn't want to buy it anymore.</p> <p>19 Q. And he didn't say why?</p> <p>20 A. I do not recall if he gave me a reasoning for why.</p> <p>21 Q. But in your mind, it was related to your extension</p> <p>22 of the offer of the right of first refusal?</p> <p>23 A. Yes.</p> <p>24 (Defendant's Exhibit 40 was marked</p> <p>25 for identification.)</p>	<p style="text-align: right;">Page 169</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Let me direct your attention to what's been marked</p> <p>3 as Exhibit 40, which is an e-mail exchange, beginning with</p> <p>4 an e-mail from Lenard Schwartz to Todd Davis dated</p> <p>5 October 30th, and ending with an e-mail from Mr. Davis to</p> <p>6 Henry Lichtenberger, Billy Bayne, and Yohan Lowie on</p> <p>7 November 3rd, 2014.</p> <p>8 Mr. Schwartz says, "The bankruptcy judge orally</p> <p>9 granted the Trustee's motion to dismiss this case. A</p> <p>10 written order will be issued in a few days."</p> <p>11 Todd Davis forwarded that to Henry Lichtenberger</p> <p>12 on November 3rd, 2014, saying, "Good morning, FYI - see</p> <p>13 below. What is the status of the Fore Star transaction</p> <p>14 documents?"</p> <p>15 So evidently, at some point between</p> <p>16 September 24th, 2014 and November 3rd, 2014, Mr. Lowie had</p> <p>17 reengaged in his interest to purchase Fore Stars or -- or --</p> <p>18 A. I think once -- I think once it came out that</p> <p>19 Mr. Lang was in bankruptcy, Mr. Yohan decided that we were</p> <p>20 okay to proceed and continue to go forward.</p> <p>21 Q. Okay.</p> <p>22 A. I think.</p> <p>23 Q. So then Mr. Lichtenberger responds to Mr. Davis</p> <p>24 with a CC to you, saying, "Are you able to get Assif [sic]</p> <p>25 to waive the right of refusal? If so, do you just want to</p>

<p style="text-align: right;">Page 170</p> <p>1 purchase the course or the LLC? Understand that it is 2 prudent to get his waiver."</p> <p>3 And then Mr. Davis responds, "Henry, I agree. 4 Perhaps . . . the BGC waiver a condition which must be 5 satisfied within xx days of the execution of the agreement. 6 The intent is to purchase the LLC."</p> <p>7 So as of November, at least November 3rd, 2014, 8 it's being represented by Mr. Davis that Mr. Lowie changed 9 his interest in purchasing the LLC instead of the assets, 10 correct?</p> <p>11 A. I don't think the LLC purchase was Mr. Lowie's 12 change. That was mine. And it was all tied to all of these 13 different things. It's just -- I felt like it gave us more 14 protection, because there was a lot more going on behind the 15 scenes than I could identify.</p> <p>16 Q. So the -- they're -- you were learning of hair on 17 the deal, essentially?</p> <p>18 MR. WILLIAMS: Learning -- learning of what? 19 THE WITNESS: Of hair on the deal. 20 MR. WILLIAMS: Yeah. Okay. Fair enough. 21 THE WITNESS: Essentially. 22 MR. WILLIAMS: Essentially.</p> <p>23 BY MR. OGILVIE: 24 Q. You've heard that term before, right? 25 A. Yes, I have.</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. Okay. 2 A. And by him buying Fore Stars, again, if there was 3 a problem with that right of first refusal, it was no longer 4 our problem. 5 (Defendant's Exhibit 41 was marked 6 for identification.) 7 BY MR. OGILVIE: 8 Q. Okay. Directing your attention to what's been 9 marked as Exhibit 41, very quickly. It's an e-mail from 10 your attorney to you -- or to Mr. Davis and copied to you, 11 with -- attaching a letter from Mr. Assaf Lang waiving his 12 right of first refusal. 13 Do you recall that? 14 A. Yes, I do recall it. 15 Q. Now, this isn't signed, but it came via e-mail. 16 Is this -- is this a way that it -- is this the 17 way that it arrived in your in box? 18 A. Go back to the main thing so I can look it up 19 really fast. Yeah. Hold on right there. Now go back to 20 the e-mail. Right there, yeah. Hold -- hold still right 21 there. Let me look it up. 22 Yeah, I'm sure I have. 23 From Friday, 7, November, 2014. 24 This is going to take me a second to find it. 25 Hold on.</p>
<p style="text-align: right;">Page 172</p> <p>1 Q. Don't -- don't worry about it. It's fine. 2 In any event, it was your understanding that 3 the -- that Mr. Lang had terminated his right to -- right to 4 first refusal? 5 A. That was my understanding, yes. 6 Q. Okay. 7 A. Here. I got the waiver letter. Hold on. 8 It looks just like you -- you're showing it. 9 Q. Okay. 10 A. Not signed. It's just a Word doc. 11 I -- I have on there an e-mail, a subsequent 12 e-mail, from Todd that says, "Looks good to me. Send to 13 Yohan to send to BCG requesting signature." So whatever 14 that's worth. 15 Q. Okay. Were you having telephone conversations 16 with Yohan Lowie at this point in time regarding this right 17 of first refusal? 18 A. By November, no. We had kind of just -- we were 19 just finishing this. Once we converted over to a securities 20 purchase agreement, I was less stressed about it. 21 Q. Okay. Let me direct your attention to Exhibit 42. 22 (Defendant's Exhibit 42 was marked 23 for identification.) 24 BY MR. OGILVIE: 25 Q. "Lot Line Adjustment Agreement" between</p>	<p style="text-align: right;">Page 173</p> <p>1 Queensridge Towers and Fore Stars. And this is the document 2 that finalized the transfer back to Fore Stars of the 3 two-point-something acres that was the subject of the 4 election for -- to conclude the clubhouse improvements 5 agreement, correct? 6 A. Yep. 7 Q. So you -- is it true and accurate to say that as 8 of the date of this document, November 14th, 2014, that you 9 had resolved that Golf Course Clubhouse Improvements 10 Agreement? 11 A. Yes. And that's -- the purchase price went from 12 12 to 15. 13 Q. When you say "the purchase price," you're talking 14 about the purchase price of Fore Stars -- 15 A. Fore Stars. 16 Q. -- and the water rights? 17 A. That is correct. 18 (Defendant's Exhibit 43 was marked 19 for identification.) 20 BY MR. OGILVIE: 21 Q. Directing your attention to what's been marked as 22 Exhibit 43. It is an e-mail exchange and "Membership 23 Interest Purchase and Sale Agreement" from -- the e-mail is 24 from Mr. Lichtenberger to you, Yohan Lowie, and Todd Davis 25 dated -- what did I say -- November 26th, 2014. The</p>

<p style="text-align: right;">Page 174</p> <p>1 attached -- and Mr. Lichtenberger says, "Attached is initial 2 draft of the Stock Purchase Agreement for the Golf Course." 3 So this -- and he goes on to say in the second 4 sentence, "The document differs greatly from the former 5 draft of the Asset Purchase Agreement so creating a marked 6 version would not be very beneficial." 7 And so the attachment -- the second through, what, 8 20th page, whatever it is, of Exhibit 43 is the first 9 iteration of a purchase and sale agreement for the entity, 10 as opposed to the prior iterations that were for the assets 11 of the entity, correct? 12 A. That's correct. 13 Q. And this is this -- references the fact that Fore 14 Stars owns the real property that constitutes the Badlands 15 Golf Course, and WRL LLC is the entity that owns the water 16 rights that are appertinent to the golf course, correct? 17 A. That is correct. Yeah, that was correct. 18 Q. And if we go to page 2, the purchase price now, as 19 a result of the lot line adjustment agreement between 20 Queensridge Towers and Fore Stars from November 14th, 2014, 21 is \$15 million because you are now transferring that 22 additional two-point-something acres where the clubhouse 23 sits? 24 A. That's correct. 25 Q. Under Section --</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Well, yeah. It's -- it's worth -- it's worth that 2 money because not only are we transferring the additional -- 3 we're transferring the clubhouse. 4 Q. Right. 5 A. We got the clubhouse back. 6 Q. Right. 7 A. Okay. 8 Q. So you're valuing the clubhouse, you and -- in 9 this case -- 10 A. It wasn't just that additional two acres. It 11 was -- it was the clubhouse -- 12 Q. The club -- okay. 13 A. -- meaning we had the clubhouse. 14 Q. The real property and the improvements? 15 A. Yeah. 16 Q. And you're valuing that at \$3 million? 17 A. Yeah. 18 Q. So in Section 2.01(b), it talks about a 19 feasibility period. 20 Is that like a -- do you have an understanding 21 that that was the purchaser's due diligence period? 22 A. Yes. 23 Q. And it was 30 days from the effective date, 24 effective date being -- oh, not actually -- not filled in at 25 this point because it's just a draft, right?</p>
<p style="text-align: right;">Page 176</p> <p>1 A. Yeah. And it's going to be, yeah, from the date 2 that this was signed. 3 Q. Right. Okay. 4 (Defendant's Exhibit 44 was marked 5 for identification.) 6 BY MR. OGILVIE: 7 Q. Directing your attention what's been marked as 8 Exhibit 44, which is an e-mail exchange between 9 Mr. Lichtenberger, you, Yohan Lowie, and Todd Davis. The 10 first e-mail is the same as the e-mail in Exhibit 43, by 11 which Mr. Lichtenberger transmitted -- 12 MR. WILLIAMS: Hold on, George. 13 THE WITNESS: Hold on. My compressor just came 14 on. Let me go turn it off. Give me one second. 15 MR. WILLIAMS: Hey, George, Billy -- let's go off 16 the record. 17 (Off the record.) 18 BY MR. OGILVIE: 19 Q. The initial e-mail on Exhibit 44 was the 20 transmittal e-mail on Exhibit 43, by which Mr. Lichtenberger 21 transmitted the initial iteration of the -- of the 22 membership -- stock membership purchase and sale agreement. 23 And then -- so that -- he transmitted that on November 26th. 24 Mr. Davis responds on December 1st to 25 Mr. Lichtenberger, you, Yohan Lowie, and Frank Pankratz,</p>	<p style="text-align: right;">Page 177</p> <p>1 saying, "Attached is the purchaser executed signature page." 2 Mr. Lichtenberger responds a few minutes later, an 3 hour later, saying, "Should we assume that you have no 4 comments to the document?" 5 Mr. Davis responds 14 minutes later, "Correct." 6 And you received a signed Membership Interest 7 Purchase and Sale Agreement, right? 8 A. That's correct. 9 Q. Were you surprised? 10 A. No. We had negotiated with Yohan for four months. 11 And let me say, that's a -- that's a lot of work. 12 (Defendant's Exhibit 45 was marked 13 for identification.) 14 BY MR. OGILVIE: 15 Q. Directing your attention to what's been marked as 16 Exhibit 45. That is the fully executed signature page for 17 the Membership Interest Purchase and Sale Agreement; is that 18 correct? 19 A. Yes. Go back. But I do want to highlight one 20 thing. Go back to the -- the -- the agreement -- 21 Q. Okay. 22 A. -- the securities agreement. 23 Q. Okay. 24 A. Go down to the section that talks about the lease 25 with Par 4. I believe that got put back in. I'm not</p>

<p style="text-align: right;">Page 178</p> <p>1 100 percent positive, but I'm 90 percent positive.</p> <p>2 Q. Section 5.9, on page 4?</p> <p>3 A. Right there where it says 1.02. "'Golf Course</p> <p>4 Lease' shall mean that certain golf course lease dated as of</p> <p>5 June 1, 2010, as amended" -- I -- I did an amendment. We</p> <p>6 canceled the lease with Par 4. And then in November, after</p> <p>7 we got through the Assaf Lang mess, Yohan wanted the lease</p> <p>8 back in place, and so I had to go and get that lease back</p> <p>9 on.</p> <p>10 Q. Okay. So whereas the prior negotiations for the</p> <p>11 purchase of the assets anticipated a termination of that</p> <p>12 lease and no more entanglements relative to -- between Fore</p> <p>13 Stars and Par 4, Mr. Lowie changed his mind and asked that</p> <p>14 you go back and extend the lease; is that -- is that what</p> <p>15 I'm hearing?</p> <p>16 A. That is what you are understanding. That's --</p> <p>17 that's what I understood. That's what I did.</p> <p>18 Q. Okay.</p> <p>19 A. And I -- when I did it, I did tell Paul Jaramillo,</p> <p>20 who owns Par 4, that I didn't understand all of what was</p> <p>21 going on, that it was complicated. So when we did the</p> <p>22 amendment, in order to induce Paul to do the amendment</p> <p>23 because of the complication, he had a 30-day or 60-day out</p> <p>24 clause. I can't remember. So there was a lease in place.</p> <p>25 It was a week lease with an out clause.</p>	<p style="text-align: right;">Page 179</p> <p>1 Q. So at this point, with the execution of the</p> <p>2 Membership Interest Purchase and Sale Agreement, you're --</p> <p>3 you have a binding contract to sell Fore Stars and WRL to</p> <p>4 Mr. Lowie's entity for 15 million, correct?</p> <p>5 A. That is correct.</p> <p>6 (Defendant's Exhibit 46 was marked</p> <p>7 for identification.)</p> <p>8 BY MR. OGILVIE:</p> <p>9 Q. We go back to the -- Exhibit 45 --</p> <p>10 So on Exhibit 44 was the e-mail exchange where</p> <p>11 Mr. Davis sent back the executed signature page for the</p> <p>12 purchaser on December 1st.</p> <p>13 Did you countersign it that same day?</p> <p>14 A. Oh, I couldn't tell you. I don't know. If -- I'm</p> <p>15 sure there's a date on it.</p> <p>16 Q. Actually, there's not.</p> <p>17 A. I think -- I mean, I -- it didn't -- we didn't</p> <p>18 hold it. So yeah, I assume that once he sent it over, I</p> <p>19 signed it and sent it back.</p> <p>20 Let me see the signature. I can tell you if I</p> <p>21 signed it on my iPad. And if I signed it on my iPad, it was</p> <p>22 probably right away.</p> <p>23 Yep, that's my iPad.</p> <p>24 Q. Okay.</p> <p>25 A. I probably signed that within 15 minutes of</p>
<p style="text-align: right;">Page 180</p> <p>1 getting it.</p> <p>2 Q. Okay. And so if we go back to Exhibit 43, the</p> <p>3 feasibility period of 30 days, is it your recollection that</p> <p>4 that would have expired on or about December 30th or 31st,</p> <p>5 2014?</p> <p>6 A. Yep, that's my recollection.</p> <p>7 Q. Let me direct your attention to what's been marked</p> <p>8 as Exhibit 46. It's an e-mail exchange between Todd Davis,</p> <p>9 Henry Lichtenberger, you eventually are included, Kerry</p> <p>10 Walters, Billy Bayne.</p> <p>11 The first e-mail on the second page says, "Henry."</p> <p>12 Go to the second page.</p> <p>13 A. This is just where they wanted to split the</p> <p>14 transactions up into two transactions, one for the water</p> <p>15 rights and one for the golf course.</p> <p>16 Q. Okay. And so -- so prior to December 23rd, 2014,</p> <p>17 it was your understanding you were proceeding with the</p> <p>18 single membership interest purchase and sale agreement that</p> <p>19 was executed on or about December 1st, 2014?</p> <p>20 A. Yep.</p> <p>21 (Defendant's Exhibit 47 was marked</p> <p>22 for identification.)</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. Directing your attention to what's been marked as</p> <p>25 Exhibit 47. It's an e-mail exchange, again, between</p>	<p style="text-align: right;">Page 181</p> <p>1 Mr. Davis, Mr. Lichtenberger, Mr. Lowie, you, and Frank</p> <p>2 Pankratz, that begins on February 4th, 2015 and ends on</p> <p>3 February 19th, 2015. The February 19th e-mail from you --</p> <p>4 I'm not sure. It doesn't say who it's to.</p> <p>5 It says, "In the e-mail string below you will find</p> <p>6 the last set of notes and clarifications to our PSA."</p> <p>7 Are you referring to the two PSAs for -- one for</p> <p>8 WRL and one for Fore Stars?</p> <p>9 A. I actually think that Yohan -- if you look up</p> <p>10 above, it's from Yohan to me, and he says, "Why are you</p> <p>11 doing this?"</p> <p>12 I think I responded. I wrote, "In the e-mail</p> <p>13 string below," so that's what you said, I apologize, "you</p> <p>14 will find the last set of notes and clarifications to our</p> <p>15 PSA."</p> <p>16 This was a little bit of a renegotiation thing</p> <p>17 that was going on, and it just made -- it was more</p> <p>18 complicated.</p> <p>19 Q. And so, essentially, you're saying the Peccole</p> <p>20 Family doesn't have any interest in the renegotiation?</p> <p>21 A. Essentially, that's what I'm saying. They --</p> <p>22 yeah, I didn't want to rep and warrant any more than what</p> <p>23 was repped and warrantied in the document, and that had</p> <p>24 become an issue.</p> <p>25 Q. Do you know why Yohan wanted to extend the option</p>

<p style="text-align: right;">Page 182</p> <p>1 on the end cap?</p> <p>2 A. No, I don't remember why. What -- hold on. Let</p> <p>3 me think for a second.</p> <p>4 He wanted to go back and talk about getting the</p> <p>5 end cap and -- and using that basically as collateral for</p> <p>6 the \$3 million that he would owe us in taking that note back</p> <p>7 and trying to close with \$12 million. And I just stated</p> <p>8 that's -- I didn't have approval to do that from the family,</p> <p>9 we have to close or we're done.</p> <p>10 (Defendant's Exhibit 48 was marked</p> <p>11 for identification.)</p> <p>12 BY MR. OGILVIE:</p> <p>13 Q. Directing your attention to what's been marked as</p> <p>14 Exhibit 48. It's an e-mail exchange from Mr. Lichtenberger,</p> <p>15 you, Kerry Walters, Frank Pankratz, Alan Mikal, Todd</p> <p>16 Davis --</p> <p>17 THE WITNESS: I thought we did it back in</p> <p>18 December.</p> <p>19 MR. WILLIAMS: You just had some stuff that I</p> <p>20 wasn't aware back then. The next year is --</p> <p>21 THE WITNESS: It was just the closing.</p> <p>22 MR. WILLIAMS: Yeah.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. Mr. Lichtenberger, on February 26th, it appears</p> <p>25 circulating --</p>	<p style="text-align: right;">Page 183</p> <p>1 A. We (inaudible) them and changed the pricing to \$7</p> <p>2 1/2 million for the water rights and \$7 1/2 million for the</p> <p>3 land.</p> <p>4 Q. Okay. And that was the final purchase price for</p> <p>5 each one of those entities, WRL and Fore Stars?</p> <p>6 A. Yes, sir.</p> <p>7 (Defendant's Exhibits 49 and 50</p> <p>8 were marked for identification.)</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. Directing your attention, I guess, first to</p> <p>11 Exhibit 49 and then to Exhibit 50. I'm going to ask you if</p> <p>12 these are the final executed version -- final executed</p> <p>13 membership interest and pur- -- membership purchase and sale</p> <p>14 agreement for -- well, strike that.</p> <p>15 The first one, 49, is the "Membership Interest</p> <p>16 Purchase and Sale Agreement" that was executed for the sale</p> <p>17 of Fore Stars to Mr. Lowie's entity, correct?</p> <p>18 A. Yes, I believe so.</p> <p>19 Can you scroll down to the signature pages for me?</p> <p>20 Yes.</p> <p>21 Q. Okay. And then exhibit -- oh, okay. Yes. Good.</p> <p>22 Exhibit B to --</p> <p>23 A. That gives you your list of stuff.</p> <p>24 Q. Lists equipment. It's identified as "Equipment</p> <p>25 List." This is the operation assets that you referenced</p>
<p style="text-align: right;">Page 184</p> <p>1 earlier that you had a valuation done. You can't remember</p> <p>2 exactly what it was, but it was less than 200 or \$300,000?</p> <p>3 A. That's what I remember.</p> <p>4 Q. Okay. If we turn to Section 2.01 of Exhibit 49 --</p> <p>5 and again, Exhibit 49 is the Membership Interest Purchase</p> <p>6 and Sale Agreement for Fore Stars.</p> <p>7 It says that the purchase price is \$7,500,000; is</p> <p>8 that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Did the seller, which is identified as The William</p> <p>11 Peter Peccole and Wanda Ruth Peccole Family Limited</p> <p>12 Partnership, receive any consideration in addition to \$7 1/2</p> <p>13 million for selling Fore Stars to Mr. Lowie's entity Ramalta</p> <p>14 LLC?</p> <p>15 MR. WILLIAMS: Objection; vague and ambiguous.</p> <p>16 MR. LEAVITT: Repeat the objection.</p> <p>17 MR. WILLIAMS: He asked you if you received any --</p> <p>18 if the company received any consideration in addition to the</p> <p>19 7.5 million. If you can answer, answer.</p> <p>20 THE WITNESS: I don't know what consideration</p> <p>21 means. More money?</p> <p>22 MR. WILLIAMS: That's why I objected.</p> <p>23 MR. LEAVITT: It could be anything.</p> <p>24 THE WITNESS: We got \$7.5 million for the sale of</p> <p>25 the property and \$7.5 million for the water rights.</p>	<p style="text-align: right;">Page 185</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. Anything else other than money? Any other land?</p> <p>3 Anything else that was given to The William Peter Peccole</p> <p>4 and Wanda Ruth Peccole Family Limited Partnership for WRL or</p> <p>5 Fore Stars?</p> <p>6 A. No. That's kind of why we had to stop. Like, I</p> <p>7 was afraid that going back and talking about the end cap</p> <p>8 and -- and all of that stuff would just open up a bigger</p> <p>9 Pandora's box. That's why we stopped. We just said, "close</p> <p>10 or don't close."</p> <p>11 (Defendant's Exhibit 51 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. OGILVIE:</p> <p>14 Q. Directing your attention to what's been marked as</p> <p>15 Exhibit 51. It is a "Grant, Bargain, and Sale Deed,"</p> <p>16 whereby Hualapai Commons Limited LLC -- I believe you</p> <p>17 testified earlier that that was a Peccole entity, correct?</p> <p>18 A. Yes.</p> <p>19 Q. -- granted and sold to EHC Hualapai LLC what is</p> <p>20 identified on Exhibit A. We look to Exhibit A.</p> <p>21 A. This is for the end cap.</p> <p>22 Q. That's all I needed to know. So this is --</p> <p>23 A. Yeah. Because if you go up, it says -- go scroll</p> <p>24 up, right there, to the exhibit for me.</p> <p>25 You can see where it says exhibit. This is a</p>

<p style="text-align: right;">Page 186</p> <p>1 condominiumized piece because it's going through -- "said</p> <p>2 exterior facade, 2.63 feet to the center of the common wall;</p> <p>3 thence north . . . feet to the northerly extension of the</p> <p>4 common wall."</p> <p>5 This is measuring out the interior of that end cap</p> <p>6 space.</p> <p>7 Q. Okay. So this is the Grant, Bargain and Sale Deed</p> <p>8 by which the Peccole Family transferred title to Mr. Lowie</p> <p>9 of the end cap, correct?</p> <p>10 A. Yeah. And I think our -- I think our loan paid</p> <p>11 off in July of '15. And after that, we had to do the</p> <p>12 commercial subdivision and the record of survey, which is</p> <p>13 what this legal description was generated from. And then we</p> <p>14 could transfer that property to Yohan.</p> <p>15 So what's the date on this deed? Is this like</p> <p>16 August? September?</p> <p>17 MR. WILLIAMS: I thought July.</p> <p>18 THE WITNESS: It might have been July, because we</p> <p>19 might have been working on it concurrently.</p> <p>20 MR. WILLIAMS: Right there.</p> <p>21 THE WITNESS: Yeah.</p> <p>22 MR. WILLIAMS: 7/13.</p> <p>23 THE WITNESS: Yeah. That's fine.</p> <p>24 We were working on this concurrently to give</p> <p>25 overture in anticipation of our loan closing.</p>	<p style="text-align: right;">Page 187</p> <p>1 BY MR. OGILVIE:</p> <p>2 Q. This is dated July 11, 2017.</p> <p>3 A. Well, that's 2017, so I'm right.</p> <p>4 So 2015 the loan paid off. And then we had to</p> <p>5 finish the record of survey and the commercial subdivision,</p> <p>6 which took about six, nine months.</p> <p>7 Q. Okay.</p> <p>8 A. So yeah, that's what this is. But this has</p> <p>9 nothing to do with the golf course.</p> <p>10 Q. Understood.</p> <p>11 A. It does have to do with that -- that collateral</p> <p>12 agreement and all that other stuff.</p> <p>13 (Defendant's Exhibit 52 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. OGILVIE:</p> <p>16 Q. Directing your attention to what's been marked as</p> <p>17 Exhibit 52. You previously just -- you just mentioned the</p> <p>18 record of survey that you had to complete.</p> <p>19 Is this the record of survey that you were</p> <p>20 referring to?</p> <p>21 A. That is.</p> <p>22 Q. Okay. And the -- the building that is referenced</p> <p>23 or reflected on this Exhibit 52, that's the end cap,</p> <p>24 correct?</p> <p>25 A. That is.</p>
<p style="text-align: right;">Page 188</p> <p>1 MR. OGILVIE: Okay. Mr. Leavitt may have some</p> <p>2 questions for you, but, at this point, I will pass the</p> <p>3 witness.</p> <p>4 MR. LEAVITT: All right. Butch, switch seats,</p> <p>5 man.</p> <p>6 (Brief pause in the proceedings.)</p> <p>7 EXAMINATION</p> <p>8 BY MR. LEAVITT:</p> <p>9 Q. All right. Mr. Bayne, thank you for your time,</p> <p>10 and I'll have a few questions with you. Hopefully I can get</p> <p>11 through them relatively quickly.</p> <p>12 You talked about an individual named Clyde Spitze,</p> <p>13 correct?</p> <p>14 A. I did.</p> <p>15 Q. And you said that Clyde Spitze understood the</p> <p>16 property probably better than anybody; is that correct?</p> <p>17 A. Understood the zoning and -- and those things,</p> <p>18 yes.</p> <p>19 Q. So zoning and land use, he would be the guy to go</p> <p>20 to to find out what was happening on the property, correct?</p> <p>21 A. Yes. And for most of the applications before --</p> <p>22 before 2004, 2005, that would be Clyde.</p> <p>23 Q. Okay. And there was some questions in regards to</p> <p>24 this PROS designation.</p> <p>25 You remember those? And we can go back to the</p>	<p style="text-align: right;">Page 189</p> <p>1 exhibits to --</p> <p>2 A. I remember.</p> <p>3 Q. Okay. All right. And you have a basic</p> <p>4 understanding of how zoning applications are filed with the</p> <p>5 City of Las Vegas; is that correct?</p> <p>6 A. A basic one, yep.</p> <p>7 Q. Okay. And when you go to the City of Las Vegas,</p> <p>8 the City of Las Vegas tells you what applications are</p> <p>9 necessary to file, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And the City of Las Vegas directs you on how to</p> <p>12 fill out those applications, correct?</p> <p>13 A. Typically.</p> <p>14 Q. Okay.</p> <p>15 A. And we don't typically fill them out. We usually</p> <p>16 hire somebody to do it.</p> <p>17 Q. Right.</p> <p>18 And so it's your understanding that that</p> <p>19 individual would go to the City of Las Vegas and get the</p> <p>20 information on how to fill out that application; is that</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. All right. So give me just a second here.</p> <p>24 George did so much, I can't even find out where the</p> <p>25 questions were. Hold on a second.</p>

<p style="text-align: right;">Page 190</p> <p>1 Okay. Sorry, Billy.</p> <p>2 A. No, you're good.</p> <p>3 MS. HAM: Jim, are you looking for the exhibit</p> <p>4 numbers?</p> <p>5 MR. LEAVITT: I'm looking for the exhibit number</p> <p>6 for the application that was submitted that had -- was</p> <p>7 signed by -- signed by Larry Miller.</p> <p>8 MS. HAM: Twenty, twenty-one, and twenty-two,</p> <p>9 believe.</p> <p>10 MR. LEAVITT: What?</p> <p>11 THE WITNESS: Twenty, twenty-one, and twenty-two.</p> <p>12 MR. LEAVITT: Okay. Can you pull up, please,</p> <p>13 Exhibits No. 20, 21, and 22? There we go.</p> <p>14 MR. OGILVIE: Who are you talking to? Do you</p> <p>15 have --</p> <p>16 MR. LEAVITT: You guys, George. George, I don't</p> <p>17 have a copy of your exhibits. You never sent them to me, so</p> <p>18 someone is going to have to pull them up.</p> <p>19 MR. OGILVIE: Well, you could have been here with</p> <p>20 me. I would have provided -- I have a copy for you right</p> <p>21 here.</p> <p>22 MR. LEAVITT: All right, George. All right.</p> <p>23 Well, if you don't mind pulling up Exhibit No. 20,</p> <p>24 please.</p> <p>25 MR. MOLINA: Which -- which one is that?</p>	<p style="text-align: right;">Page 191</p> <p>1 BY MR. LEAVITT:</p> <p>2 Q. Actually, hold on just a second. Let's hold on a</p> <p>3 second. So I want to come back to that.</p> <p>4 So Clyde Spitze was an individual who worked with</p> <p>5 your grandfather, and he was one of the individuals that</p> <p>6 went to the City of Las Vegas and asked the City of Las</p> <p>7 Vegas how to fill out applications for zoning; is that</p> <p>8 correct.</p> <p>9 A. That is correct.</p> <p>10 Q. So he would be an individual who has probably the</p> <p>11 most knowledge regarding the zoning on the property and any</p> <p>12 potential master plan land use designations on the property;</p> <p>13 is that correct?</p> <p>14 A. That's correct.</p> <p>15 MR. OGILVIE: Objection; lacks -- lacks</p> <p>16 foundation.</p> <p>17 MR. WILLIAMS: Let's slow it down just a little</p> <p>18 bit guys, just because I'm concerned about the court</p> <p>19 reporter as well as making sure that people can get</p> <p>20 objections in.</p> <p>21 MR. LEAVITT: You got it.</p> <p>22 MR. WILLIAMS: I'm the one who speeded it up</p> <p>23 trying to save my client, but we'll have to slow down just a</p> <p>24 little bit.</p> <p>25 MR. LEAVITT: Butch just told me to hurry up. Now</p>
<p style="text-align: right;">Page 192</p> <p>1 he's telling me to slow down.</p> <p>2 MR. WILLIAMS: To slow down, right. Yeah.</p> <p>3 Welcome to my life.</p> <p>4 BY MR. LEAVITT:</p> <p>5 Q. All right. So I'm going to read to you something</p> <p>6 that Mr. Spitze stated, and I want to ask you whether you</p> <p>7 agree with it. This was during his deposition that was</p> <p>8 taken on August 21st, 2019, at 9:00 o'clock a.m. And this</p> <p>9 is Volume II. And this is from page 356 of his deposition</p> <p>10 line 3.</p> <p>11 The question is:</p> <p>12 "Question: Understood. Are you aware of any time</p> <p>13 that the William Peccole or anyone -- that William Peccole</p> <p>14 or anyone from the Peccole Family went to the City of Las</p> <p>15 Vegas and requested that a parks, recreation, or open space</p> <p>16 designation be placed on any part of the property?</p> <p>17 "Answer: Not that I -- that I know of."</p> <p>18 Would you agree with that?</p> <p>19 A. I would agree with that.</p> <p>20 Q. Okay. So would you agree that there's never any</p> <p>21 time that the Peccole Family went to the City of Las Vegas</p> <p>22 and said, Hey, put a parks, recreation, open space</p> <p>23 designation on your master plan on our 250-acre property?</p> <p>24 A. (Inaudible).</p> <p>25 MR. OGILVIE: Objection; lacks foundation, calls</p>	<p style="text-align: right;">Page 193</p> <p>1 for speculation.</p> <p>2 THE COURT REPORTER: I didn't get the answer.</p> <p>3 THE WITNESS: I would -- I would agree that as far</p> <p>4 as I know, we never asked the city to do that.</p> <p>5 BY MR. LEAVITT:</p> <p>6 Q. Okay. And are you aware of any point in time when</p> <p>7 the City of Las Vegas gave you or anybody else in the</p> <p>8 Peccole Family notice that it was going to change a land use</p> <p>9 designation on the 250-acre property to a PROS designation?</p> <p>10 A. I'm not aware of that. I don't -- I don't know</p> <p>11 when that would have occurred, and I'm not -- I'm not aware</p> <p>12 of that, no.</p> <p>13 Q. Okay. Do you know if there ever was a PROS</p> <p>14 designation put on the property under the city's master</p> <p>15 plan?</p> <p>16 A. Under the city's master plan, I do not know. What</p> <p>17 I do know is that when we got the tax bill every year, we</p> <p>18 would go and appeal to the taxing authority that the land</p> <p>19 was being used as open space.</p> <p>20 Q. Okay. And that actually brings me to a question.</p> <p>21 So when you went to appeal your taxes, was that</p> <p>22 appeal based on the use that was being made of the property</p> <p>23 or was it based on zoning of the property?</p> <p>24 A. It was being based on the use, how we were using</p> <p>25 the property as a golf course.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. Okay. And was the tax appeal based on the use 2 that was being made of the property, or was it based upon a 3 potential master plan land use designation of PROS? 4 A. Just the use, as far as I know, when we were doing 5 the appeals. 6 Q. Okay. 7 A. We would show them that it was a golf course. We 8 would show our licensure as a golf course. 9 Q. Okay. All right. And by showing the tax assessor 10 that the property was being used as a golf course, the 11 argument you were making is that the property is currently 12 being used a golf course; therefore, it should be taxed as a 13 golf course for open space, correct? 14 A. That is correct. 15 Q. You were not conceding to the tax assessor that 16 the property could only be used as open space into 17 perpetuity, were you? 18 A. No. And I don't know that the tax assessor -- 19 THE COURT REPORTER: I'm sorry, could only be used 20 as open space and what? 21 MR. LEAVITT: Into perpetuity, were you, question. 22 Q (By Mr. Leavitt) Go ahead. 23 A. No. We weren't conceding anything other than we 24 were using it as a golf course, and we didn't want to pay a 25 lot of taxes for residential land.</p>	<p style="text-align: right;">Page 195</p> <p>1 Q. Okay. And so -- well, let me -- let me read to 2 you something else that Mr. -- Mr. Spitze stated in his 3 deposition. This is from Volume I of Mr. Spitze's 4 deposition, taken on August 16th, 2019. And this is Page 5 No. 178. This is the question. And by the way, I'm 6 questioning him. It says: 7 "And, again, I have read through tens of thousands 8 of pages of documents here, and I have not seen anywhere in 9 any of these documents where the City of Las Vegas 10 conditioned the development of the Queensridge property upon 11 the construction of a golf course. Would you agree with 12 that? 13 "Absolutely it did not." 14 Would you agree with Mr. Spitze's statement there? 15 A. To the best of my understanding. 16 Q. Okay. And then I said -- then the next question 17 was: 18 "So was there any point in time when anybody at 19 the City of Las Vegas came to you and stated we will not 20 allow you to build the Queensridge development unless you 21 will build a golf course?" 22 And then Mr. Ogilvie states: "Objection; lacks 23 foundation, mischaracterizes the evidence." 24 And then he answers: "No." 25 In other words, nobody from the city ever came to</p>
<p style="text-align: right;">Page 196</p> <p>1 you and said you can't build Queensridge unless you build 2 the golf course; would you agree with that? 3 A. To my -- to my understanding, there were no limits 4 placed on us. 5 Q. Okay. And then the -- turning to page 187 of 6 Mr. Spitze's deposition, he -- he has a -- the question is 7 presented: 8 "Okay. And then the City of Las Vegas never 9 specifically required you or made a condition to have open 10 space?" 11 And he answered: "That's right." 12 Would you agree with that? 13 A. To the -- to the best of my knowledge. Again, I 14 wasn't there for any of that, but I would defer to Clyde. 15 Q. Okay. And -- but you're not aware of any time 16 when the City of Las Vegas stated to you or anybody at your 17 family that you could not build on Queensridge unless you 18 had a golf course? 19 A. We contemplated building on that golf course all 20 through and up unto our negotiations with Yohan to sell the 21 golf course. 22 Q. And what evidence do you have of that? 23 A. The Hyatt meetings -- 24 Q. Okay. 25 A. -- where we talked to Hyatt.</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. Okay. 2 A. I asked GC Wallace to do a study on how much it 3 was going to cost to pipe and deal with the flood control 4 and the FEMA issues on the corner of Alta. That was 5 probably in April or May of 2014. So all the way up until 6 the point that we decided that -- once I got back from GC 7 Wallace that it was going to be very, very expensive is when 8 we decided let's see if we can just sell the golf course to 9 somebody that can operate a golf course better than we can. 10 Q. Okay. And did the Queensridge CC&Rs give you any 11 indication of whether your family was reserving the -- or I 12 don't know, maybe reserving is not the best way to say it, 13 of whether your family kept the right to develop on the golf 14 course? 15 A. In contemplating what we would do with GC Wallace, 16 we were not under the impression that we could not develop 17 on the golf course. But we also were not under the 18 impression that we could turn off the golf course. 19 Q. Okay. And in the Queensridge CC&Rs it states, 20 does it not, that the golf course is not part of the 21 Queensridge community, correct? 22 A. States -- states it clearly. 23 Q. Okay. And in the Queensridge CC&Rs it also states 24 that the golf course is available for development; is that 25 correct?</p>

<p style="text-align: right;">Page 198</p> <p>1 A. It says it in the CC&Rs that I've read, yes.</p> <p>2 Q. Okay. And so based upon the facts and information</p> <p>3 that you have, and also the CC&Rs, was it you and your</p> <p>4 family's belief that you could actually develop the golf</p> <p>5 course into residential units, if you wanted?</p> <p>6 MR. OGILVIE: Objection; lacks foundation, calls</p> <p>7 for speculation.</p> <p>8 THE WITNESS: I would say that it was my family's</p> <p>9 understanding that the golf course could be developed on.</p> <p>10 When you say "into residential units," again, we never would</p> <p>11 have gotten rid of the 27 holes.</p> <p>12 BY MR. LEAVITT:</p> <p>13 Q. Totally understand that. And I understand that.</p> <p>14 A. So could we fit houses here and there, yes, we</p> <p>15 contemplated that.</p> <p>16 Q. Okay. But did you -- do you feel like you had the</p> <p>17 right to develop homes on the property, on the 250-acre</p> <p>18 property?</p> <p>19 MR. OGILVIE: Objection; lacks foundation, calls</p> <p>20 for expert -- or calls for a legal conclusion.</p> <p>21 THE WITNESS: I'm not sure that we felt we had the</p> <p>22 right to develop where the golf course was.</p> <p>23 BY MR. LEAVITT:</p> <p>24 Q. Okay. And when you sold the property to</p> <p>25 Mr. Lowie, were there any restrictions on the property that</p>	<p style="text-align: right;">Page 199</p> <p>1 were disclosed to him?</p> <p>2 A. No. Everything -- everything's in our reps and</p> <p>3 warranties in that securities agreement.</p> <p>4 Q. Okay. And in that securities agreement, is there</p> <p>5 any rep or warranty that says Mr. Lowie cannot build on the</p> <p>6 golf course?</p> <p>7 A. No. I don't believe -- I don't believe the reps</p> <p>8 and warranties -- we did not rep that he could build. We</p> <p>9 did not rep that he could not build.</p> <p>10 MR. OGILVIE: Objection; the document speaks for</p> <p>11 itself.</p> <p>12 BY MR. LEAVITT:</p> <p>13 Q. Go ahead. You can continue.</p> <p>14 A. And we acknowledged that there was the BGC</p> <p>15 restriction, orally we talked about that a little bit. And,</p> <p>16 again, that was his to go and deal with.</p> <p>17 Q. Right.</p> <p>18 And he could actually terminate the BGC</p> <p>19 restriction on his own, correct?</p> <p>20 A. How- -- however -- once he owned Fore Stars LLC,</p> <p>21 he could do what he needed to as Fore Stars LLC.</p> <p>22 Q. Understood.</p> <p>23 All right. And do you know -- do you know if --</p> <p>24 whether the property was zoned R-PD7?</p> <p>25 A. When we looked --</p>
<p style="text-align: right;">Page 200</p> <p>1 THE COURT REPORTER: Was zoned what, R? I'm</p> <p>2 sorry, what is it?</p> <p>3 MR. LEAVITT: R-PD7.</p> <p>4 THE WITNESS: When we looked it up for the rep and</p> <p>5 warranty section, we just went to the county and looked it</p> <p>6 up and saw that it was zoned R-PD7, so we put it into the</p> <p>7 document.</p> <p>8 BY MR. LEAVITT:</p> <p>9 Q. And I'll represent to you that Mr. Spitze, in his</p> <p>10 deposition, said that meant -- said that R-PD7 meant that</p> <p>11 residential units could be developed in R-PD7 zoning.</p> <p>12 Is that your understanding also?</p> <p>13 MR. OGILVIE: Objection; lacks foundation.</p> <p>14 THE WITNESS: I don't have an -- an understanding</p> <p>15 of what R-PD7 meant, other than -- I don't know where it</p> <p>16 means that you can develop that.</p> <p>17 BY MR. LEAVITT:</p> <p>18 Q. Understood.</p> <p>19 A. I know that it means residential plan development,</p> <p>20 seven units per acre. But where that applies exactly, I</p> <p>21 didn't have an understanding of.</p> <p>22 Q. Okay. But as far as you know, were there any</p> <p>23 restrictions in place -- let's start with: Were you aware</p> <p>24 of any legal restrictions in place that would prohibit the</p> <p>25 development of homes on the golf course?</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Other than our BGC restrictive covenant, other</p> <p>2 than that, I am not aware of any legal restrictions. But</p> <p>3 I'm -- I would go to our attorney and ask if there's legal</p> <p>4 restrictions.</p> <p>5 Q. So --</p> <p>6 MR. OGILVIE: I object to the last question as</p> <p>7 calling for a legal conclusion.</p> <p>8 BY MR. LEAVITT:</p> <p>9 Q. Okay. Okay. So if you wanted to know whether you</p> <p>10 could build where the grass was on the golf course, you</p> <p>11 would go to your attorney and you would get a legal opinion</p> <p>12 from him to make that determination?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 A. And he would probably go to land use and check</p> <p>16 with land use. It would go to planning, I assume. But --</p> <p>17 but that's how it would go. I wouldn't just decide it.</p> <p>18 Q. And then would land use -- and when you say "land</p> <p>19 use," are you referring --</p> <p>20 A. The City.</p> <p>21 Q. Okay. City of Las Vegas Planning Department,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And then what would the City of Las Vegas Planning</p> <p>25 Department do? Would they give you a zoning verification</p>

<p style="text-align: right;">Page 202</p> <p>1 letter; is that what they would do?</p> <p>2 A. Um-hmm, typically.</p> <p>3 MR. OGILVIE: Objection; lacks foundation.</p> <p>4 BY MR. LEAVITT:</p> <p>5 Q. Okay. And what do you mean by --</p> <p>6 THE COURT REPORTER: I'm sorry, what was the</p> <p>7 answer?</p> <p>8 THE WITNESS: I said, yes, typically.</p> <p>9 BY MR. LEAVITT:</p> <p>10 Q. Okay. And what do you mean by, "yes, typically,"</p> <p>11 that's how the process works?</p> <p>12 A. When I'm -- when we're developing a piece of</p> <p>13 property, typically we'll go to land use and find out what's</p> <p>14 allowed, what's not allowed, what's the zoning, what it</p> <p>15 allows us to do. And so typically, I would go down or we</p> <p>16 would hire somebody to go down and -- and do that. It</p> <p>17 depends on the site, the piece of property, and the</p> <p>18 complexity.</p> <p>19 Q. Is that how you've done it for every one of your</p> <p>20 properties?</p> <p>21 A. Yes.</p> <p>22 MR. LEAVITT: Okay. All right. Okay. And if we</p> <p>23 could pull up Exhibit No. 20.</p> <p>24 THE COURT REPORTER: And can you guys try to slow</p> <p>25 down a little bit for me? It's been a long day.</p>	<p style="text-align: right;">Page 203</p> <p>1 MR. LEAVITT: Yes.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 THE COURT REPORTER: Thank you.</p> <p>4 (Discussion off the record.)</p> <p>5 THE WITNESS: Okay. Go ahead.</p> <p>6 BY MR. LEAVITT:</p> <p>7 Q. Okay. Exhibit No. 20 is the application</p> <p>8 Mr. Peccole [sic] was referring to previously. And you'll</p> <p>9 remember that he referenced one, two, three, four, five</p> <p>10 lines down where it says PROS.</p> <p>11 You see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Is there anything on this document where</p> <p>14 Mr. Miller is affirming that the general plan existing is</p> <p>15 PROS, or is this a document you would typically fill out and</p> <p>16 submit to the City because this is the type of document the</p> <p>17 City would want you to submit in order to get a general plan</p> <p>18 application?</p> <p>19 A. Generally --</p> <p>20 MR. OGILVIE: Objection; lacks foundation, vague</p> <p>21 and ambiguous, calls for speculation.</p> <p>22 BY MR. LEAVITT:</p> <p>23 Q. Go ahead. You can --</p> <p>24 A. Generally we would go down and we would get -- we</p> <p>25 would get this line, the general plan line. We would get</p>
<p style="text-align: right;">Page 204</p> <p>1 that from city planning.</p> <p>2 Q. Right.</p> <p>3 So this isn't something where you were signing and</p> <p>4 saying and committing and affirming, Hey, we believe that</p> <p>5 there's a PROS on the property; that's not what this</p> <p>6 document means?</p> <p>7 A. That is not what this document mean --</p> <p>8 Q. Okay.</p> <p>9 A. -- for us.</p> <p>10 MR. OGILVIE: Objection; lacks foundation, calls</p> <p>11 for a legal conclusion.</p> <p>12 MR. LEAVITT: Well, seems how you asked him</p> <p>13 questions about it, George, I thought I could ask him</p> <p>14 questions about it.</p> <p>15 MR. OGILVIE: I didn't ask him what it meant. I</p> <p>16 asked him what it was.</p> <p>17 MR. LEAVITT: I'm just -- I'm just getting on you</p> <p>18 a little bit, George. It's getting late.</p> <p>19 Q (By Mr. Leavitt) Okay. All right. Let's turn</p> <p>20 to -- there were questions about the Peccole Ranch Master</p> <p>21 Plan, and Mr. Ogilvie asked you just a couple of questions</p> <p>22 on that and moved off the topic. I actually call it the</p> <p>23 "Peccole Ranch Concept Plan." But I just have a couple of</p> <p>24 questions for you there.</p> <p>25 There's an argument that's being made that the</p>	<p style="text-align: right;">Page 205</p> <p>1 Peccole Ranch Master Plan applied to the 250-acre property</p> <p>2 in this case, or otherwise known as the Badlands Golf</p> <p>3 Course, and what -- that was -- that was sold to Mr. Lowie</p> <p>4 or some other -- I shouldn't say it that way. That</p> <p>5 Mr. Lowie acquired through the Fore Stars transaction.</p> <p>6 Okay. So that argument is being made. I'm just</p> <p>7 representing that to you. And the arguments being made is</p> <p>8 that Phase II -- well, hold -- let's go back.</p> <p>9 The 250-acre property, the golf course property,</p> <p>10 is located in Phase II of the Peccole Ranch Concept Plan,</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Okay. Do you agree or disagree that the 250-acre</p> <p>14 property in this case is subject to the Peccole Ranch</p> <p>15 Concept Plan?</p> <p>16 A. I do not believe that the property north of</p> <p>17 Charleston was part of Peccole Ranch, as -- for the reason</p> <p>18 that none of that property is subject to Peccole Ranch HOA,</p> <p>19 we don't pay fees. If you talk to Jan Porter who</p> <p>20 administers the Peccole Ranch HOA, she will tell you none of</p> <p>21 that property is part of Peccole Ranch. And it's not</p> <p>22 contemplated that it -- it was part of Peccole Ranch other</p> <p>23 than by the City.</p> <p>24 Q. Okay. And what do you mean by there's -- you said</p> <p>25 it's not subject to HOA. What do you mean by that?</p>

<p style="text-align: right;">Page 206</p> <p>1 A. So when we created -- when the 1992 master plan 2 was created and we had the opportunity to annex property 3 into the master plan, as we annexed property into the master 4 plan, it became subject to it, and, thus, the declarant was 5 Peccole Ranch HOA. The person responsible to collect fees 6 and assessments was Peccole Ranch HOA. 7 Peccole Ranch HOA doesn't get fees or assessments 8 from Queensridge. It doesn't get them from the golf course. 9 It doesn't get them from Rampart Commons, Sir Williams 10 Court, 21 Stars, any of those entities that we talked about 11 earlier. And so it's never made sense to me that it was 12 part of Peccole Ranch Master Plan Phase II. 13 I agree with your idea that there's a concept 14 plan. Clearly there was a concept. There's no doubt about 15 it. We have the maps. But it -- it was never -- we did not 16 annex that property in. 17 Q. Okay. So that concept was never applied to the 18 250-acre property; is that correct? 19 A. That concept wasn't applied to any property north 20 of Charleston. 21 Q. Got it. Okay. 22 A. Not just the 250 acres. 23 Q. And so let me make sure I understand this. 24 So in order for the 250-acre property in this 25 case, the golf course, to be subject to the Peccole Ranch</p>	<p style="text-align: right;">Page 207</p> <p>1 Master Plan or Concept Plan, however you want to call it, it 2 would have had to have been annexed into that plan; is that 3 correct? 4 A. That's my understanding -- 5 MR. OGILVIE: Objection; calls for a legal 6 conclusion. 7 THE WITNESS: That's my understanding based on 8 reading the CC&Rs for Peccole Ranch. 9 BY MR. LEAVITT: 10 Q. Perfect. All right. And is that the un- -- is 11 that also written in the -- well, let me take a step back. 12 Are you familiar with the Queensridge CC&Rs? 13 A. I am familiar with the Queensridge CC&Rs. 14 Q. And isn't it true that the Queensridge CC&Rs also 15 include a provision that the Queensridge CC&Rs will only 16 apply to that property which is annexed into the Queensridge 17 CC&Rs? 18 A. That is correct. 19 Q. And isn't it true that the 250-acre property that 20 we've been discussing here, the golf course property, has 21 never been annexed into the Queensridge CC&Rs either? 22 A. Hence the designation "not a part of." 23 Q. Not a part of. Okay. 24 And when you say "not a part of," what are you 25 referring to?</p>
<p style="text-align: right;">Page 208</p> <p>1 A. Not a part of Queensridge. 2 Q. Got it. 3 A. Now, again, I would point you to Clyde. Clyde is 4 going to know more about that history than me. 5 Q. Okay. Well, actually, we can see what Clyde said 6 right here. This is on page -- this is Volume I of 7 Mr. Spitze's deposition. It's August 16th, 2019. And the 8 question is -- 9 MR. OGILVIE: What -- what -- what -- where are 10 you, Jim? 11 MR. LEAVITT: Sorry. Sorry, Mr. Ogilvie. Page 12 147, Volume I, line 24. 13 Q. (By Mr. Leavitt) The question is: 14 "And on Phase II," we're referring to the Peccole 15 Ranch Phase II, "there were two different plans. There was 16 the Peccole and the Triple Five plan." 17 And the Triple Five plan was the original plan 18 that your grandfather had entered into with Triple Five; is 19 that correct? 20 A. I don't know. 21 Q. Okay. Well, he had entered into some type of 22 arrangement with Triple Five to begin with, correct? 23 A. Yes. 24 Q. Okay. And then later on, that original Phase II 25 plan was abandoned, and a Queensridge plan was put in</p>	<p style="text-align: right;">Page 209</p> <p>1 place -- 2 A. Yes. 3 Q. -- is that correct? Okay. 4 A. That's the picture that's in our office. 5 Q. All right. Perfect. 6 So then -- let me continue. 7 "Question: And on Phase II, there were two 8 different plans. There was the Peccole and the Triple Five 9 plan?" 10 And the answer is: "Yes." 11 Then the question is: "Back in 1990, correct?" 12 The answer is: "Yes." 13 "And then after Mr. Peccole got into the 14 litigation with Triple Five and broke with Triple Five, then 15 a new plan came in, correct?" 16 "Yes." 17 You agree with that so far? 18 A. Yes. 19 Q. Okay. Then the next question is: 20 "Okay. That's your plan that you worked on." And 21 of course I'm speaking with Mr. Spitze right now. And he 22 said -- and I say, "right?" 23 And then he said: 24 "Answer: Yes." 25 "Question: And that would be -- maybe that would</p>

<p style="text-align: right;">Page 210</p> <p>1 be better to refer to the second plan as Phase II as the 2 Queensridge plan, correct?" 3 And he answers: "That's true." 4 Do you agree with all that? 5 A. I do. 6 Q. Okay. To summarize all that, there was this 7 Peccole Ranch Concept Plan for Phase II that was a concept 8 that may have, at some time in the future, applied to be 9 joined with the 250-acre property, correct? 10 A. That is how I understood it. 11 Q. And that Phase II Peccole Ranch Concept Plan that 12 may have applied to the 250-acre golf course property, in 13 this that we're talking about here, was abandoned; is that 14 correct? 15 MR. OGILVIE: Objection; lacks foundation. 16 THE WITNESS: (Inaudible) And they changed it for 17 the Queensridge plan. 18 MR. LEAVITT: Okay. 19 THE COURT REPORTER: I'm sorry, what was the 20 beginning of the answer? I didn't get the beginning. 21 THE WITNESS: And they changed it for the 22 Queensridge plan. 23 THE COURT REPORTER: No, the beginning, while 24 there was -- during the objection. 25 MR. LEAVITT: No, that's what he said.</p>	<p style="text-align: right;">Page 211</p> <p>1 THE COURT REPORTER: Okay. 2 MR. LEAVITT: Oh, let me rephrase. Let me -- let 3 me rephrase this. Okay? 4 MR. OGILVIE: Let me -- let me object so I don't 5 cut anyone off, because this is going to lack foundation. 6 He testified he doesn't have any understanding of what -- or 7 doesn't really have any intimate knowledge or -- he didn't 8 use those terms, but essentially no intimate knowledge of 9 what happened prior to him arriving in 2006. 10 MR. LEAVITT: Okay. 11 THE WITNESS: That's true. 12 BY MR. LEAVITT: 13 Q. Okay. And -- but you -- through your efforts as 14 the CEO and through your work as the CEO from 2005 and 2006 15 forward, you gained information and knowledge regarding the 16 historical use of the property, correct? 17 A. I gained some from reading the CC&Rs and trying to 18 go back and put this together when we were sued by Bob 19 Peccole. 20 Q. Okay. So as of 2006, while you were CEO, were you 21 aware of whether the Peccole Ranch Concept Plan applied to 22 the 250-acre property or not? 23 A. Let me restate -- 24 MR. OGILVIE: Objection; lacks, foundation, vague. 25 THE WITNESS: And let me restate, I was not the</p>
<p style="text-align: right;">Page 212</p> <p>1 CEO when I was six. Sorry. But my understanding is that 2 the -- the original master plan was not the Queensridge 3 master plan. They are -- they are different. 4 BY MR. LEAVITT: 5 Q. Right. 6 And so the original master plan, make sure I get 7 that right, is the Peccole Ranch Master Plan? 8 A. From 1992. 9 Q. From 1992. 10 Which was abandoned and replaced with the 11 Queensridge plan; is that your understanding? 12 A. (Inaudible.) 13 MR. OGILVIE: Objection; lacks foundation, calls 14 for a legal conclusion. 15 BY MR. LEAVITT: 16 Q. And Mr. Spitze was -- 17 THE COURT REPORTER: I'm sorry, what was the 18 answer? Because I can hear the attorneys louder than I can 19 hear the witness. Since I'm not in the room, I didn't hear 20 the answer. 21 MR. LEAVITT: He said, "Absolutely." 22 THE COURT REPORTER: Thank you. 23 MR. LEAVITT: Can -- can you confirm that you said 24 absolutely? 25 THE WITNESS: Yes, I -- I did say absolutely.</p>	<p style="text-align: right;">Page 213</p> <p>1 THE COURT REPORTER: I'm sorry. Just wait a 2 second before you answer in case there's an objection. 3 THE WITNESS: Okay. I'll go slower. 4 BY MR. LEAVITT: 5 Q. And you stated that Mr. Spitze would also have 6 information and knowledge regarding that because he was the 7 person who was actually involved in the planning documents 8 back in the 1990s, correct? 9 MR. WILLIAMS: Objection; speculation. 10 THE WITNESS: Yes, as far as I know, that's 11 correct. 12 BY MR. LEAVITT: 13 Q. Okay. All right. I'm going to come back to some 14 other questions here real quick. 15 But, Billy, you're not an appraiser -- did you 16 ever get an MAI designation as an appraiser? 17 A. No. 18 Q. Okay. And so you're not an appraiser? Okay. 19 A. No -- 20 Q. But you know how to -- 21 A. -- I'm not. 22 Q. You know how to value land, of course? 23 A. I feel that I can figure out a price for me to 24 purchase a piece of property for. 25 MR. LEAVITT: Okay. Butch, has an objection.</p>

<p style="text-align: right;">Page 214</p> <p>1 MR. WILLIAMS: Well, yeah. Again, lacks foun- --</p> <p>2 lacks foundation.</p> <p>3 Go ahead.</p> <p>4 BY MR. LEAVITT:</p> <p>5 Q. Okay. Have you done an analysis to value that,</p> <p>6 the 250-acre property, as of September 14th, 2017?</p> <p>7 A. I have not.</p> <p>8 Q. Therefore, I assume that you don't know what the</p> <p>9 value of the 250-acre property is as of September 14th,</p> <p>10 2017.</p> <p>11 MR. OGILVIE: Objection; vague.</p> <p>12 THE WITNESS: I would say that the value of the</p> <p>13 property as of December 1st, 2014, was \$15 million owed.</p> <p>14 BY MR. LEAVITT:</p> <p>15 Q. Okay. But my question was a little different.</p> <p>16 Do you know what the value of the 250-acre</p> <p>17 property was as of September 14th, 2017?</p> <p>18 A. I do not.</p> <p>19 Q. Okay. And do you know what the value of the</p> <p>20 250-acre property is as of today?</p> <p>21 A. I do not.</p> <p>22 Q. Okay. Let me try and speed this up a little here.</p> <p>23 A. You're good. Go slow so she can type it good.</p> <p>24 Q. All right. At the time the 250-acre property</p> <p>25 was -- let me rephrase this.</p>	<p style="text-align: right;">Page 215</p> <p>1 At the time of the transfer or acquisition of the</p> <p>2 -- actually, I'm going to rephrase that.</p> <p>3 At the time of the acquisition of the Fore Stars</p> <p>4 entity by Mr. Lowie or his related entities, were there five</p> <p>5 separate parcels that were involved in that transfer?</p> <p>6 A. I'd have to go back and look at the document.</p> <p>7 Q. But the deed would say what those -- what those</p> <p>8 parcels were; is that correct?</p> <p>9 A. The deed would say what the parcels were.</p> <p>10 MR. LEAVITT: Let me grab one exhibit here, Billy,</p> <p>11 real quick.</p> <p>12 Jennifer, are you -- are you on the line there?</p> <p>13 MR. WILLIAMS: Doesn't look like it.</p> <p>14 MR. LEAVITT: Is Jennifer there, Elizabeth, or</p> <p>15 someone who can pull up an exhibit for me?</p> <p>16 MR. WILLIAMS: I can't hear.</p> <p>17 THE WITNESS: She's not answering.</p> <p>18 MS. HAM: Sorry. Hold on. She is here. I don't</p> <p>19 know that she has volume, though.</p> <p>20 THE WITNESS: The exhibit that you sent me is --</p> <p>21 MS. HAM: She has no microphone, so she can't</p> <p>22 answer, but she can hear what you're saying.</p> <p>23 MR. LEAVITT: Okay. Let's -- George, how do you</p> <p>24 want to do this? Do you want me to mark this as Exhibit No.</p> <p>25 53?</p>
<p style="text-align: right;">Page 216</p> <p>1 MR. OGILVIE: Sure. Yeah.</p> <p>2 MR. LEAVITT: All right.</p> <p>3 MR. OGILVIE: Yes, that's fine.</p> <p>4 MR. LEAVITT: Okay. So we're going to mark as</p> <p>5 Exhibit No. 53. And if Jennifer can pull it up, it's --</p> <p>6 it's B-PP 30 million memo.</p> <p>7 (Exhibit 53 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. LEAVITT:</p> <p>10 Q. Okay. All right. Let me hand this to you. I'm</p> <p>11 going to give you a hard copy here. So this is going to be</p> <p>12 marked as Exhibit No. -- what did we say?</p> <p>13 A. Fifty-three.</p> <p>14 Q. Fifty-three.</p> <p>15 Okay. And then I want you to take just a moment</p> <p>16 to familiarize yourself with that document.</p> <p>17 A. Okay.</p> <p>18 MR. MOLINA: We can't see it.</p> <p>19 THE WITNESS: I can -- you can't see it on the</p> <p>20 screen?</p> <p>21 MR. MOLINA: No.</p> <p>22 MR. OGILVIE: No.</p> <p>23 MR. LEAVITT: We can see it.</p> <p>24 MR. MOLINA: Okay. Now we can see it.</p> <p>25 MR. OGILVIE: Is this Bates numbered?</p>	<p style="text-align: right;">Page 217</p> <p>1 MR. LEAVITT: Yes. I'll -- actually, I'll</p> <p>2 identify the document right now. It's Bates No. LO 00037342</p> <p>3 and 37343, and it has been produced in this matter.</p> <p>4 Q (By Mr. Leavitt) Okay. And I want to come back,</p> <p>5 and I want to keep this document up. But what I want --</p> <p>6 what I want to do first really quick, Billy, is I want to</p> <p>7 put in a nutshell, because we just had probably like three</p> <p>8 hours of back and forth on what the hundred-million-dollar</p> <p>9 deal was.</p> <p>10 Can you just describe that very briefly, in your</p> <p>11 own words, what the hundred-million-dollar deal was, rather</p> <p>12 than going through all the documents? I understand it to</p> <p>13 be --</p> <p>14 A. Yeah. I just was waiting for an objection.</p> <p>15 Q. Yeah. You can describe it. There's no objection</p> <p>16 to you describing it.</p> <p>17 A. So --</p> <p>18 MR. OGILVIE: I will object that the documents</p> <p>19 speak for themselves.</p> <p>20 MR. LEAVITT: I agree with you on that one,</p> <p>21 George, but we're going to get his opinion on what the --</p> <p>22 THE WITNESS: The hundred million dollars</p> <p>23 represented us selling out of Queensridge Towers, the Tivoli</p> <p>24 piece of property, the Sahara and Hualapai piece of</p> <p>25 property, and -- and I believe Fort Apache, but I'm not 100</p>

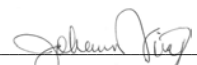
<p style="text-align: right;">Page 218</p> <p>1 percent certain on Fort Apache, if that was a separate 2 transaction that was outside of the IDB transactions. 3 BY MR. LEAVITT: 4 Q. Okay. And there was a hundred million dollars 5 that was paid to your family as part of those transactions; 6 is that correct? 7 A. That is correct. 8 Q. Okay. And that -- that agreement or that overall 9 agreement has been -- has been referred to as the 10 "Securities Agreement;" is that how it's been referred to? 11 A. Yes. 12 Q. Okay. And referring over to Exhibit No. 53, this 13 is minutes of a special meeting of board of directors of 14 Peccole-Nevada Corporation, correct? 15 A. That's what it looks like, yes. 16 Q. Okay. And on the back it's signed. 17 A. What's the date? 18 Q. Let's go there. It's right here. 19 A. September 6th, 2005. So this was before the 20 closing. 21 Q. Exact -- so it's actually right around the time of 22 the closing, correct? 23 A. Because the closing we determined was the 15th. 24 Q. Of September 2005, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 219</p> <p>1 Q. Okay. All right. And so this is the -- the meet- 2 -- or at least the minutes of this meeting that occurred on 3 September 6th, 2005, correct? 4 A. Um-hmm. 5 Now, if you'll notice, I was there too. 6 Q. Okay. So you were present at this -- do you 7 recall this meeting? 8 A. I do. 9 Q. Okay. And there has been, I'll represent to you, 10 an assertion by Mr. Lowie, or a representation by Mr. Lowie, 11 that as part of that hundred-million-dollar transaction, he 12 spoke to an individual at Peccole and advised them that as 13 part of this whole deal he wanted \$30 million to go to pay 14 American -- is it American Golf? 15 A. Um-hmm. 16 Q. -- American Golf, so that their leasehold interest 17 could be removed from the 250-acre property, so that he 18 could move forward, at some point in time in the future, 19 with purchasing that 250-acre property. So that -- that's 20 been the representation by Mr. Lowie, generally, that's been 21 made. Okay? And I'm going to walk through this a little 22 bit with you. 23 A. I don't agree with that, but go ahead. 24 Q. I got -- I understand. 25 So there's some disagreement over -- at least</p>
<p style="text-align: right;">Page 220</p> <p>1 Mr. Lowie says that a portion of that hundred million 2 dollars was supposed to be attributed to removing American 3 Golf from the golf course, and you disagree with that? 4 A. I disagree that Mr. Lowie -- Mr. Lowie weighed in 5 on how we should spend the hundred million dollars. 6 Q. Okay. And if you can -- can you turn over to -- 7 A. The second page? 8 Q. Yeah, the second page. 9 And on the second page there's a portion that's 10 highlighted. And I don't want to have to read, but I'm 11 going to read this part here. 12 It says, "Resolved further that this 13 corporation" -- and that's Peccole Corporation, correct? 14 A. Correct. 15 Q. -- "is directed to reserve a portion of the 16 proceeds" -- and the proceeds that's being referred to there 17 is \$100 million, correct? 18 A. Correct. 19 Q. -- "in a separate interest earning account prior 20 to any distributions to any shareholders of the corporation 21 from the sale of the securities." And the securities was 22 the hundred million dollars, correct? 23 A. Correct. 24 MR. OGILVIE: Objection; I don't see hundred 25 million dollars in here anywhere.</p>	<p style="text-align: right;">Page 221</p> <p>1 MR. LEAVITT: Understood. I'm asking him if 2 that's what it is. 3 MR. OGILVIE: Okay. The document speaks for 4 itself, and there's no reference to a hundred million 5 dollars in here. 6 MR. LEAVITT: Okay. We'll continue. Thank you 7 for the objection. 8 Q. (By Mr. Leavitt) So it says, "from the sale of the 9 securities of approximately \$30 million to pay off the 10 current loan in full with Nevada State Bank related to the 11 purchase of the leasehold interest of the Badlands Golf 12 Course, when such loan can be paid." 13 Did that action occur? 14 A. This action occurred. 15 Q. Okay. 16 A. It did not occur in my recollection the way 17 Mr. Lowie remembers it occurring. 18 Q. Okay. 19 A. And if you'll note, this paragraph says "to pay 20 off the loan with Nevada State Bank." 21 We closed on the leasehold interest of the 22 property far before this with the loan that we originated 23 from collateralizing the Suncoast Hotel and Casino. 24 Q. Okay. 25 A. So once we realized our mistake on where the golf</p>

<p style="text-align: right;">Page 222</p> <p>1 course towers was being built, we went out, got a loan, and 2 fixed this problem before IDB came into the picture. So 3 then it was up to us at this meeting -- this was a family 4 meeting. The signatories on this signature was Larry, 5 Bruce, Kerry, my mom, and Jared Shafer was the trustee for 6 Leann, and I was on the -- the meeting as well over a phone 7 call. I was on the phone. And we decided as a family that 8 we needed to be careful and make sure that we paid off this 9 loan and not let this loan go because we were going to have 10 to take over operations of the golf course, and we did not 11 know how the golf course could support this loan going 12 forward. The Suncoast Hotel Casino could, but the golf 13 course could not. 14 Q. Understood. 15 Do you know whether Mr. Lowie had an option to 16 purchase or right of first refusal to purchase the 250-acre 17 golf course prior to 2006? 18 A. From these documents that we looked at today, it 19 looks like he did. 20 Q. Okay. And do you think he would have exercised 21 that right of first refusal or that option to purchase if 22 there was a \$30 million obligation on the golf course 23 property? 24 MR. WILLIAMS: Objection; speculation. 25 MR. OGILVIE: Calls -- yes, agreed.</p>	<p style="text-align: right;">Page 223</p> <p>1 BY MR. LEAVITT: 2 Q. With that objection, go ahead. 3 A. Do I think he would have? 4 Q. Yeah. 5 A. I don't think that he would have bought a golf 6 course with a \$30 million note on it and assumed that 7 obligation. 8 Q. Okay. 9 A. But I don't think that that happened the way that 10 he recollects. 11 Q. I -- and I totally understand that. You have a 12 different recollection than him. And I'm -- every -- and 13 I'm here to tell you that you swore to tell the truth, so I 14 don't want to hear anything but other than what you think. 15 A. That's my opinion. 16 Q. Okay. I'm going to read to you a statement here 17 regarding the acquisition of the Fore Stars entity. Okay. 18 And I want you to tell me if it's true. 19 MR. OGILVIE: What is it that you're reading from, 20 Counsel? 21 MR. LEAVITT: It's going to be something I'm just 22 reading from. I'll -- I'm -- I'm going to read him a 23 statement, and I'm going to ask him if it's true. That's 24 all. 25 MR. OGILVIE: What is it? What is it that you're</p>
<p style="text-align: right;">Page 224</p> <p>1 reading from? 2 MR. LEAVITT: A document that I'm holding in my 3 hand, George. You'll -- you'll recognize it here in a 4 minute. Okay? So -- 5 MR. OGILVIE: Really? I object. Can you not play 6 games and just tell me what it is you're reading from? 7 BY MR. LEAVITT: 8 Q. I'm going to make a statement, and I'm going to 9 ask you if you agree with it. Okay? 10 Mr. Lowie or his -- and/or his entities paid less 11 than 4.5 million for the land that comprised the golf course 12 and drainage; do you agree with that statement? 13 A. Say it again. 14 Q. Mr. Lowie or his entities, right -- and this is 15 referring to the acquisition of the 250-acre property. 16 A. Okay. 17 Q. Okay. So Mr. Lowie and/or his entities paid less 18 than \$4.5 million for the land that comprised the golf 19 course and drainage. 20 A. Paid less? He paid 7.5 million for the golf 21 course. He paid 7.5 million for the water rights. 22 Q. Okay. Let me ask that, how that -- how that is. 23 So you -- when that negotiation occurred, you sent 24 a price to Mr. Lowie for the purchase or the acquisition of 25 the Fore Stars entity, correct?</p>	<p style="text-align: right;">Page 225</p> <p>1 A. Well, I think we pretty comprehensively just went 2 over all of that. 3 MR. WILLIAMS: (Inaudible), right? 4 THE WITNESS: Yeah. 5 MR. LEAVITT: Yeah. 6 THE COURT REPORTER: I'm sorry, what was that, 7 Mr. Williams? 8 MR. WILLIAMS: I'm sorry, I shouldn't have 9 commented. It was kind of a speaking objection. Let me 10 just pull it back. 11 BY MR. LEAVITT: 12 Q. Okay. So who set the price at 15 million? 13 A. Yohan proposed in his LOI 12 million. We 14 countered at 15. He struck it in the redlines. He came 15 back and said that he would pay 3 million if we could 16 consummate the deal with IDB. We consummated the deal with 17 IDB, and we did a total price of \$15 million. 18 Q. Okay. So that's my -- that's my point. Is there 19 was a total price of \$15 million that was agreed upon for 20 the golf course property, correct? 21 A. That's correct. 22 MR. OGILVIE: Objection; mischaracterizes the 23 documents. 24 MR. LEAVITT: Okay. 25 MR. OGILVIE: It's the golf course property and</p>

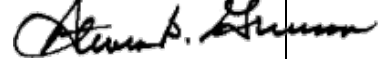
<p style="text-align: right;">Page 226</p> <p>1 the water rights.</p> <p>2 BY MR. LEAVITT:</p> <p>3 Q. Okay. Mr. Ogilvie is right, the golf course</p> <p>4 property, which included the water rights, correct?</p> <p>5 A. For those two documents, those two agreements, it</p> <p>6 was \$15 million total, 7 1/2 million for each one.</p> <p>7 Q. Okay. I want to take a step back. Okay.</p> <p>8 Before the price was separated out, you and Mr. --</p> <p>9 the Peccoles and Mr. Lowie had agreed upon \$15 million for</p> <p>10 that global asset, which would be all of the assets that</p> <p>11 Fore Star owned, including the property, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. That's what the initial agreement was, correct?</p> <p>14 A. Well, the initial agreement was 12 million from</p> <p>15 the LOI -- yes, we got to 15 million.</p> <p>16 Q. Got it.</p> <p>17 And then at some later date, that 15 million was</p> <p>18 separated out into 7.5 million for the land and 7.5 million</p> <p>19 for the water, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know why that was done?</p> <p>22 A. They had to put a -- a price -- I don't know why.</p> <p>23 They had to put a price on the water rights, and -- and it's</p> <p>24 somewhat arbitrary. Water rights go for various prices</p> <p>25 based on the types of water rights they are. And so they --</p>	<p style="text-align: right;">Page 227</p> <p>1 that's the price they ascribed to them.</p> <p>2 Q. Okay. And you didn't care how they did that,</p> <p>3 correct?</p> <p>4 A. I didn't even get involved. You saw my e-mail.</p> <p>5 "Sounds great."</p> <p>6 Q. So you wanted -- you just wanted to make sure you</p> <p>7 got paid your \$15 million for the Fore Stars entity, which</p> <p>8 included the land with the water rights, correct?</p> <p>9 A. We needed \$15 million for the whole thing, yes.</p> <p>10 Q. And did you ever do an analysis to determine how</p> <p>11 much would be attributed to the land versus how much would</p> <p>12 be attributed to the water rights?</p> <p>13 A. No. Never cared.</p> <p>14 MR. LEAVITT: Okay. And, George, you're right. I</p> <p>15 apologize. George, I was reading from the declaration of</p> <p>16 Chris Molin- -- Molina. That was -- that was page 1, lines</p> <p>17 16 to 17.</p> <p>18 THE COURT REPORTER: How do you spell Molina?</p> <p>19 MR. MOLINA: M-o-l-i-n-a.</p> <p>20 THE COURT REPORTER: Thank you. You.</p> <p>21 BY MR. LEAVITT:</p> <p>22 Q. During the questioning, Mr. Bayne, in regards to</p> <p>23 this hundred-million-dollar transaction that occurred, I</p> <p>24 believe you used the word several times that it was a</p> <p>25 complicated transaction. Would you agree with that?</p>
<p style="text-align: right;">Page 228</p> <p>1 A. It was a complicated transaction.</p> <p>2 Q. And Mr. Ogilvie actually even said it had a lot of</p> <p>3 hair on it. Would you agree with that?</p> <p>4 A. I agree with Mr. Ogilvie it had a lot of hair on</p> <p>5 it.</p> <p>6 MR. OGILVIE: Objection; that mischaracterizes</p> <p>7 what I said. I said the asset purchase agreement, as</p> <p>8 opposed to the purchase of the entity, was beginning to get</p> <p>9 a lot of hair on it.</p> <p>10 THE WITNESS: I agree with that too.</p> <p>11 MR. LEAVITT: I agree with that too, George, and</p> <p>12 thanks for clarifying that.</p> <p>13 MS. HAM: I'm just going to object to the term of</p> <p>14 "a lot of hair on it," as (inaudible). I have no clue what</p> <p>15 you all are talking about, but sounds okay, I guess.</p> <p>16 MR. WILLIAMS: Oh, my mercy.</p> <p>17 MR. LEAVITT: What you gonna do, Butch?</p> <p>18 MR. WILLIAMS: You ride it out, is what you do.</p> <p>19 You just practice law.</p> <p>20 Sorry, Billy.</p> <p>21 THE WITNESS: You're fine.</p> <p>22 BY MR. LEAVITT:</p> <p>23 Q. I can probably wrap up like a whole bunch of</p> <p>24 questions with just one very pointed question.</p> <p>25 Would you agree that a golf course operation on</p>	<p style="text-align: right;">Page 229</p> <p>1 the -- based upon your past experience, a golf course</p> <p>2 operation on the 250-acre property was a financial failure?</p> <p>3 MR. OGILVIE: Lacks -- objection; lacks</p> <p>4 foundation, calls for an expert opinion.</p> <p>5 BY MR. LEAVITT:</p> <p>6 Q. Let me rephrase that.</p> <p>7 Based upon your experience, do you believe that</p> <p>8 the -- a golf course operation on the 250-acre property was</p> <p>9 not financially feasible?</p> <p>10 MR. OGILVIE: Same objection.</p> <p>11 THE WITNESS: It was not financially feasible for</p> <p>12 us.</p> <p>13 MR. LEAVITT: Okay. And briefly, Mr. -- actually,</p> <p>14 you know what, I'm not going to ask you that question.</p> <p>15 Okay. Can we take just a five-minute -- quick</p> <p>16 five-minute break?</p> <p>17 THE WITNESS: Sure.</p> <p>18 (Off the record.)</p> <p>19 MR. LEAVITT: Can you hear me, George?</p> <p>20 Okay. So, George, here's what I want to do, is</p> <p>21 I'm going to end my questioning here. It's -- but it's real</p> <p>22 late, so I'm going to reserve the right to call Mr. Bayne</p> <p>23 for a continued deposition, if I need to. There was a lot</p> <p>24 of documents that I saw today that were used as part of the</p> <p>25 deposition that I had not seen that were going to be used,</p>

<p style="text-align: right;">Page 230</p> <p>1 and so I haven't had a full and complete opportunity to go 2 through those documents that had been used and had been 3 marked. I don't know if I need to. But, if necessary, in 4 order to have the opportunity to review the documents and 5 because it's 6:00 o'clock -- almost 6:00 o'clock Utah time, 6 I'm going to just reserve that right, if necessary, again, 7 to continue the deposition of Mr. Bayne, and I'm not closing 8 my questioning, I guess is what I'm saying.</p> <p>9 MR. WILLIAMS: Right. And I'm going to -- I'm 10 going to object to continuing the deposition. We've gone -- 11 we've gone to seven hours that's allowed by the rule, so 12 we'll see what happens. I mean, if you guys want to get 13 together and have a few more questions for Billy, based upon 14 some things you look at, obviously we'll work with you any 15 way that we can. But I just -- I don't want to get into 16 another six or seven hours. It's trying enough, so --</p> <p>17 MR. OGILVIE: Well --</p> <p>18 MR. WILLIAMS: Anyway, that's all.</p> <p>19 MR. OGILVIE: -- I'm going to join your objection, 20 Butch.</p> <p>21 Jim, you can seek whatever you want, but I'm not 22 going to stipulate to that.</p> <p>23 MR. LEAVITT: Well, I'll depose Billy without you, 24 George.</p> <p>25 MR. WILLIAMS: All right. Are we wrapped up? How</p>	<p style="text-align: right;">Page 231</p> <p>1 do you want to work out Mr. Bayne's signing?</p> <p>2 MR. OGILVIE: Wait. Wait. Wait. So I didn't 3 realize Jim was -- was finishing for the day. I have some 4 follow-up.</p> <p>5 MR. WILLIAMS: You got about three minutes. Go.</p> <p style="text-align: center;">FURTHER EXAMINATION</p> <p>6</p> <p>7 BY MR. OGILVIE:</p> <p>8 Q. Okay. Mr. Bayne, Mr. Leavitt covered with you 9 some Clyde Spitze testimony and -- and got from you that 10 Clyde Spitze would know better than -- than anybody the -- 11 the land use history of Badlands of -- well, first of all, 12 of Peccole Ranch Phase II.</p> <p>13 And my question was going to be: You would defer 14 to Mr. Spitze's testimony regarding the land use of Peccole 15 Ranch Phase I and Phase II; would you not?</p> <p>16 A. I would defer to Clyde on -- on that historical 17 stuff for sure.</p> <p>18 Q. And so Mr. Leavitt read for you a couple pieces of 19 Mr. Spitze's testimony. Let me read to you a couple more 20 and see if you agree with this.</p> <p>21 So in his deposition Volume I, at page 115, 22 beginning at line 21, I asked him:</p> <p>23 "So you had an understanding that there were 24 portions of Phase II," meaning Queensridge -- or, I mean, 25 meaning Peccole Ranch Master Plan Phase II, "that were</p>
<p style="text-align: right;">Page 232</p> <p>1 designated by the City in its general plan to be parks, 2 recreation, and open space. But as you were taking down the 3 applications needed to develop the property, advising the 4 City that you wanted to change what is reflected by the 5 general plan map on 2825 to what is designated in the map on 6 3607?"</p> <p>7 That was the question.</p> <p>8 He said: "Yes."</p> <p>9 And I said: "Okay."</p> <p>10 And he answered: "And they evidently did accept 11 it because that's exactly what it shows."</p> <p>12 And I asked him: "Right. That it was -- your 13 plans were incorporated into the City's general plan?"</p> <p>14 And he answered: "Yes."</p> <p>15 You don't have any knowledge or information 16 that -- that would be contrary to that, do you?</p> <p>17 A. I do not.</p> <p>18 MR. LEAVITT: Objection; lacks foundation and 19 contrary to the legal rulings in this case.</p> <p>20 BY MR. OGILVIE:</p> <p>21 Q. And Mr. -- I further asked Mr. Spitze: 22 "Okay. And earlier you testified that before you 23 took plans in, before your staff, you and your staff" --</p> <p>24 MR. LEAVITT: Hold on. Hold on. Hold on.</p> <p>25 George, where are you at?</p>	<p style="text-align: right;">Page 233</p> <p>1 MR. OGILVIE: Page 116, beginning at line 25.</p> <p>2 MR. LEAVITT: Got you.</p> <p>3 BY MR. OGILVIE:</p> <p>4 Q. I said: "Okay. And earlier you testified that 5 before you took the plans in, before your staff -- you and 6 your staff took the plans in, you would sit down with Bill 7 Peccole and perhaps his attorney and maybe Larry Miller, 8 maybe Larry Miller, maybe not, and went through these 9 applications with Bill Peccole?"</p> <p>10 And he answered: "Absolutely."</p> <p>11 Is that consistent with your understanding of 12 the -- Mr. -- your grandfather's oversight of the 13 development of Peccole Ranch and Badlands, that -- that all 14 applications would have gone -- been gone through with him?</p> <p>15 A. That's my understanding of how -- how Clyde and my 16 grandfather interacted.</p> <p>17 Q. Okay. And he -- he testified further at line 14 18 on page -- whatever the next page is, Jim. Give me a 19 second.</p> <p>20 MR. LEAVITT: 117.</p> <p>21 BY MR. OGILVIE:</p> <p>22 Q. 117, he testified further, "We didn't do anything 23 without Mr. Peccole's approval of everything we did."</p> <p>24 Does that sound consistent with your understanding 25 of the way your grandfather operated Peccole-Nevada?</p>

<p style="text-align: right;">Page 234</p> <p>1 Peccole -- yes, Peccole-Nevada.</p> <p>2 A. It does. And I would be surprised if they did</p> <p>3 anything without my grandfather at least knowing about it.</p> <p>4 Q. Okay. And further on, on page 119, beginning at</p> <p>5 line 6, I asked him:</p> <p>6 "Do you have an understanding of whether or not</p> <p>7 Mr. Peccole -- I'm not asking you if Mr. Peccole had an</p> <p>8 understanding. I'm asking: Do you have an understanding of</p> <p>9 whether or not Mr. Peccole knew that there were portions of</p> <p>10 Phase II that were designated by the City in its general</p> <p>11 plan as parks, recreation, and open space?"</p> <p>12 And Mr. Spitze answered: "I am absolutely sure he</p> <p>13 did."</p> <p>14 Is that consistent with your understanding?</p> <p>15 MR. LEAVITT: Well, hold on. I'm going to object</p> <p>16 right there. I don't see that answer.</p> <p>17 MR. OGILVIE: "I am absolutely sure he did," at</p> <p>18 line 12.</p> <p>19 MR. LEAVITT: Which page are you on, George?</p> <p>20 MR. OGILVIE: I think 119.</p> <p>21 MR. LEAVITT: You skipped two pages. Okay.</p> <p>22 Sorry. Okay. I got you. Okay. Go ahead.</p> <p>23 BY MR. OGILVIE:</p> <p>24 Q. Let me restate it.</p> <p>25 I asked Mr. Spitze:</p>	<p style="text-align: right;">Page 235</p> <p>1 "Do you have an understanding of whether or not</p> <p>2 Mr. Peccole knew that there were portions of Phase II that</p> <p>3 were designated by the City in its general plan as parks,</p> <p>4 recreation, and open space?"</p> <p>5 And his response was: "I am absolutely sure he</p> <p>6 did."</p> <p>7 Do you have any knowledge or information that</p> <p>8 would be contrary to that testimony?</p> <p>9 A. I do not.</p> <p>10 Q. Now, Mr. Leavitt asked you about the annexation of</p> <p>11 Phase II of Peccole Ranch Master Plan into -- into Phase I</p> <p>12 or into Peccole Ranch. And I believe you were testifying</p> <p>13 that Phase II was never annexed into the CC&Rs or to the --</p> <p>14 the community, the Peccole Ranch Community, or -- or, I'm</p> <p>15 sorry, common interest community.</p> <p>16 That's -- whether or not it was annexed into the</p> <p>17 Peccole Ranch Common Interest Community doesn't mean that it</p> <p>18 wasn't part of the Peccole Ranch Master Plan, does it?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. But that -- that was a distinction you were</p> <p>21 drawing, was that you don't believe anything north of</p> <p>22 Charleston was annexed into the common interest community,</p> <p>23 the Peccole Ranch Common Interest Community?</p> <p>24 A. That is what -- that is what I said, yes.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 236</p> <p>1 A. That is my belief.</p> <p>2 Q. Mr. Leavitt asked you some questions about</p> <p>3 valuation, and you said you -- your knowledge is that the</p> <p>4 value was \$15 million total as of December 1st, 2014.</p> <p>5 That \$15 million total, that's for the -- the --</p> <p>6 what ultimately became the purchase agreement for WRL and</p> <p>7 the purchase agreement of Fore Stars, correct?</p> <p>8 A. And the business interest, yes.</p> <p>9 Q. Okay. And the business interest.</p> <p>10 And then Mr. -- addressing -- addressing</p> <p>11 Mr. Leavitt's quote of Mr. Molina's declaration, which I'm</p> <p>12 paraphrasing, Lowie paid -- Mr. Lowie paid less than \$4 1/2</p> <p>13 million for the golf course.</p> <p>14 You know how he came to that, that valuation,</p> <p>15 right? He took the \$7 1/2 million and reduced it by the</p> <p>16 value of the equipment that you testified was worth no more</p> <p>17 than 2- or \$300,000, so let's -- let's call it \$100,000,</p> <p>18 just for sake of the question. So it reduces the \$7 1/2</p> <p>19 million purchase price of Fore Stars to 7.4 for the real</p> <p>20 property. And then the -- the 250 acres that's at issue in</p> <p>21 these lawsuits doesn't include the property -- the</p> <p>22 two-point-something acres that you valued at \$3 million that</p> <p>23 you got in the -- in the election by Queensridge Towers on</p> <p>24 the Clubhouse Improvements Agreement. So reducing that --</p> <p>25 call it 7.4 by \$3 million, that would be less than \$4 1/2</p>	<p style="text-align: right;">Page 237</p> <p>1 million for the 250-acre golf course, correct?</p> <p>2 MS. HAM: I'll make an objection on the record to</p> <p>3 the form of the question.</p> <p>4 MR. LEAVITT: Yeah. And it lacks foundation and</p> <p>5 assumes evidence not in -- or assumes facts not in evidence.</p> <p>6 It's speculative, conjectural, and confusing.</p> <p>7 Do you have another one?</p> <p>8 MR. WILLIAMS: Objection; vague and ambiguous.</p> <p>9 BY MR. OGILVIE:</p> <p>10 Q. You can answer.</p> <p>11 A. I got to learn how this objection stuff works.</p> <p>12 I mean, based on what you said, I don't have an</p> <p>13 argument.</p> <p>14 MR. OGILVIE: Okay. I don't have anything</p> <p>15 further.</p> <p>16 FURTHER EXAMINATION</p> <p>17 BY MR. LEAVITT:</p> <p>18 Q. Okay. Let me ask a question here, though.</p> <p>19 Because previously I asked you if it was true that Mr. Lowie</p> <p>20 paid less than \$4.5 million for the land, and you said that</p> <p>21 was not true, correct?</p> <p>22 A. It was not. The purchase and sales securities</p> <p>23 agreement was for 7.5 million.</p> <p>24 Q. Okay.</p> <p>25 A. But if you want to do the math that way --</p>

Page 238	Page 239																																																								
<p>1 Q. Yeah.</p> <p>2 A. -- I guess you could elect to do the math that</p> <p>3 way.</p> <p>4 Q. But you -- you don't necessarily agree with that</p> <p>5 math?</p> <p>6 A. When -- when you asked the question: Did he pay</p> <p>7 me less than \$4 1/2 million, I got \$7.5 million --</p> <p>8 Q. Okay.</p> <p>9 A. -- on my end.</p> <p>10 MR. OGILVIE: Is that it?</p> <p>11 MR. LEAVITT: That's it.</p> <p>12 MR. OGILVIE: Thank you, Mr. Bayne. Appreciate</p> <p>13 it.</p> <p>14 THE WITNESS: Thanks guys.</p> <p>15 MR. WILLIAMS: Hold on. Let's figure out about</p> <p>16 this reading and signing little thing that we have to figure</p> <p>17 out.</p> <p>18 MR. OGILVIE: Oh, and -- and there was Exhibit 53.</p> <p>19 How is that going to get transmitted to the court reporter?</p> <p>20 MR. LEAVITT: Elizabeth, does your office want to</p> <p>21 handle that, transmitting that to the court reporter?</p> <p>22 MS. HAM: Yes. Remind me, I'm sorry, what Exhibit</p> <p>23 No. 53 was.</p> <p>24 MR. LEAVITT: That's the -- Jennifer knows which</p> <p>25 one it is.</p>	<p>1 MS. HAM: Can we share the court reporter's</p> <p>2 information with my office, please?</p> <p>3 (Discussion off the record.)</p> <p>4 MR. WILLIAMS: All right. Everybody jumped the</p> <p>5 gun here. Reading and signing, let's go back to that. How</p> <p>6 do you want to do it? Billy's in Mapleton, Utah. If you</p> <p>7 want to send it to me at my e-mail, I can give it to Billy.</p> <p>8 MR. OGILVIE: Perfect. Works for me. Any</p> <p>9 notary -- any notary works.</p> <p>10 MR. WILLIAMS: Okay. And, George, if you'll just</p> <p>11 share with the court reporter my e-mail, that would be</p> <p>12 fabulous.</p> <p>13 (The deposition was concluded at</p> <p>14 5:01 p.m.)</p> <p>15 /////</p> <p>16 /////</p> <p>17 /////</p> <p>18 /////</p> <p>19 /////</p> <p>20 /////</p> <p>21 /////</p> <p>22 /////</p> <p>23 /////</p> <p>24 /////</p> <p>25 /////</p>																																																								
<p>Page 240</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA)</p> <p>3) SS</p> <p>4 COUNTY OF CLARK)</p> <p>5 I, Johanna Vorce, Certified Court Reporter, do</p> <p>6 hereby certify:</p> <p>7 That I reported the taking of the deposition of</p> <p>8 the witness, WILLIAM BAYNE, commencing on Friday, July 16,</p> <p>9 2021, at 9:10 a.m.</p> <p>10 That prior to being examined, the witness was by</p> <p>11 me duly sworn to testify to the truth.</p> <p>12 That I thereafter transcribed my shorthand notes,</p> <p>13 and the typewritten transcript of said deposition is a</p> <p>14 complete, true, and accurate transcription of said shorthand</p> <p>15 notes.</p> <p>16 That a request has been made to review the</p> <p>17 transcript.</p> <p>18 I further certify that I am not a relative or</p> <p>19 employee of an attorney or counsel of any party involved in</p> <p>20 said action, nor a relative or employee of the parties</p> <p>21 involved, nor a person financially interested in said</p> <p>22 action.</p> <p>23 Dated this 27th day of July, 2021.</p> <p>24 </p> <p>25 Johanna Vorce, CCR No. 913</p>	<p>Page 241</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4 I declare under penalty of perjury that I have read the</p> <p>5 foregoing _____ pages of my testimony, taken</p> <p>6 on _____ (date) at</p> <p>7 _____ (city), _____ (state),</p> <p>8</p> <p>9 and that the same is a true record of the testimony given</p> <p>10 by me at the time and place herein</p> <p>11 above set forth, with the following exceptions:</p> <p>12</p> <table border="1"> <thead> <tr> <th>Page</th> <th>Line</th> <th>Should read:</th> <th>Reason for Change:</th> </tr> </thead> <tbody> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	13				14				15				16				17				18				19				20				21				22				23				24				25			
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Page 242					Page 243				
1	ERRATA SHEET				1	HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE			
2	Page	Line	Should read:	Reason for Change:	2	Litigation Services is committed to compliance with applicable federal			
3					3	and state laws and regulations ("Privacy Laws") governing the			
4	---	---	_____	_____	4	protection and security of patient health information. Notice is			
5			_____	_____	5	hereby given to all parties that transcripts of depositions and legal			
6	---	---	_____	_____	6	proceedings, and transcript exhibits, may contain patient health			
7			_____	_____	7	information that is protected from unauthorized access, use and			
8	---	---	_____	_____	8	disclosure by Privacy Laws. Litigation Services requires that access,			
9			_____	_____	9	maintenance, use, and disclosure (including but not limited to			
10	---	---	_____	_____	10	electronic database maintenance and access, storage, distribution/			
11			_____	_____	11	dissemination and communication) of transcripts/exhibits containing			
12	---	---	_____	_____	12	patient information be performed in compliance with Privacy Laws.			
13			_____	_____	13	No transcript or exhibit containing protected patient health			
14	---	---	_____	_____	14	information may be further disclosed except as permitted by Privacy			
15			_____	_____	15	Laws. Litigation Services expects that all parties, parties'			
16	---	---	_____	_____	16	attorneys, and their HIPAA Business Associates and Subcontractors will			
17			_____	_____	17	make every reasonable effort to protect and secure patient health			
18	Date: _____				18	information, and to comply with applicable Privacy Law mandates,			
19		Signature of Witness			19	including but not limited to restrictions on access, storage, use, and			
20					20	disclosure (sharing) of transcripts and transcript exhibits, and			
21		Name Typed or Printed			21	applying "minimum necessary" standards where appropriate. It is			
22					22	recommended that your office review its policies regarding sharing of			
23					23	transcripts and exhibits - including access, storage, use, and			
24					24	disclosure - for compliance with Privacy Laws.			
25					25	© All Rights Reserved. Litigation Services (rev. 6/1/2019)			



1 RTRAN

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5 DISTRICT COURT

6 CLARK COUNTY, NEVADA

7)
8 180 LAND COMPANY LLC, ET AL.,)

CASE#: A-18-775804-J

9 Petitioners,)

DEPT. XXVI

10 vs.)

11 CITY OF LAS VEGAS,)

12 Respondent.)

13 BEFORE THE HONORABLE GLORIA STURMAN
14 DISTRICT COURT JUDGE

15 MONDAY, SEPTEMBER 13, 2021

16 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

17 APPEARANCES:

18 For the Petitioners:

JAMES J. LEAVITT, ESQ.
KERMITT L. WATERS, ESQ.
ELIZABETH M. GHANEM, ES.
AUTUMN L. WATERS, ESQ.
MICHAL A. SCHNEIDER, ESQ.

21 For the Respondent:

22 GEORGE F. OGILVIE, III, ESQ.
23 PHILIP R. BYRNES, ESQ.
24 REBECCA L. WOLFSON, ESQ.
25 J. CHRISTOPHER MOLINA, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Monday, September 13, 2021

2

3 [Case called at 10:02 a.m.]

4 MR. LEAVITT: -- on behalf of Fore Stars.

5 MR. WATERS: Kermitt Waters, on behalf the landowner,
6 Your Honor.

7 MS. GHANEM: Elizabeth Ghanem on behalf of Plaintiffs,
8 in-house counsel.

9 MR. LEAVITT: And, Your Honor, we have two legal
10 assistants here also with us, Jennifer Miller and Sandy Guerra.

11 THE COURT: Are you going to have any parties participating
12 remotely?

13 MR. LEAVITT: We have. From our office, Michael Schneider
14 is appearing remotely. He's an attorney.

15 THE COURT: Okay. All right. But nobody who is going to be
16 arguing, or appearing --

17 MR. LEAVITT: No.

18 THE COURT: -- other than just observing?

19 MR. LEAVITT: No.

20 THE COURT: Okay. Got it.

21 MR. SCHWARTZ: Andrew Schwartz for the City of Las Vegas.
22 Good morning, Your Honor.

23 THE COURT: Mr. Schwartz, hi.

24 MR. MOLINA: Chris Molina for the City of Las Vegas, and we
25 also have Rebecca Wolfson.

1 MS. WOLFSON: Good morning, Your Honor. Rebecca
2 Wolfson, for the City of Las Vegas.

3 THE COURT: All right. Thank you very much.

4 All right. So we have a number of matters on calendar
5 today, and I just wanted to review the current status of our pleading.
6 When this got remanded from federal court there was no order from
7 when it had been here originally, before it got removed. Then we got an
8 order, then we had an amended complaint, and the answer. So I just
9 wanted to clarify that all the motions that we have are directed to the
10 current pleadings that are on file.

11 Is that your understanding, Mr. Leavitt?

12 MR. LEAVITT: That is my understanding. Yes, Your Honor.

13 THE COURT: And, Mr. Schwartz, for the City?

14 MR. SCHWARTZ: Yes, Your Honor.

15 THE COURT: Okay, great. All right.

16 And, Mr. Schwartz, do you have anybody who's going to be
17 either participating remotely, or appearing, or need to argue remotely
18 from your side?

19 MR. SCHWARTZ: No, Your Honor.

20 THE COURT: Sorry, I forgot to ask. All right, thanks.

21 All right. So then what we've got on is, and we need to
22 discuss the logical order to go, we have the City's motion to dismiss,
23 then we've got the City's motion to remand, and it seems like, I don't
24 know, this is probably in reverse order. It seems like it makes more
25 sense to do motion to remand before a motion to dismiss, but we'll

1 discuss. And then we've got a counter-motion for summary judgment
2 filed by the City, which I understand has been withdrawn. I talked to Mr.
3 Leavitt about that. And then we've got the Plaintiff's motion to
4 determine property interest.

5 So, Mr. Leavitt, with respect to the order of proceedings
6 today.

7 MR. LEAVITT: Your Honor, I think probably the logical move
8 is to probably do the City's -- and how you announced them was the
9 City's motion to dismiss, based upon the two claims being joined
10 together, with the petition for judicial review and inverse condemnation
11 claim.

12 THE COURT: Okay.

13 MR. LEAVITT: And the reason I say that, because it's totally
14 distinct and different from the City's motion to remand.

15 THE COURT: Okay.

16 MR. LEAVITT: As part of the motion to remand the City also
17 asked that the claims be dismissed for different, separate and distinct
18 reasons.

19 THE COURT: Correct.

20 MR. LEAVITT: And then, obviously, depending upon your
21 ruling on that we should proceed with the motion to determine property
22 interest. Having said that, the caveat is we obviously wanted the motion
23 to determine property interest decided first --

24 THE COURT: Okay.

25 MR. LEAVITT: -- but we understand why --

1 THE COURT: Right.

2 MR. LEAVITT: -- the Court put these all on the same
3 calendar. And then of course the City withdrew its counter-motion.

4 THE COURT: Technically, there is no such thing as
5 withdrawal of a motion once it's been opposed; so what's your position
6 on that?

7 MR. LEAVITT: Well, the way the City -- the City combined
8 opposition and counter-motion, and it addressed both the property
9 interest issue and the take issue, comingling the two issues. And so
10 what I believe the City did, and they clarified this over the weekend, is
11 the City withdrew the counter-motion as it relates to the take issue,
12 because your status conference order that was signed, I believe two
13 weeks ago, stated that at this hearing today we will only decide the
14 motion to determine property interest.

15 We'll decide that issue, then after we decide that issue we'll
16 have a totally separate hearing where we address the take issue,
17 whether that property interest has been taken. So what the City
18 withdrew with the counter-motion to determine take.

19 THE COURT: THE COURT: Okay.

20 MR. LEAVITT: It's a little difficult to understand how they did
21 it --

22 THE COURT: Right.

23 MR. LEAVITT: -- because they filed an 88 page opposition
24 and comingled --

25 THE COURT: Right.

1 MR. LEAVITT: -- the property interest issue with the take
2 issue. We filed, if you'll recall a reply that was --
3 THE COURT: Correct, correct.
4 MR. LEAVITT: -- 37 pages --
5 THE COURT: Correct.
6 MR. LEAVITT: -- and then we didn't get our order signed to
7 exceed those pages, so we modified that reply, didn't add any new
8 arguments --
9 THE COURT: Okay. So --
10 MR. LEAVITT: -- and brought it down to 30 pages --
11 THE COURT: So --
12 MR. LEAVITT: -- and then we filed that.
13 THE COURT: -- as I said, once a motion has been opposed,
14 you can't technically, quote, "withdraw it." But are you taking a position
15 on their request to withdraw?
16 MR. LEAVITT: Your Honor --
17 THE COURT: I mean, in other words, do we have to address
18 it?
19 MR. LEAVITT: No, Your Honor. We agreed that that motion
20 should be withdrawn --
21 THE COURT: Okay.
22 MR. LEAVITT: -- based upon your status check where you
23 stated that you would only address the property interest issue at this
24 hearing, and you will not address the take issues.
25 THE COURT: Okay. All right. Mr. Schwartz, so discuss the

1 order of proceedings, and then the second thing with respect if you're in
2 agreement that that's the appropriate way to handle the allegedly
3 withdrawn motion.

4 MR. SCHWARTZ: Thank you, Your Honor.

5 THE COURT: Would you agree on the --

6 MR. SCHWARTZ: No.

7 THE COURT: -- order of proceedings?

8 MR. SCHWARTZ: No. No, I don't.

9 THE COURT: Okay.

10 MR. SCHWARTZ: Your Honor, I think we should proceed
11 with the motion to remand first --

12 THE COURT: Uh-huh.

13 MR. SCHWARTZ: -- because if the Court grants that motion,
14 and we think that it's absolutely clear that that motion should be granted,
15 give the City a chance to decide these applications on the merits.
16 Because the takings -- the regulatory takings claims can't proceed
17 without a ripe claim, and this claim is obviously not ripe, and the Court
18 should remand it so that it can ripen.

19 THE COURT: Okay.

20 MR. SCHWARTZ: We think that should be argued first, then
21 the motion to dismiss for improper joinder of the civil complaint for
22 regulatory taking with the PJR.

23 Now, Your Honor, we disagree strongly with the developer
24 about this motion to determine property interest.

25 THE COURT: Okay. I think we've got some additional

1 co-counsel arriving. So we should make note of your additional counsel.

2 Mr. Ogilvie, hi.

3 MR. OGILVIE: Good morning, Judge.

4 THE COURT: Mr. Ogilvie we'll note your appearance and that
5 of your co-counsel, on the record.

6 MR. OGILVIE: I'm sorry?

7 THE COURT: We'll note your appearance and the
8 appearance of your co-counsel on the record --

9 MR. OGILVIE: Yes.

10 THE COURT: -- if you want to make your appearances?

11 MR. OGILVIE: Should we do it now?

12 THE COURT: Yes, please. Yeah.

13 MR. OGILVIE: George Ogilvie on behalf of the City.

14 THE COURT: And then we have Mr. Byrnes.

15 All right. So if we -- for my purposes, I guess counsel has
16 agreed that the issues that were addressed in the counter-motion for
17 summary judgment, can be addressed at a later time.

18 MR. SCHWARTZ: Your Honor, let me, if I could, explain?

19 THE COURT: Okay.

20 MR. SCHWARTZ: This motion to determine property interest
21 is a fiction. It's made up, there's no such thing.

22 THE COURT: Okay.

23 MR. SCHWARTZ: The motion is really a motion for summary
24 adjudication of one issue, and that's an element of a taking claim. You
25 have to have a property interest in order to argue that it's taken, okay.

1 So it's just a motion for summary adjudication of that one issue, and
2 counsel misled this Court in telling you that the process for deciding
3 these claims in Nevada, is that you hear this motion to determine
4 property interest first, before you can hear --

5 THE COURT: Okay.

6 MR. SCHWARTZ: -- a motion on the merits.

7 THE COURT: That's not my question. I don't want to talk
8 about the merits. My question for you is, what's the appropriate -- for
9 today, the appropriate order of proceedings. And my question was,
10 technically, there is no such thing as, quote, "withdrawing" on motion
11 that has been --

12 MR. SCHWARTZ: Right.

13 THE COURT: -- opposed. You need a stipulation.

14 MR. SCHWARTZ: Well --

15 THE COURT: Counsel has indicated that they don't object to
16 the Court not considering the counter-motion.

17 MR. SCHWARTZ: Well, that's right, Your Honor, but I think --
18 sorry.

19 THE COURT: So my question is, is your counter-motion on,
20 or is it off?

21 MR. SCHWARTZ: It's off.

22 THE COURT: It's a yes or no question.

23 MR. SCHWARTZ: It's off. But, Your Honor, I --

24 THE COURT: Thank you. All right.

25 MR. SCHWARTZ: -- want to make just one thing --

1 THE COURT: So I agree with you that the appropriate order
2 of proceedings would be to start with the motion to remand, then
3 address the motion to dismiss, that makes more sense to me. If the
4 whole thing is remanded then I think the whole thing is remanded, so
5 that makes it, to me, the more appropriate place to start, so we'll start
6 with the motion to remand, if you want to address your motion to
7 remand?

8 MR. SCHWARTZ: I just want to make one point.

9 THE COURT: No.

10 MR. SCHWARTZ: The Court --

11 THE COURT: Start with your motion to remand.

12 MR. SCHWARTZ: Your Honor, I have some exhibits, hard
13 copies for the Court; may I approach?

14 THE COURT: Certainly.

15 MR. SCHWARTZ: We'll be referring to these exhibits in our
16 argument.

17 THE COURT: Okay.

18 MR. SCHWARTZ: Thank you.

19 THE COURT: Are these exhibits that are attached to the filed
20 documents? So these are just paper copies?

21 MR. SCHWARTZ: All of these exhibits are in the City's
22 appendices of exhibits.

23 THE COURT: Got it. Thank you.

24 MR. SCHWARTZ: With the exception there are a couple of
25 pleadings in here that are on file with the Court.

1 THE COURT: Thank you.

2 MR. SCHWARTZ: And we don't need to makes those our
3 exhibits, it wasn't necessary.

4 Your Honor, I'd like to put this motion to remand in context.
5 In this case a developer bought a golf course and drainage for four and a
6 half million dollars. Under the City's general plan the property could not
7 be used for housing. That's the law, clear and simple. The developer
8 then voluntarily shuts down a golf course and applies to develop the golf
9 course with housing.

10 In the first set of applications the developer filed for the
11 17 acre property, that the developer carved out of the 250 acre badland.
12 The City changed the law to allow the City to approve 435 luxury housing
13 units for construction on just the 17 acre portion of the 250 acre badland.
14 So the City changed the zoning from RPD-7 to R-3, which increased the
15 allowable density from 7 units per acre to 25 units per acre. The City
16 amended the general plan to change the park, recreation and open-space
17 designation in the general plan that does not allow housing, to a
18 designation that allowed housing.

19 By the developer's own evidence that approval increased the
20 value of just the 17 acre property to \$26 million. So the developer, with
21 that application already made five times its investment in the entire 250
22 acre property, and they still got 233 acres left to develop or use for open
23 space, such as the 133 acre portion that they carved out.

24 So instead of building the 435 unit project the developer sues
25 the City for \$386 million; and this is not a hyperbole, this is what's going

1 on here. And the developer denies that the City approved the
2 development on the 435 acre project, it denies that that approval exists,
3 which is, how can I say this as delicately as possible, preposterous.
4 Preposterous. They got a permit to build a substantial development and
5 they claim they don't have it.

6 Okay. So when a developer invests \$4.5 million in a piece of
7 property and now is seeking damages of \$386 million, you know
8 something is very wrong. The law can't be, it can't be that the developer
9 gets compensation in this case. It can't be that there was no injury. No
10 injury, there's no taking, there's no compensation. It can't possibly be a
11 violation of the developer's constitutional rights under these facts.

12 The only conclusion is, what's the purpose of this lawsuit?
13 This lawsuit is pure and simple, just a shakedown. There is no other
14 conclusion, given these facts, and it should have never been brought,
15 and it should be thrown out.

16 THE COURT: Okay. So we're talking here today about that
17 portion of the overall golf course that is the 130 acre sub-parcel, and the
18 amended complaint specifically references the 2020 master plan,
19 because this whole thing start way back in like what, 2017, or
20 something?

21 We're now -- the amended complaint talks about the 2020
22 master plan. So what are you seeking to have remanded, because I'm
23 trying to figure out, since we have amended pleadings, what you're
24 seeking to have remanded?

25 MR. SCHWARTZ: The 133 acre applications.

1 THE COURT: Yeah.

2 MR. SCHWARTZ: But the facts that I'm telling the Court are
3 directly relevant to whether the Court should remand, and I'm trying to
4 give the Court the background, and my reasons for --

5 THE COURT: I understand.

6 MR. SCHWARTZ: -- that I think [indiscernible - counsel and
7 court speaking at the same time].

8 THE COURT: But my question is, is the entire thing to be
9 remanded --

10 MR. SCHWARTZ: Oh, no.

11 THE COURT: -- or --

12 MR. SCHWARTZ: No. This Court -- the developer filed four
13 separate lawsuits.

14 THE COURT: Right.

15 MR. SCHWARTZ: One for each property, and asked for
16 damages for each property. It claims that the City has denied
17 development. It denied any use of all four properties in each of the
18 lawsuits. So this lawsuit only concerns the 133 acre property where the
19 City Council struck the applications because they were incomplete.

20 Okay. So --

21 THE COURT: So they were incomplete in 2000 and whatever;
22 was it '17, it seems like I recall '17.

23 MR. SCHWARTZ: '17 I think was the date. Because at the
24 time the Crockett order, Judge Crockett order, required a major
25 modification application, and the developer didn't file one, so the City

1 had no choice. It couldn't rule on those applications without being in
2 contempt of Court. But I want to get to that, because I think some more
3 background might be useful for the Court.

4 So this property originally started as Peccole Ranch master
5 plan, it was 1539 acres. Now as a condition of approval of that project,
6 and the inclusion in gaming district, so it's a condition of the zoning,
7 which RPD-7 zoning requires that open space, and inclusion in the
8 gaming district, they had to set aside the badlands for the golf course
9 and drainage.

10 So, you know, counsel is going to argue later that the City
11 asserts that those conditions of approval mean that the badlands has to
12 be open space, recreation, in perpetuity. That's false, and I'll address
13 that later. I'm just giving the Court the background. Then in -- that was
14 1990. In 1992 the City Council, by a legislation, by ordinance, designated
15 the badlands PROS in the general plan, and the general plan is like the
16 constitution, per land use under State law.

17 Zoning ordinances implement the general plan. Zoning
18 ordinances have to be consistent with the general plan. So when the
19 City Council designated the badlands PROS, that's the law, and that law
20 must be followed. All development requests must deal with that
21 restriction. PROS does not allow residential development, or
22 commercial development.

23 Now again, this was only imposed on about 15 percent of the
24 PRNP. The other 85 percent of the PRNP was developed, including by
25 this developer, who got the benefit in building the Queensridge Towers

1 and the Tivoli Village retail, got the benefit of the open space amenity of
2 the golf course. So they already made money developing, based on this
3 amendment.

4 The developer then bought the golf course and drainage in
5 2015. It then segmented the property into four parts, the 17 acres,
6 35 acres, 65 acres and 133 acres. Then it applied to develop the 17 acre
7 property. The 435 units was approved. The City denied -- later denied
8 an applicate to develop the 35 acre property. There was no application
9 ever filed for the 65 acre property, and then in this case the City found
10 that the 133 acre applications were incomplete.

11 So the developer then filed these four lawsuits, creating
12 absolute chaos, Your Honor. You've got four different cases in four
13 different courts, and it's -- frankly, it's a mess, and the developer is
14 capitalizing on that fact.

15 So neighbors challenged the 435 project approval and Judge
16 Crockett sustained the challenge. He said, you need to file a major
17 modification application, you didn't file one, therefore he voided the
18 17 acre approval. Voided. That went up to the Nevada Supreme Court
19 and the Court reversed Judge Crockett, and they reversed Judge
20 Crockett on a very narrow ground.

21 In the City's -- in the Las Vegas Municipal Code, which also
22 call the Unified Development Code, UDC -- so you'll see in citations in
23 your -- in these materials, Your Honor, you'll see the acronym UDC.
24 That's part of the Las Vegas municipal code. The UDC requires that
25 properties zoned PD need a major modification application to develop.

1 Property zoned RPD, like the badlands do not need a major modification
2 application. It's that simple.

3 The developer is going to argue that the Nevada Supreme
4 Court made all sorts of other rulings, that it did not make, and they're
5 depending on the Court not leading that decision, because they blatantly
6 mispresent what that decision did. Well, the Court in overturning Judge
7 Crockett reinstated the City's approvals, and the City opposed the
8 neighbor's challenge to their approval, and the City filed an amicus brief
9 in the Nevada Supreme Court, supporting its action, saying, we don't
10 need a major modification application.

11 So the City stood behind its approvals in this entire process,
12 then the Nevada Supreme Court reversed and ordered the permits
13 reinstated. That decision is tab 4, in our binder. The City, a week after
14 the remittitur had been issued for the Nevada Supreme Court order of
15 reversal, that's at tab 4, sent a letter to the developer saying, your
16 permits for approving the 17 acre, 435 luxury unit project has been
17 reinstated by the Nevada Supreme Court. The Court just issued its
18 remittitur. You're ready to go. In fact, we'll extend the life of your permit
19 two years, because -- to account for the time that the 17 acre approval
20 was on appeal. We'll extend it by two years. Come in and apply for a
21 building permit and you're ready to go.

22 The developer now again denies that it has a permit. In --

23 THE COURT: Why are we talking about it?

24 MR. SCHWARTZ: In this case --

25 THE COURT: That's not my case.

1 MR. SCHWARTZ: In this case, though --

2 THE COURT: I'm not understanding.

3 MR. SCHWARTZ: Well, it is important, because it goes to
4 ripeness, and it goes to what happened in this case --

5 THE COURT: Okay.

6 MR. SCHWARTZ: -- in 133 acre case. At the same time the
7 City wrote to the developer, when the Nevada Supreme Court earlier
8 reversed Judge Crockett. Before the remittitur had been issued, the City
9 wrote to the developer and said, the Supreme Court has reversed Judge
10 Crockett's order, you don't need a major modification application. As
11 soon as the remittitur is issued you're ready to -- you know, the City
12 Council is ready to consider your permits on the merits. That was back
13 in March, March of 2020.

14 So it's been a year and a half since that occurred. What has
15 the developer done? Have they asked the City to now consider the 133
16 acre application on the merits, because the City couldn't before; it was
17 under Judge Crockett's order? No, they haven't. So now they're
18 opposing remand of the 133 applications to the City Council, so that the
19 City Council can actually rule on the merits. Does this seem odd?
20 You've got -- this is the only developer I've ever heard of that doesn't
21 really want to develop their property.

22 They've got permits, the City -- what more could the City do?
23 We approved your permit for a pretty substantial development. You
24 know, here -- we defended it in the courts, here it is, and the developer
25 doesn't want to develop. The same thing with the 133 acres. We sent

1 the developer a letter on the 65 acre property. You don't need an MMA;
2 you never filed any applications on the 65 acre property. Come in and
3 file, you know, we're open for business.

4 This all goes to the ripeness doctrine, which is why the Court
5 should remand, because the 133 acre case, like the other cases, can't
6 possibly be ripe. That's exactly what Judge Herman found in the 65 acre
7 case, and the facts here are identical. No applications on the merits, in
8 the 133 acre case and the 65 acre case. The case isn't ripe under
9 overwhelming law.

10 But let's step back, why is -- why are we in this most bizarre
11 situation? And, you know, as the Court will see, the developer is taking
12 the most implausible position on the law. His position is that there was a
13 taking that's contravened by overwhelming law. It has no place, so why
14 are we here? Well, the developer can't -- it can't proceed with building
15 on the property, even though it has the right to do it right now.

16 THE COURT: On which property?

17 MR. SCHWARTZ: Well, on the 17 acre property. But, Your
18 Honor, for purposes of takings the law is clear, you can't carve up the
19 property, that's called segmentation. The Courts are on to that. They
20 say that's a no, no. Because a taking, there's got to be an extreme
21 regulation that wipes out the value of the property. That's the test for
22 liability for a taking. So you can't develop, let's say, the PRNP. Develop
23 85 percent of it with thousands of housing units, and a hotel, and a
24 casino, and retail, and the government -- and you set aside 15 percent.
25 You can't then sell the 15 percent, the open space, and say -- and then he

1 says, no, we want to keep this as open space, which is has the right to
2 do. Then he said, wait a minute, you've taken my property because you
3 wiped out my value for that portion, just like the badlands.

4 Even if the Court doesn't find that the PRNP, the 1500 acre
5 PRNP is the parcel as a whole, then at least the badland is a parcel as a
6 whole, it was under one use, one owner, sold in one transaction. That's
7 the parcel as a whole.

8 So the developer then carved that up and got substantial
9 development on the 17 acres. There can't possibly be a taking, because
10 the badlands, as a parcel as a whole, the City has allowed extensive
11 development of the property increased, and its value by at least by five
12 times according to the developer's own evidence. And so there can't
13 possibly be a taking here, in this case.

14 So why is that we're here, and why is the developer acting in
15 such a bizarre fashion where it has permits to develop, and it doesn't
16 want to develop? It's done nothing. You know, we never got any
17 response to these letters. All we got is an argument in the Courts, in
18 these courts, that the 17 acre approvals, the City nullified them, and
19 that's frivolous, and Judge Herndon found it frivolous, and it's just -- it's
20 just frivolous. Why are they acting in such a bizarre fashion? Because it
21 doesn't fit with their narrative, which is that they're the victims of the
22 City.

23 They don't have any law on their side. They've already been
24 enriched considerably. And so how are they going to get the big bucks?
25 It's this narrative of victimization and then trying to shift the Court's

1 attention away from the takings -- the takings law -- except the takings
2 law, to these bizarre claims like they have, like zoning referred to
3 property rights, absolutely bizarre. Never been, you know, -- it's the
4 craziest argument ever.

5 Okay. So what we're saying is the Court shouldn't indulge
6 this phony lawsuit, it should remand the 133 acre application to the City
7 Council. Call the developer's bluff. If they really think that they can't
8 build on this property and that that would be a taking, then give the City
9 a chance, give the City a chance to rule on the merits of the application.
10 The City hasn't had that chance. It would be the height of injustice to
11 require the City to pay takings' damages to the developer for finding that
12 the 133 acre applications are incomplete under Judge Sturman's order,
13 where the City had no alternative, and now it has to pay compensation
14 when the developer doesn't even want to let the City Council decide the
15 case on the merits?

16 All right. So there are two reasons here that the Court
17 should remand. First, the Court has authority to remand, and a remand
18 would promote judicial economy. It would moot this phony motion to
19 determine proper interest, and the City's motion for summary judgment.
20 And, you know, there can't be a taking if there's no decision denying the
21 alleged property rights. So their motion to determine properties, oh, we
22 have this property right under zoning, which, again it is preposterous.
23 But even if they did, if the City approves the 133 acre applications, which
24 it could do, then the motion is moot, and they're taking this case as
25 moot.

1 The second reason the Court should remand is because, as
2 I've indicated, the claim is not ripe, based on this record. There is no
3 decision on the merits, and as I'll explain, the ripeness doctrine
4 requires -- that puts the burden on the developer to file two applications
5 for this property alone, not combined with another property, two
6 applications for this property alone, and have them denied, then the
7 claim might be ripe under the takings doctrine, under *the State v. 8th*
8 *Judicial District* case from the Nevada Supreme Court.

9 Okay. So, Your Honor, in your minute order dismissing the
10 PJR, which is tab 1, the Court found that the City was bound by Judge
11 Crockett's order. The City had no choice but to find the applications to
12 be incomplete, and the Court dismissed the PJR on that basis. I think
13 recognizing that it would be unfair to the City to saddle the City with any
14 liability, equitable or monetary, if the City was duty bound to find those
15 applications incomplete. Never reviewed them on the merits.

16 The Court then confirmed this in its findings of fact and
17 conclusions of law, which is tab 2. Now in those documents the Court
18 denied the PJR without prejudice should Judge Crockett's order be
19 overturned on appeal. So after the orders were issued the Nevada
20 Supreme Court reversed the Crockett order and the City sent the letter to
21 the developer, and you've not got your permits on the 17 acre property,
22 go ahead and build.

23 And Judge Herndon decided that, in his ruling in the 65 acre
24 case, that the approvals -- the City's approvals were valid, and the City
25 had no power to nullify them. The developer's claim that the City

1 nullified the permits was frivolous.

2 THE COURT: Well, so going back to the minute order,
3 because as you pointed out the minute on February 15th, was
4 specifically that the motion to dismiss the PJR was granted, because
5 Crockett had ruled on the same issue, that was on appeal, so it was
6 without prejudice should the decision be overturned. The decision being
7 overturned, I guess I'm trying to figure out the procedural posture that
8 we're in here.

9 They overturn the Crockett order, so in this case, I
10 understand your point about how they shouldn't be splitting this all up,
11 and muddling things up, but it is, so whatever, they then filed an
12 amended complaint. So what are we talking about here? What are you
13 seeking to remand?

14 MR. SCHWARTZ: What I was getting at here, Your Honor --
15 my point is this Court still has jurisdiction over the PJR -- the PJR. Let
16 me explain. The developer refiled its PJR and an amended civil
17 complaint for a regulatory taking on July 13th --

18 THE COURT: Uh-huh.

19 MR. SCHWARTZ: -- and then refiled it on July 29th. All right.
20 The Court has the authority to remand until there's a final judgment. The
21 Court has authority to remand until there is a final judgment. There is no
22 final judgment here. Now the developer argues, once a PJR is dismissed
23 the judgment is final, and the Court no longer has jurisdiction. Well,
24 that's wrong. The only authority the developer cites to that is *Black's*
25 *Law Dictionary*. I'm going to give the Court Nevada law.